

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

**In the matter of an Appeal in terms of
section 331 of the Code of Criminal
Procedure Act No. 15 of 1979 as amended
read with Article 138(1) of the Constitution
of the Democratic Socialist Republic of Sri
Lanka.**

Democratic Socialist Republic of Sri Lanka.

Complainant

Court of Appeal Case No.:

CA HCC 0046/19

Vs.

High Court of Gampaha

Case No.

HC 30/2011

Loku Ranasinghe Arachchige Sunil Shantha.

Accused

AND NOW BETWEEN

Loku Ranasinghe Arachchige Sunil Shantha

Accused-Appellant

Vs.

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

Complainant-Respondent

Before: **B. Sasi Mahendran, J.**
 Amal Ranaraja, J.

Counsel: Shiral D. Wanniarachchi for the Accused-Appellant.

 Anoopa de Silva, D.S.G. for the Respondent.

Argued on: 08.07.2025

Decided on: 04.08.2025

JUDGMENT

AMAL RANARAJA, J.

1. The Accused-Appellant (hereinafter referred to as the “*Appellant*”) has been indicted in the *High Court of Gampaha* in High Court case number HC 30/11.
2. The charges in the indictment are as follows;

Charge 01

That during the period between September 01,2004 to December 31, 2004, at *Radawana*, in the *District of Gampaha*, within the jurisdiction of this Court, the accused-appellant did commit the offence of rape, on a minor, and thereby committed an offence punishable under section 364(2)(e) of the Penal Code as amended by Act No.22 of 1995.

Charge 02

That during the same period and same place as mentioned above, but at a date other than the date mentioned in the 01st charge, the accused-appellant did commit the offence of rape, on the said minor, and thereby committed an offence

punishable under section 364(2)(e) of the Penal Code as amended by Act No. 22 of 1995.

Charge 03

That during the same period and same place as mentioned above, but at a date other than the date mentioned in the 01st and 02nd charges above, the accused-appellant did commit the offence of rape, on the said minor, and thereby committed an offence punishable under section 364(2)(e) of the Penal Code as amended by Act No. 22 of 1995.

3. At the conclusion of the trial, the Learned High Court Judge has found the appellant guilty of the charges, convicted him there of and proceeded to sentence the appellant as follows;

A term of 18 years rigorous imprisonment each in respect of the 1st, 2nd and 3rd charges.

A fine of Rs.10,000 each in respect of the 1st, 2nd and 3rd charges with a term of 6 months each in default of payment of the fine.

Directed that the terms of rigorous imprisonment shall run concurrently.

4. The appellant aggrieved by the disputed judgement and the sentencing order has preferred the instant appeal in this Court.

Case of the prosecution

5. PW01 has been born on February 03, 1994. Due to their impoverished circumstances, PW01's parents have struggled to provide for her. As a result, at a very young age, PW01 has been sent to live in the household of the appellant. During her time there, PW01 has attended school and contributed to the household by doing odd jobs when she was not in class.

6. When PW01 was residing in the household of the appellant, he has allegedly engaged in sexual intercourse with PW01. The fact that PW01 was sexually abused by the appellant has not been disclosed to a 3rd party until a teacher at school has observed a change in PW01's behaviour and questioned her about it. Upon PW01 divulging the incidents regarding the appellant, the school authorities have notified the probation officer of the area, which has subsequently led to a complaint being made to the *Police*. In response, the *Police* has initiated an investigation.
7. PW01 has been examined by *Dr. K. Gunathilake*, the Judicial Medical Officer of the *Gampaha Base Hospital*. The medico-legal report has been marked B-1.

Case of the appellant

8. The appellant has asserted that the allegations made against him are unfounded and untrue.

Ground of appeal

9. The Learned Counsel for the appellant urged the following ground of appeal when the matter was taken up for argument;
 - i. Has the Learned High Court Judge properly evaluated the evidence led at the trial prior to delivering the disputed judgment?
10. The Learned Counsel for the appellant has raised concerns regarding the testimony of PW01, asserting that it lacks sufficient detail about the incidents specified in the charges, particularly regarding penetration by the appellant.
11. In page 53 of the *Appeal Brief*, an admission has been documented, confirming that the appellant does not dispute the fact that PW01 was residing in the appellant's home at the time referenced in the charges, and that she was under the custody of the appellant.
12. In her testimony, PW01 has stated that during her time in the appellant's home she experienced sexual abuse. She has indicated that there were

two or three occasions where the appellant engaged in sexual intercourse with her in the sitting area of the residence in the evening. These facts are detailed in pages 54 and 55 of the *Appeal Brief*.

ප්‍ර: තමුන්ට යම් කරදරයක් සිදුවුණ කියා කිව්වා?

උ: ඔව්.

ප්‍ර: ඔබට සිදු වූ කරදරය මොකද්ද?

උ: සුනිල් මාමා මට අතවර කළා.

ප්‍ර: සුගන්ධිකාට මොකද්ද සිදුවුනේ කියා විස්තර කර කියන්න?

උ: සුනිල් මාමාගේ පුරුෂ ලිංගය මගේ ලිංග ප්‍රදේශයට ඇතුල් කළා.

ප්‍ර: මෙම සිද්ධිය සිදු වුනේ කොහේදිද?

උ: ගෙදරදි.

ප්‍ර: ගෙදර කොහේදිද?

උ: සාලයේදි.

ප්‍ර: එය සිදු වුනේ එක පාරකදිද කිහිප අවස්ථාවකදිද?

උ: දෙපාරක් සිදු වුණා.

ප්‍ර: එම නිවසේ කවුද සිටියේ?

උ: නැන්දයි, මල්ලියි, මමයි, වික්කිකරුයි විතරයි.

ප්‍ර: සුනිල් මාමා කරදරය කරන වේලාවේ ගෙදර කවුද සිටියේ?

උ: කවුරුවත් සිටියේ නැහැ.

ප්‍ර: ගෙදර අය ඒ අවස්ථාවේ කොහේ ගිහිල්ලද සිටියේ?

උ: මල් කඩන්න ගිහින්.

ප්‍ර: ඔය විදියට සුනිල් මාමා සුගන්ධිකාට කී පාරක් විතර කරදර කර තිබෙනවාද?

උ: දෙපාරක් තුන් පාරක් විතර.

[pages 54 and 55 of the *Appeal Brief*]

13. PW01 has consistently maintained her narrative throughout the proceedings. The patient's history provided to *Dr. Gunathilake* i.e. PW05, aligns with her testimony, suggesting a coherent account of events. However, it is essential to recognise that though PW01 has provided detailed descriptions of the incident, they may be limited to an extent, due to her tender age at the time of the occurrence.
14. Additionally, PW01's desire to forget the traumatic experiences and focus on moving forward with her life could impact the depth of her recollections. Furthermore, the prolonged delay in testifying in Court may also have influenced the narrative, as time can affect memory recall and emotional processing.
15. PW01 has stated that the incidents referred to in the charges occurred when she was around 11 years old. It is important to consider that she has been very young at that time. Children's memories are not uniform; they can vary from one child to another. Furthermore, if PW01 was in a state of mind where she would have preferred to forget her traumatic past, it would be unreasonable to expect her to provide exact dates or detailed information.
16. The nature of the admission recorded indicates that the appellant has not contested the fact that PW01 was residing in the appellant's home during the relevant time frame mentioned in the charges. PW01's narrative aligns with this period. Given these circumstances, the appellant would have had an awareness when the alleged incidents referred to by PW01 took place.

ප්‍ර: ඔබ කියා සිටියා, මේ සුනිල් මාමාගෙන් වගේම වෙනත් සුනිල් මාමා කෙනෙකුගෙන් කරදර වුණා කියා?

උ: ඔව්. මේ සුනිල් මාමාගේ නංගියේ මහත්තයාගෙන්.

ප්‍ර: තමුන්ට මුලින් කරදර කළේ මෙම සුනිල් මාමාද, අනික් සුනිල් මාමාද?

උ: අනික් සුනිල් මාමා.

ප්‍ර: අනික් සුනිල් මාමාගෙන් කරදර වුණාට පසුව මේ සුනිල් මාමාට සැක හිතීලා තමුන්ගෙන් ප්‍රශ්න කළාද?

උ: නැහැ. මම කිව්වා.

ප්‍ර: තමුන් එම සිද්ධිය මේ සුනිල් මාමාට කිව්වේ, මේ සුනිල් මාමාට ඒ ගැන සැකයක් හිතීලා තමුන්ගෙන් ප්‍රශ්න කළාට පසුව කිව්වොත් හරිද?

උ: නැහැ මම කිව්වා.

ප්‍ර: තමුන් පොලිසියේ කටයුත්තරයට කිව්වේ, තමන්ම එම සිද්ධිය මෙම විත්තිකරුට කිව්වා කියාද, නැත්නම් මෙම විත්තිකරුට සැක හිතීලා තමුන්ගෙන් ප්‍රශ්න කළා කියලද?

උ: මට මතක නැහැ.

ප්‍ර: තමුන් පොලිසියේ කටයුත්තරයට, "මම ඉන්න ගෙදර සුනිල් ශාන්ත මාමා මේ ගැන සැකයක් හිතීලා මගෙන් විස්තර කරලා ඇහුවා" කියා කිව්වාද?

උ: මට මතක නැහැ.

ප්‍ර: තමා මෙහෙම පොලිසියට කිව්වා කියලා ලියලා තිබෙනවා නම් හරිද?

උ: නැහැ. මමයි කිව්වේ

එම කොටස වී1 ලෙස ලකුණු කරනවා.

[*vide* pages 58 to 61 of the *Appeal Brief*]

Although a contradiction has been noted as "V1", during the cross-examination of PW01, the appellant has failed to prove the statement of PW01 through which the contradiction was noted.

As such, the appellant has failed to establish the existence of the alleged contradiction.

“Although several contradictions were marked when the accused gave evidence, the proper procedure had not been followed. When a witness is to be contradicted, the proper procedure is set out in section 145 of the Evidence Ordinance. This section contemplates that when a witness is to be contradicted his attention must be first drawn to the fact of having made a previous statement, and thereafter, more specifically, to the parts of the statement which are to be used for the purpose of contradicting him. It is only after that, the actual writing with which the witness was contradicted with, can be proved”.

– *vide Gamini Sugathasena and Another vs. The State* [1988] 1 SLR 405.

Furthermore, it is important to highlight that the contradiction marked “V1” pertains solely to PW01’s disclosure of incidents of sexual abuse by a third party to the appellant upon the inquiry made by the latter. In this context, it does not directly relate to the core of PW01’s testimony.

17. Also, it has been pointed on behalf of the appellant that PW01 has acknowledged the suggestion indicating that it was the appellant who took her to hospital after she revealed the incidents of sexual abuse. When considering the totality of evidence, it is clear that the investigators have directed PW01 to undergo a medical examination, rather than the appellant. This indicates that PW01 may have been factually misled.
18. Rape is a horrific offence that not only violates an individual’s physical anatomy but also inflicts profound psychological trauma leaving lasting scars on victims. The seriousness of the offence necessitates a robust legal response that serves not only to punish the offender, but also to deter potential future offences. Deterrent punishment aims to convey a strong societal message that such behaviour will not be tolerated, thereby, fostering a sense of safety and justice.
19. In determining the appropriate punishment, the Court is required to consider the same from the point of view of the convict as well as the public.

20. In *Attorney General vs. H. N. de Silva* 57 NLR 121, Basnayake, ACJ, explaining the matters that should be taken into consideration in determining a sentence has stated as follows;

“In assessing the punishment that should be passed on an offender, a Judge should consider the matter of sentence both from the point of view of the public and the offender, Judges are too often prone to look at the question only from the angle of the offender. A Judge should, in determining the proper sentence, first consider the gravity of the offence as it appears from the nature of the act itself and should have regard to the punishment provided in the Penal Code or other statute under which the offender is charged. He should also regard the effect of the punishment as a deterrent and consider to what extent it will be effective. If the offender held a position of trust or belonged to a service which enjoys the public confidence that must be taken into account in assessing the punishment. The incident of crimes of the nature of which the offender has been found to be guilty and the difficulty of detection are also matters which should receive due consideration. The reformation of the criminal, though no doubt an important consideration is subordinate to the others I have mentioned. Where the public interest or the welfare of the State (which are synonymous) outweighs the previous good character, antecedents and age of the offender, public interest must prevail.”

21. Convictions for rape carry significant implications not just for the victim but for the society as a whole, ensuring that individuals convicted of serious offences are dealt with appropriately, is crucial for justice and further deterrence of future offences. The legal consequences imposed on individuals convicted of rape are designed to reflect the seriousness of the crime.

22. S. N. Silva, J, as he was then, in assessing the aggravating circumstances as regards to the offence of rape has stated as follows in *Attorney General vs. Ranasinghe* [1993] 2 SLR 81,

“It is also appropriate to cite an observation made by the Lord Chief Justice in the Court of Appeal of England, with regard to the sentence to be imposed for an offence of rape. In the case of Roberts ⁽⁴⁾ at page 244. It was observed as follows;

“Rape is always a serious crime. Other than in wholly exceptional circumstances, it calls for an immediate custodial sentence. This was certainly so in the present case. A custodial sentence is necessary for a variety of reasons. First of all to mark the gravity of the offence. Secondly to emphasise public disapproval. Thirdly to serve as a warning to others. Fourthly to punish the offender, and last but by no means least, to protect women. The length of the sentence will depend on all the circumstances. That is a trite observation, but these, in cases of rape vary widely from case to case.”

In the case of, Keith Billam ⁽⁵⁾ the Lord Chief Justice repeated the foregoing observations and stated that in a contested case of rape a figure of five years imprisonment should be taken as the starting point of the sentence, subject to any aggravating or mitigating features. He observed further as follows:-

“The crime should in any event be treated as aggravated by any of the following factors : (1) violence is used over and above the force necessary to commit the rape; (2) a weapon is used to frighten or wound the victim; (3) the rape is repeated ; (4) the rape has been carefully planned ; (5) the defendant has previous convictions for

rape or other serious offences of a violent or sexual kind ; (6) the victim is subjected to further sexual indignities or perversions ; (7) the victim is either very old or very young ; (8) the effect upon the victim, whether physical or mental, is of special seriousness. Where any one or more of these aggravating features are present, the sentence should be substantially higher than the figure suggested as the starting point.””

23. It is seen that several of these aggravating circumstances are present in the instant case. The fact that PW01 was very young below the age where she may have consented to sexual intercourse, the degree of pre-planning by the appellant and the repeated commission of the offence, are some of those aggravating circumstances. Public interest demands that a custodial sentence be imposed on the appellant in this case.

24. Accordingly, under those circumstances, I am not inclined to interfere with the disputed judgment and the sentencing order. I dismiss the appeal.

Appeal dismissed.

25. The Registrar of this Court is requested to communicate this judgment to the *High Court of Gampaha* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree.

Judge of the Court of Appeal