

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

In the matter of an application under and  
in terms of Section 331 of the Criminal  
Procedure Code to be read with Article  
138 of the Constitution of the Republic of  
Sri Lanka.

Court of Appeal No:

The Republic of Sri Lanka

CA/HCC/209/2020

**Complainant**

High Court of Anuradhapura

Case No: HC/96/2017

Vs.

Anthonilage Nimal Ranasinghe

**Accused**

**AND NOW**

Anthonilage Nimal Ranasinghe

**Accused – Appellant**

Vs.

Hon. Attorney General,

Attorney General Department,

Colombo 12.

**Respondent**

Before : Menaka Wijesundera J.  
Wickum A. Kaluarachchi J.

Counsel : Darshana Kuruppu with Sahan Weerasinghe for the  
Accused-Appellant.  
Maheshika Silva, DSG for the Respondent.

Argued on : 13.05.2024

Decided on : 12.06.2024

**MENAKA WIJESUNDERA J.**

The instant appeal has been filed to set aside the judgment dated 27.08.2020 of the High Court of Anuradhapura.

The appellant has been indicted for committing the offence of rape of a girl less than sixteen years of age.

**The grounds of appeal raised by the learned Counsel for the appellant are as below,**

- 1) The trial judge had failed to consider the improbability in the story of PW1,**
- 2) The trial judge had failed to consider the belatedness of the 1<sup>st</sup> complaint by the victim,**
- 3) The prosecution had failed to prove a specific date of offence,**
- 4) The trial judge had not considered the defense adequately.**

The version of the victim is that when she and her younger sister were at home, the appellant who had been called as Nimal bappa had come to her house and had sent the sister to the boutique and according to her she had lost consciousness and it was the sister who had told her as to what has happened.  
(Page 44)

She had further said that when she regained consciousness she has had no clothes on her and her parents had not been at home. She describes the incident at page 56 and 57 very reluctantly says that the appellant raped her.

Thereafter, she has said that she did not tell anyone because the appellant has threatened to kill her and she had been taken to the doctor when she had

complained of a stomach ache and then only the doctor had said that she was six months pregnant. At this point only the mother of the victim had got to know of the incident.

At that point only she had implicated the appellant.

The sister had been called in evidence and the sister does not corroborate the victim.

After the examination of the doctor only the 1<sup>st</sup> complaint had been lodged which is after six months from the incident and the prosecution had failed to explain the delay except for the evidence of the victim which says that the appellant had threatened her and then she failed to tell anyone of the incident. But this threat also is contradicted between the mother of the victim and the victim.

Hence, the version of the victim creates a very obvious doubt in the case for the prosecution because for one thing she who says that the sister of the victim who had been at the scene and who is supposed to have told the victim of the incident (because of her unconscious state) does not corroborate the victim and added to all this the victim at one point says that she was unconscious and could not remember anything at the very next juncture says as to what happened to her.

The investigative officer who had recorded her statement had made an observation that the victim was very obviously pregnant at the time the statement was made, hence if that is so for the mother not to have noticed all this time is very hard to believe, and the truthfulness of the victims version is further in doubt when she implicates the appellant for the first time at the doctor after nearly six months from the incident.

Hence, as submitted by the learned Counsel for the appellant the story of the victim is highly improbable and the trial judge had failed to consider the same.

Hence, the vague story narrated by the victim subjected to many infirmities has created a reasonable doubt in the story for the prosecution.

The appellant has given evidence on oath and has denied the entire incident but the trial judge had failed to consider the same in the proper perspective.

Hence, theses improbabilities in the prosecution story had slipped the mind of the trial judge, which is very disheartening because the cardinal rule in

criminal law is for the prosecution has to prove its case beyond a reasonable doubt.

But in the instant case there are many a doubts haunting the case of the prosecution.

It has been held in the case of **Padmathilake vs Director General Commission to Investigate Bribery and Corruption 2009 2SLR** that **“It has to be stressed here that credibility of prosecution witnesses should be subject to judicial evaluation in totality and not isolated scrutiny by the Judge. When witnesses make inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses is unreliable and in the absence of special circumstances, no conviction can be based on the testimony of such witnesses”**.

In the instant matter, the evidence of the victim is inconsistent and improbable hence basing a conviction on such evidence is dangerous and is not fair.

This situation is made worse by the undue delay of lodging the first complaint and **Justice Jayasuriya had held in the case of in Haramanis vs Somalatha 3 Sri L.R. 365** where it has been held that **“The law in its wisdom has held that the statement should be made within a reasonable time. The test is whether it was made as early as could reasonably be expected in the circumstances and whether there was or was not time for tutoring and concoction”**.

In the instant case, as averred before, it has taken six long months even for the mother of the victim to be told of the incident, leave alone the authorities, which creates a magnanimous doubt in the case for the prosecution considering the nature of the circumstances in the case.

Hence, it is the opinion of this Court for the reasons stated above that there is merit in the grounds of appeal raised by the appellant as such we find the conviction and the sentence imposed by the trial judge to be erroneous and bad in law.

As such the instant appeal is allowed and the sentence and the conviction of the appellant is hereby set aside and the appellant is acquitted.

**Judge of the Court of Appeal**

**Hon. Justice Wickum A. Kaluarachchi**

**I agree.**

**Judge of the Court of Appeal**