

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA.

In the matter of an Application against an
order of the High Court under Section 331
of the Code of Criminal Procedure Act No.
15 of 1979.

Democratic Socialist Republic of Sri Lanka

Court of Appeal No:

Vs.

CA/HCC/135/2015

Sumanadasage Sandun Hemantha

High Court of Trincomalee:

Accused

HC/481/2012

AND NOW BETWEEN

Sumanadasage Sandun Hemantha

Accused-Appellant

Vs.

The Hon. Attorney General

Attorney General's Department

Colombo 12.

Respondent

Before : Menaka Wijesundera J.

K.M.G.H Kulatunga J.

Counsel : Senarath Jayasundara and Rehani Chandrasiri

for the Accused-Appellant.

Sudharshana De Silva, SDSG for the Respondent.

Argued on : 14.10.2024

Decided on : 26.11.2024

MENAKA WIJESUNDERA J.

The instant appeal has been filed to set aside the judgment dated 06.08.2015 of the High Court of Trincomalee.

The accused-appellant (appellant) had been indicted under sections 354 and 364(2) of the Penal Code. The appellant had pleaded not guilty and the

prosecution had placed evidence against him. The appellant also had given evidence and had called witnesses.

Upon the conclusion of the trial, the learned trial judge had convicted the appellant for both counts in the indictment and had sentenced accordingly.

The instant appeal has been lodged against the said conviction and sentence.

The grounds of appeal raised by the counsel for the appellant are as follows,

- 1) The charge being defective,
- 2) The prosecution has not proved their case beyond a reasonable doubt.

The charge being defective.

The counsel for the appellant stated that since the charges in the indictment have been framed on the basis of a time period, it is against the legal basis set out under section 165(1) of the Code of Criminal Procedure where the details of a charge has been defined.

The said section has specified that the particulars of the charge should include the time and place of the offence, but the instant indictment has no specific time but a time period.

The Counsel for the appellant went on to quote a few judgments, including one of mine (CA-HCC-0007-2024 decided on 10.9.2024) where it has been held that in a charge a specific date has to be mentioned.

But as I have very clearly dealt with the said issue in the judgment quoted above, I do not wish to go in to the same issue.

The prosecution not proving its case beyond a reasonable doubt.

The story of the prosecution unfolds with the evidence of the victim, who had been born in 1990 and at the time of the incident she had been between 15 and 16 years of age.

She had said at the very outset that the incident took place in 2006 but when the state counsel suggested to her that it was in 2005, she had agreed and had based her evidence to that year, during her evidence.

In cross-examination, she had said that she had complained to the police in July of 2007 and to a suggestion made by the defense, she had said that it has happened in 2006. Hence, her evidence with regard to the time period during which the offence took place is subjected to doubt (pages 295 and 297 of the brief).

According to her evidence, she had met the appellant while going to her extra classes in school (page 445 of the brief) and she has started a love affair with him and she alleges that on three occasions she has had sexual intercourse with him but she had not told anyone (at pages 300-304, 306,309 and 310of the brief).

The appellant had been working in the Pradeshiya Sabha in Trincomalee during this time.

The third instance of sexual intercourse had been at her cousin's place, who had given evidence in the trial (pages 326 and 327 of the brief).

After the third time, she had missed her menstrual cycle twice and she had not been feeling quite right. As such, she had told the appellant and then he had given her some pills but that had not worked and she had continued to feel sick (pages 331 and 333 of the brief).

Then he had suggested to her that they may get the fetus aborted to which she had reluctantly agreed and she got it aborted with her cousin's help (pages 77 and 78 of the brief). Her parents had not known but one day the cousin has had an argument with the victim's mother, and the cousin had told the parents of the victim and then only the parents had got to know of the entire incident. (page 436 and 447 of the brief).

Thereafter, the parents had confronted the appellant and had tried to get him to marry her whilst he had not done so.

Therefore, the instant complaint had been lodged on 03.07.2007. The cousin and the parents of the victim had given evidence and they had corroborated the victim (pages 337-391, 393 and 394, 422-424, 427, 433, 450 and 457 of the brief).

The doctor who had examined the victim had done so in July, 2007 and the victim, in the history given to the doctor, had said that she had a sexual relationship with a person known to her and that she got an abortion done on 2006.06.26. She had not stated the name of the culprit to the doctor.

Hence, if that is so and on considering evidence with regard to her missing her menstrual cycle twice and the date of her first complaint, a great doubt arises with regard to the time period stated in the indictment.

Hence, it has to be concluded that there is a reasonable doubt with regard to the date of the offence upon considering the case history by the victim to the doctor, which the learned trial judge had not adverted his mind to at all.

Furthermore, the appellant has given evidence and had said that at the time of the offence he had been working in the Pradeshiya Sabha in Trincomalee. He had known the victims' cousin's husband and that he brought him a proposal in 2006 and that he liked it at the beginning but later changed his mind because he got to know that she was having a relationship with a person called Nihal (pages 519-521 of the brief).

He had completely denied of having any kind of sexual act with the victim and had said, in fact, that he was working on 26th and 27th of June in 2006 on which days the victim had alleged that she went to get the abortion done with the appellant and the cousin (page 523 of the brief).

Hence, when such evidence is given, the trial judge has to analyze whether it creates a reasonable doubt in the case for the prosecution.

Already the date of offence in the indictment has not been subject to doubt and this is further so upon considering the details in the case history given to the doctor victim. This is further aggravated by the stand taken up by the appellant.

But the learned trial judge had merely rejected the position of the appellant on the basis that the witnesses of the prosecution were not cross-examined on those points. (pages 565-571 of the brief).

Therefore, upon considering the above mentioned matter on law and facts it is abundantly clear that the prosecution has failed to prove beyond a reasonable doubt the date on which the offence has taken place, thereby violating one of the fundamental requirements of criminal law.

It is the fundamental duty of the prosecution that they prove their case beyond a reasonable doubt and the constituents in the charge have to be proved beyond a reasonable doubt which includes the date of the offence.

In the instant case, the prosecution had not clearly done so and the trial judge had been very naïve to the said short comings in the case for the prosecution case.

Furthermore, the Counsel for the appellant has raised in his written submissions that although the charge in the indictment has referred to only one act of rape and the prosecution leading the evidence pertaining to three acts of rape whether it violates the provisions of section 54 of the Evidence Ordinance.

At this point I wish to draw my attention to the explanation 1 of section 54 of the Evidence Ordinance where it has been said that,

“This section does not apply to cases in which the bad character of any person is itself a fact in issue.”

This has been discussed in ***The Law of Evidence in Sri Lanka by G.L. Peiris*** at page 286 where the author has drawn some further clarifications which has been introduced by the ***Administration of Justice Law, No. 44 of 1973***, of the National State Assembly;

- (a) Where proceedings are taken against a person for having received stolen goods knowing them to be stolen or for having in his possession stolen property, evidence may be given that there was found in his possession other property stolen within the proceeding period of twelve months, and such evidence may be taken into consideration for the purpose of proving that such person knew the property to be stolen which forms the subject of the proceeding.
- (b) Where proceedings are taken against a person for having received goods knowing them to be stolen or for having in his possession stolen property, and evidence has been given that the stolen property was found in his possession, then if such person had within five years immediately preceding been convicted of any offence involving fraud or dishonesty, evidence of such previous conviction may be given and may be taken into consideration for the purpose of proving that the person accused knew the property which was proved to be in his possession to have been stolen.

Therefore, in the instant matter, although the charge refers to only one single act of rape, the evidence of the other two becomes relevant under section 54 explanation 1 of the Evidence Ordinance and also under section 14 explanation 2 of the Evidence Ordinance. At this point I wish to quote,

The Law of Evidence Volume1 E.R.S.R Coomaraswamy, page 687 where it has been stated that;

“It has also been shown that evidence that the accused committed acts similar to that which form the subject matter of the charge is admissible not to show that because he has committed one crime, he would

therefore be likely to commit another crime of the same nature, but to prove intention, knowledge, good faith and other similar states of mind of the accused with regard to the act or to rebut, even by anticipation, the defence of accident or mistake or other similar defence and to show that the act charged formed part of a series of occurrences.”

As such, the prosecution leading the evidence of three acts of rape becomes relevant under the above quoted sections of the Evidence Ordinance.

But it has to be stated that the trial judge had admitted the evidence of all three instances of rape displaying no consideration for the above mentioned principles in the Law of evidence.

As such, on consideration of the above mentioned facts and the principles of law, it is the considered view of this Court that the trial judge had seriously misdirected himself on several questions of law and fact, which makes it only but fair to set aside the conviction and the sentence of the appellant and allow the instant appeal.

Judge of the Court of Appeal

K. M. G. H. KULATUNGA, J.

1. I have had the advantage and the privilege of reading in draft the judgement of my sister Justice Menaka Wijesundera. As for her proposed conclusion, I am in agreement that the Appeal should be allowed as the prosecution has failed to prove that the alleged act of rape was committed within the period specified in the charge as well as the overall unreliability of the evidence of the prosecutrix.
2. However as for the reasoning and the finding on the 1st ground of appeal that, *“in a charge a specific date has to be mentioned”* and the consequential views expressed on the validity of the charge, I am respectfully unable to concur. So, I will now venture to consider the first ground of appeal and state my own reasons. The sum total of the said ground of appeal is that the charge is defective due to the failure to state a specific and fixed date of the alleged offence.
3. In **Baiya Dewayalage Sugathapala alias Sugathe Seeya v. Attorney General** [CA/HCC/0007/2024] Justice Wijesundera opined that, *“the Accused-Appellant was never given a specific date/period of the offence as per the provisions of the Code of Criminal Procedure ...and that the Appellant did not have a charge to answer.”* The said finding is now reiterated in the draft judgement. Arriving at the said conclusion in that decision, reference is made to the following decisions:
 - a. **Kumburawela Kankanamge Dayarathne v. Attorney General**, CA/188/2015, in which Justice Thurairaja (as he then was) has opined that, *in a criminal prosecution, the charge should include the time and place, and the same should be clearly informed to the Accused;*

- b. in **R. H. M. S. Prematunga alias Ananda v. Attorney General, CA 01/2013**, decided on 31/01/2014, Justice Sisira De Abrew referring to Section 165 of the Criminal Procedure Act opined that the charge must, *inter alia*, specify the time and place of the offence. and held further, that “.... *when a charge specifies that the Accused committed the offence during a period and the evidence shows that the offence was not committed during the said period the Accused cannot be convicted. In such a situation it cannot be contended that the Accused was not prejudiced because the idea behind specifying the time and place of offence, as I pointed earlier, is to give sufficient opportunity to the Accused to answer the charge and to ensure a fair trial.*”;
- c. then the Indian cases of **A.N. Mukerji v. State** [A.I.R 1969 All 489 at page 496] and **Ram Asrey v. State of U.P.** [1982 A.L.J. 1138] which determined that, ‘*the charge to state the offence and contain particulars as to the time and place of the alleged offence and the person against whom it was committed, is important.*’;
- d. **Sukhdev v. State M.P.** [1995(2) Crimes 336 at 337] where it held that, “*Time of the commission of offence is of great significance..... counsel for the complainant fairly conceded that there is substantial defect in the framing of the charge when the timing has been misquoted.*”; and
- e. in the case of **Attorney General v. Viraj Aponso and Others, SC 24/2008**, it was held that, “*It is clear that it is the responsibility of the prosecution to inform the time, place and the offence clearly to the person who is charged. It is fundamental for the Accused-Appellant to formulate his defence..... If the accused wants to take up the defence of alibi, he cannot do so because there is no due date or time given.*”

4. Upon citing and referring to the above decisions, Justice Wijesundera in **Baiya Dewayalage Sugathapala alias Sugathe Seeya v. Attorney General** (supra) concludes thus; *“Therefore, in the instant matter the Appellant has been charged for the period of 01-04-2014 to 16-10-2014 as per 165(1) of the Code of Criminal Procedure, there is no specific time or a date given by the prosecution for the Appellant to formulate his defence which denies a fair trial. Therefore, considering all the proceedings during the trial, the oral and written submissions of both parties, I find that the Accused-Appellant was never given a specific date/period of the offence as per the provisions of the Code of Criminal Procedure. Hence it is the opinion of this court that the Appellant did not have a charge to answer.”*
5. Referring and relying on **Baiya Dewayalage Sugathapala**’s case it is now reiterated in the proposed draft judgement that, *“in a charge a **specific date** has to be mentioned”* (emphasis added), which I am respectfully not able to subscribe to and agree with for the following reasons.
6. As opposed to the decisions referred to above, I find that this Court has in the following decisions held otherwise. They are;
 - a. **Madawala Gedara Premadasa v. Attorney General**, CA/261/2009, decided on 26.05.2014, where Justice Anil Gooneratne addressed the issue of vagueness regarding the date of the incident, holding that the lack of specificity in the incident date did not prejudice the Accused, as the alleged acts occurred on multiple dates, indicating a pattern of repetition and continuation rather than a single incident.
 - b. Justice Sampath B. Abayakoon in **Madduma Ralalage Gunasena v. Attorney General**, CA/HCC/0082/2020, decided on 20.05.2022, held that the lack of specific dates in cases of repeated abuse over a period does not hinder the prosecution if the time period specified sufficiently informs the Accused about the time

frame of the allegations. The court cited precedents such as *R v. Dossi* 13 Cr. App. R. 158 and *Wright v. Nicholson* 54 Cr. App. R. 38 affirming that precise dates are not mandatory unless they impact the fairness of the trial.

- c. In **Keerawella Palliyaguruge Dinesh Indika v. Attorney General**, CA/88/2013, where the Appellant was informed of the time frame (a month's period from September 5, 2003, to October 5, 2003) and denied entering the victim's house during that period, Justice K. K. Wickramasinghe held that this time range in the indictment was adequate and did not prejudice the Appellant's defense, affirming that minor uncertainties about exact dates do not necessarily undermine the fairness of a trial. The court acknowledged that the victim, a young child, could not provide exact dates for the repeated incidents of sexual abuse, but it found that this did not prejudice the Appellant's defense.
- d. In **Jayawardana v. Attorney General**, CA/HCC/0431/2019, the timeframe of the offence spanned for a month's period (between December 1 and December 31, 2009). Justice Priyantha Fernando found that, in cases involving sexual offences against children, where it may be challenging for child victims to recall exact dates, the given time frame did not harm the Appellant's defense, and rejected this ground of appeal, particularly because the Appellant did not present an alibi or evidence that a specific date would have changed his defense.
- e. **Siripala v. Attorney General**, CA/HCC/0156/18, further states that an indictment's date range (for three offences during a period of one year from October 11, 2004, to October 10, 2005) is valid if it does not mislead the Accused or affect the fairness of the trial. The court found no error in the time frame given in the indictment, as it was reasonably sufficient for the Appellant to understand the charges and prepare a defense.

7. In the light of these divergent opinions, I will now endeavour to consider this contentious issue. The charges preferred against the appellant in this instance are kidnapping from lawful guardianship punishable under Section 354 of the Penal Code and that of statutory rape punishable under Section 364(2) (e) of the Penal Code as amended by Act No. 22 of 1995. The date of offence alleged and specified is not a fixed and a determinate date but a time period namely, “*between 1st January 2005 and 31st December 2005.*”
8. The argument advanced on behalf of the Appellant is that, it is mandatory under Section 165 (1) of the Code of Criminal Procedure Act to *inter alia* state in a charge, the time of the offence in the form of a precise date. Simply the argument advanced is that a charge in which the specific and determinate *date* of offence is not stated is not valid and there is no charge for the Accused to answer. To consider this argument, it is necessary comprehend the provisions of Sections 164 and 165 of the Code of Criminal Procedure Act which read as follows;

CHAPTER XVI

OF THE CHARGE

Charge to state offence. **164.**

(1) Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as will give the accused notice of the matter with which he is charged.

(4) The law and section of the law under which the offence said to have been committed is punishable

shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) The charge shall when it is preferred, whether at the inquiry preliminary to committal for trial or at the trial, be read to the accused in a language which he understands.

Illustrations

(a) –(d).....

Particulars as to time-place person.

165.

(1) The charge shall contain such particulars as to the time and place of the alleged offence and as to the person (if any) against whom and as to the thing (if any) in respect of which it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged and to show that the offence is not prescribed.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of movable property, it shall be sufficient to specify the gross sum or, as the case may be, the gross quantity in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 174:

Provided that the time included between the first and last of such dates shall not exceed one year.

Then manner of committing offence must be stated.

(3) When the nature of the case is such that the particulars mentioned in section 164 and the preceding subsections of this section do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations

(a)-(f).....

9. Sections 164 and 165 of the Code of Criminal Procedure Act together specify the requisite elements of a charge. According to which a charge basically consists of 2 parts namely, the **statement of the offence** and the **particulars of the offence**. Section 164 requires that the **statement of offence** or the law and the provision that is violated to be stated and Section 165 requires that the **particulars of the offence** or the description of the offending act or omission, the time and place, the person against whom or the thing in respect of which the offence was committed be stated. These two sections together lay down and determine what should be stated and contained in a charge.

10. Section 165(1) requires the charge to contain particulars as to the time and place of the alleged offence. It is significant and relevant that the specific requirement is the '*time*' and not the '*date*'. However, in this context, it appears that in certain legal literature, judicial writings and amongst practitioners the words *time* and *date* have been used interchangeably and in the alternative. So much so, the requirement of *time* under Section 165 is misunderstood and often referred to as the *date* of committing an offence. No doubt, in the normal course in most of the charges a specific *date* is forthcoming and is so stated. However, Section 165 as a matter of law does not require a specific and determinate *date* but *the time* of the alleged offence.

11. So, in this context what does the word '*time*' mean? It is a matter of interpretation. It is the literal rule of statutory interpretation that should be resorted to and applied first. Under the literal rule, the words of the statute are given their natural or ordinary meaning and applied without the judge seeking to put a gloss on the words or seek to make sense of the statute. The first and most elementary rule of construction is that it

is to be assumed that the words and phrases of technical statutes are used in their technical sense if they have acquired one, and otherwise in the ordinary meaning. Therefore, it is desirable to adhere to the words of the Act of the Parliament giving to them the sense which is their natural import in the order in which they are placed. It is the rule of literal construction. If language is clear and explicit, the court must give effect to it, for in that case the words of the statute speak the intention of the Legislature. [vide-**Maxwell** 12th edition; **R v. Inhabitants of Ramsgate**, (1827) 6 B&C as 712.; **R v. Harris** (1836) 7 C & P 446, **R v Maginnis** (1987) AC 303, **Fisher v. Bell** (1961) 1 QB 394, **Whitely v. Chappel** (1868) LR 4 QB 147].

12. As for the ordinary and natural meaning, the **Black's Law Dictionary** (9th Edition) defines the word "*time*" to mean, "*1. A measure of duration. 2. A point or period of duration at or during which something is alleged to have occurred....*" Thus, the ordinary meaning of the word '*time*' is simply a point or *a duration* which will certainly include minutes, hours, days, weeks, or months.
13. The '*date*' as we know is a numbered day in a month of a year being a 24 hour duration, which certainly will come within the meaning of '*time*.' The legislature in formulating Section 165 has used the word '*time*' and deliberately avoided the word '*date*.' The ordinary meaning of '*time*' is clear and unambiguous. It is a *measure of duration*.
14. In my thinking the rationale for the legislator to require the "*time*" of offence rather than the "*date*" is that, in certain circumstances, a precise and specific date may not be ascertainable and available but a time period may be. Classic examples that come to my mind are cases of sexual offences perpetrated on very young children during prolonged periods; in certain criminal conspiracies and offences of a continuing

nature; then in certain murders where the deceased is last seen with the Accused as well as cases of *Corpus Delicti* (where the dead body is not found); and then also where the prosecution endeavours to prove its case wholly or mainly on circumstantial evidence and the investigation commences late with the discovery of may be a decomposed body. In such cases it would be futile and presumptuous to expect the charge to specify and the prosecution to prove a precise and specific date of offence. All that the prosecution will practically be able to do is to state the period during which the offence must have been committed and prove that it was committed on a day during that period. In the above circumstances, the investigators and prosecutors practically will not have evidence to establish a precise or a fixed date but a time period. In such circumstances, specifying a time period becomes necessary.

15. It has often been argued that, specifying a time period is specifically provided only for the offences of Criminal Breach of Trust and dishonest misappropriation by Section 165(2) and not for other offences. The said section provides that,

16(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of movable property, it shall be sufficient to specify the gross sum or, as the case may be, the gross quantity in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 174:

Provided that the time included between the first and last of such dates shall not exceed one year.

16. The argument is that, it is only for such offences under Section 165 (2) that the prosecution is not required to specify a precise date of offence; and that it is only in respect of the offences of criminal breach of trust or dishonest misappropriation to which the said sub-section applies that a time period may be stated. It is thus argued that in all other cases to which Section 165 (1) applies, the precise time (date) of the alleged offence must be specifically stated in the charge.

17. Section 165(2) provides for lumping up of the gross quantity in respect of several acts of criminal breach of trust or misappropriation committed during a period of one year. The legal effect of which is to consolidate the total amount misappropriated by several separate acts into one charge and form an aggregate offence but for which each of such acts of misappropriation or criminal breach of trust would be a separate offence. Section 165(2) enables to lump up and consolidate and then it is *deemed to be a charge of one offence* within the meaning of Section 174. By this deeming provision, a single offence is created by a fiction of law, but for which each act would be a separate offence. Therefore, Section 165(2) enables the lumping up of criminal proceeds of several separate offences and by a legal fiction creates a legally valid single offence. Section 165(2) provides for a unique means to consolidate several offences in to a single charge of which the date of committing each such offence is known. In my thinking, this contention is not well founded. It is true that sub-section (2) specifically deals with two kinds of offences and makes a provision in respect of them, but that is not to say that in every other case, the time must be so specifically mentioned as to indicate precisely the date and the time at which the offence was committed.

18. Then it is also argued that specifying a time period may prejudice the accused by denying the ability to take up the defence of alibi and the

accused will thus be denied a fair trial when a specific date is not so stated. It is quite possible that in some cases stating a period may deprive the accused person of the opportunity to setup an alibi. At first blush this may seem to cause prejudice, but when the statute provides and permits the framing of a charge in that form, prejudice so caused is not invidious prejudice.

19. That being so, what strikes my mind is that in almost all the cases the inability to ascertain and the non-availability of evidence as to the precise date of the offending is caused by or is a direct consequence of the criminal conduct which is attributable to the offender him/herself. To put it differently, the cause of the non-availability of evidence as to the precise date is the result of the criminal act of the perpetrator him/herself. For instance; when an offender abuses children of tender age, and by direct threats and other coercive means such children are prevented from divulging and complaining promptly, such delay naturally causes a loss of memory as to the specific date; similarly in planned crimes committed in secrecy it is almost impossible to detect immediately and collect evidence as to the precise date of committing such crimes. Can a person accused of such a crime be heard to complain of prejudice from circumstances created by the perpetrator him/herself and then has any person a right to benefit or gain an advantage from circumstances created by a criminal act? I think not, and it cannot be so. Thus, of prejudice in such circumstances an accused cannot and has no moral or legal right to complain. If not, this will enable and encourage perpetrators of serious crime to destroy and obliterate evidence as to the specific date of committing the crime and escape criminal liability and get off scot-free of an offending of which otherwise there would be sufficient evidence. If it is proved that an accused committed the alleged criminal act (*actus reus*) with the requisite intent (*mens rea*) on a day during the period specified in the charge, does the exact date matter? I

think not, unless the exact date is otherwise relevant or is a constituent element of the offence.

20. Considering a similar issue the Canadian Supreme Court in the decision of **R. v. Douglas** [1991 CanLII 81 (SCC), 63 C.C.C. (3d) 29 (S.C.C.)], held that “*the failure to state with exact precision the time when an offence occurred is not fatal unless time is an essential part of the offence charged and the accused is misled or prejudiced by any variation in time that arises. It is generally the case that a charge may be proven if the evidence discloses the commission of the offence within the time period specified in the particular count of the indictment. The accused must be apprised of the offence charged with reasonable and precise information so as to ensure the ability to make full answer and defence.*”
21. No doubt the right to a fair trial requires that every person charged with a criminal offence must be informed in a language which he or she understands of the charges against him, with details being given as to the facts and the law on which the charge is based. This information must allow the accused person to effectively prepare his or her defence. In the criminal justice context, the right to a fair trial, more often than not exclusively, focuses on ensuring fairness to the accused. However, courts in other jurisdictions have acknowledged that considering the right to a fair trial court should also be mindful of the interests of the, victims/witnesses and the community/public as well. This approach is consistent with the conceptualisation of the right to a fair trial in European and United Kingdom human rights jurisprudence as a ‘*triangulation of interests.*’[vide-Lord Steyn in **Attorney General’s Reference (No 3 of 1999)** of Australia (2001) 2 AC 91, 118: 14 December 2000)].

22. It is now accepted that there must be fairness to all sides. In a criminal case this requires the court to consider a '*triangulation of interests*.' It involves taking into account the interests of the victim and his or her family, and the public in considering and deciding the right to a fair trial from the perspective of an accused. You must be mindful of the interest of the society and ensure that the criminal justice system is not made ineffective or that would make the prevention of a serious social problem almost impossible.
23. Thus, to my mind the absence of a specific date of offence *per se* does not cause a denial of a fair trial if it is in accordance with the procedure established by law. I do not think it would be right to hold that a charge is invalid solely for the reason that it does not specify a particular date of the offence. However, where it is possible to specify precisely the necessary particulars of the date of offence, the prosecution ought to mention the said particulars in the charge, but where the said particulars cannot be precisely specified in the charge having regard to the nature of the information available to the prosecution, the failure to mention such particulars will not invalidate the charge on that score alone.
24. As to the issue of fair trial, prejudice or difficulty to prepare a defence are all matters of fact to be presented to the trier of facts when the evidence is tendered and to be determined at the end of the trial. Accordingly, I hold that the provisions of Section 165 of the Criminal Procedure Act provide and enable a ***period of duration*** to be stated in the particulars of offence.
25. Subject to the aforesaid, I agree that the Appeal should be allowed as the prosecution has failed to prove that the act of rape as alleged was committed within the period specified in the charge and also the overall

unreliability of the evidence of the prosecutrix. I would allow the appeal and make the order which my sister Justice Menaka Wijesundera proposes.

Judge of the Court of Appeal.