

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

In the matter of an Appeal made under
Section 331(1) of the Code of Criminal
Procedure Act No.15 of 1979 read with
Article 138 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

Court of Appeal Case No.

CA/HCC/0155/2024

**High Court of Polonnaruwa
Case No. HC/40/2014**

Maldeniye Gedera Ravindra Piyasena
alias Ranuka

ACCUSED-APPELLANT

vs.

The Hon. Attorney General
Attorney General's Department
Colombo-12

COMPLAINANT-RESPONDENT

BEFORE : **P. Kumararatnam, J.
K. M. G. H. Kulatunga, J.**

COUNSEL : **Buddhika Thilakaratna for the
Appellant.
Dileepa Peeris, ASG, PC, for the
Respondent.**

ARGUED ON : **03/04/2025**

DECIDED ON : **28/03/2025**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General in the High Court of Polonnaruwa on the following charge namely, committing the offence of statutory rape on Herath Mudiyansele Thilini Madhushika Herath on or before the 19th of February 2013, within the jurisdiction of the court which is an offence punishable under Section 364(2) of the Penal Code.

After the trial, the Appellant was convicted as charged and was sentenced to 12 years Rigorous Imprisonment and a fine of Rs.25,000/-, in default of which 12 months simple imprisonment was imposed. Further, a sum of Rs.400,000/- was ordered as compensation with a default term of 24 months simple imprisonment.

Being aggrieved by the aforesaid conviction and sentence the Appellant preferred this appeal to this court.

The learned Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence. Also, at the time of argument the Appellant was connected via zoom platform from prison.

The Counsel for the Appellant advanced the following grounds of appeal:

1. The prosecution has failed to prove the date of offence beyond a reasonable doubt.
2. The prosecution has failed to prove the case beyond a reasonable doubt.
3. The learned High Court Judge failed to consider that the prosecutrix had a reason to implicate the Appellant.
4. The learned trial Judge has grievously erred in law by shifting the burden of proof to the Appellant.
5. The learned High Court Judge misdirected himself on facts and law.
6. The DNA evidence was improperly admitted to the trial.

Background of the case

In this case the prosecutrix was 14 years old at the time of this grave crime. The Appellant is a neighbour of the victim. On the morning of the day of the incident in question the Appellant had made a proposal to the victim that they elope together. As the victim had rejected the proposal, the Appellant had entered her house through the kitchen entrance on the same day around 6.00 p.m. When the victim had entered the room, the Appellant had taken off his shirt. The victim had not been able to recall anything thereafter, but remembers seeing the Appellant leaving with his shirt on.

Although she said narrated the above at the beginning of her examination-in-chief, later down the line she had said that the Appellant had kissed her face and had inserted his penis into her genital area. Before his departure, he had told the victim not to divulge this incident to her mother and had left the after putting his shirt on.

PW2, the mother of the victim had come home around 6.30 p.m. that day. Thereafter, as she was washing the clothes of the victim and she had noticed blood marks on them. When she inquired regarding this from the victim, she had rather reluctantly, divulged the incident to PW2, but that too only after

midnight. Therefore, the complaint was lodged on the following day at the Medirigiriya Police.

PW8, the JMO who examined the victim noted a fresh hymenal tear on the six o'clock position in the victim's vagina.

After the closing of the prosecution case, the defence was called and the Appellant had given evidence from the witness box and denied that such an incident took place. The Appellant took up the position that he was falsely implicated and he had divulged that the victim had had a love affair with a person called Indika.

Under the first ground of appeal the Appellant contended that the prosecution had failed to prove the date of offence beyond a reasonable doubt.

The learned Counsel for the Appellant highlighting a certain portion of the evidence given by the victim submitted that the victim had failed to mention the date of the offence correctly.

It is not disputed that the complaint to the police was lodged on 20.02.2013. The victim in her evidence said that she had divulged the incident to her mother after midnight. According to PW2, she had come to know the incident at the early hours of the day and lodged the complaint that day morning.

In **Bhoginbhai Hirjibhai v. State of Gujarat** (supra) the court held further:

“In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters.”

“It is unrealistic to expect a witness to be a human tape recorder.”

In **R. v. Dossai** 13 Cr.App.R. 158 the court held that:

“A date specified in an indictment is not a material matter unless it is an essential part of the alleged offence; the defendant may be convicted although the jury finds that the offence was committed on a date other than that specified in the indictment. Amendment of the indictment is unnecessary, although it will be good practice to do so (provided that there is no prejudice below) where it is clear on the evidence that if the offence was committed at all, it was committed on the day other than that specified.”

As the Appellant had been given sufficient notice regarding the date of offence and plausible evidence was led through witnesses regarding the date, I conclude no prejudice or failure of justice was caused to the Appellant. Hence, this ground of appeal has no merit.

As the 2nd to 5th grounds of appeal are interconnected all grounds will be considered together hereinafter.

In a criminal case, the prosecution is responsible for proving the defendant's guilt to the jury and demonstrating that a conviction is justified. The phrase "**beyond a reasonable doubt**" means that the evidence and arguments presented by the prosecution must be so strong and convincing that any rational person would accept the defendant's guilt as fact. This standard ensures that no reasonable uncertainty remains before a conviction is made.

In the case of **State of Andra Pradesh v. Garigula Satya Vani Murthy** AIR 1997 SC 1588, it was held that:

“...the courts are expected to show great responsibility while trying an accused on a charge of rape. They must deal with such cases with utmost sensitivity.”

The victim was only 14 years old when she was raped. She had given evidence about the incident accurately without any contradiction or omission.

Although she had not come out with the complete recount of the incident at the beginning, she had given evidence properly in the later stages of the trial. Hence, it cannot be said that the victim had provided two different versions sufficient to create a reasonable doubt.

The Appellant in his evidence stated that he is a disabled soldier who had sustained injuries during the war. To substantiate the said claim, he had marked his medical report as V1. Hence, the learned Counsel argued that due to his disability he could not have grappled or pulled a person thereby denied committing statutory rape.

It is well settled law that if an accused person is engaging a defence or taking up a certain position, that that position must be put to the witnesses and when they are giving evidence.

In **Sarwan Singh v. State of Punjab** [2002] AIR Supreme Court iii 3652 at 36755,3656, it was observed;

“It is a rule of essential justice that whenever the opponent has decline to avail himself of the opportunity to put his case in cross examination it must follow that the evidence tendered on that issue ought to be accepted.”

This case was cited with approval in the case of **Boby Mathew v. State of Karnataka** [2004] 3 Cri.L.J. 3003.

As the Appellant had not put his medical condition to the prosecution witnesses when they gave evidence, the court has to consider only that the proposition was put to the witnesses during the cross examination.

The prosecutrix in her evidence admitted that she had an affair with a person called Indika and that they were caught while in an abandoned house through the information provided by the Appellant. Although the Counsel for the Appellant contended that this led to the victim to implicate the Appellant in this case, the victim had never mentioned that she had any animosity with the Appellant over this incident.

In **State of Punjab v. Gurmit Singh [1996] 2 SCC 384** it was held that:

“The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour....”

Next the Counsel for the Appellant contended that the learned trial Judge has grievously erred in law by shifting the burden of proof to the Appellant thereby reversing the presumption of innocence which occasioned in the deprivation of a fair trial.

Upon perusal of the judgment nowhere had, the learned High Court reversed the burden of proof and placed it upon the Appellant. The learned High Court Judge had accurately considered the evidence presented by the prosecution and the defence and concluded that the Appellant is guilty of the charge.

When an accused is facing a serious criminal charge it is essential that every point in favour of the accused, though it may seem trivial, should be placed before the Judge. It may well be that all such matters, if so, placed before the judge may create a reasonable doubt, the benefit of which should accrue to the accused.

In this case the learned High Court Judge had considered the evidence given by the prosecutrix and the defence and had arrived at the conclusion that the evidence given by the prosecutrix is convincing and reliable and therefore, the prosecution had proved the case beyond a reasonable doubt.

Finally, the Appellant contended that the admission of the DNA Report without the consent of the defence has caused great prejudice to him. According to the DNA Report no any incriminating evidence was found against the Appellant. As such, this too had not caused any prejudice to the Appellant.

After careful perusal of the evidence presented during the trial, I am of the view that the evidence presented by the prosecution is not tainted with any

serious shortcomings or ambiguity. Therefore, it is safe to act on such evidence of the prosecution against the Appellant.

As discussed under the grounds of appeal advanced by the Appellant, the prosecution had adduced strong and incriminating evidence against the Appellant. The learned High Court Judge had accurately analyzed all the evidence presented by both parties to arrive at the conclusion that the prosecution has indeed proved the case beyond a reasonable doubt.

As the learned High Court Judge had rightly convicted the Appellant for the charge levelled against him in the indictment, and I affirm the conviction and dismiss the Appeal of the Appellant.

The Registrar is directed to send this judgment to High Court of Polonnaruwa along with the original case record.

JUDGE OF THE COURT OF APPEAL

K. M. G. H. Kulatunga, J.

I agree.

JUDGE OF THE COURT OF APPEAL