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

In the matter of an Appeal made under and in terms of the provisions contained in the Constitution of the Democratic Socialist Republic of Sri Lanka and Section 331 of the Code of Criminal Procedure Act, No.15 of 1979.

Court of Appeal No:

CA/HCC/0152/2022

High Court of Kegalle

Case No: HC/3994/2019

Democratic Socialist Republic of Sri Lanka

COMPLAINANT

Vs.

Paliskara Mudiyanselage Indika Chithra Paliskara

ACCUSED

AND NOW BETWEEN

Paliskara Mudiyanselage Indika Chithra Paliskara

ACCUSED-APPELLANT

Vs.

The Hon. Attorney General,

Attorney General's Department,

Colombo 12.

COMPLAINANT-RESPONDENT

Before	: Sampath B. Abayakoon, J.
	: P. Kumararatnam, J.
Counsel	: Damithu Surasena for the Accused-Appellant
	: Jayalakshi de Silva, S.S.C. for the Complainant-Respondent
Argued on	: 23-01-2024
Written Submissions	: 12-09-2023 (By the Accused-Appellant)
	: 10-01-2024 (By the Respondent)
Decided on	: 06-05-2024

Sampath B. Abayakoon, J.

The accused-appellant (hereinafter referred to as the appellant) was indicted before the High Court of Kegalle, for committing the offence of rape on or about 17-11-2016, at a place called Meepitakanda within the jurisdiction of High Court of Kegalle and thereby committing an offence punishable in terms of section 364(1) of the Penal Code as amended by Penal Code (Amendment) Act No. 22 of 1995.

After the trial without a jury, the learned High Court Judge of Kegalle has found the appellant guilty as charged by the judgment dated 28-07-2022.

Having considered the mitigatory circumstances pleaded on behalf of the appellant, as well as the aggravating circumstances, the learned High Court Judge has imposed a rigorous imprisonment period of 8 years on him, and has also ordered the appellant to pay a fine of Rs. 25,000/- with a default sentence of 8 months rigorous imprisonment.

In addition to the above, he has also been ordered to pay Rs. 100,000/- as compensation to the victim, with a default sentence of 2 years rigorous imprisonment.

Being aggrieved by the above conviction and the sentence the appellant has preferred this appeal.

The Facts in Brief

The victim of this incident of rape has given evidence as PW-01 at the trial. She was 71 years of age when the trial commenced on 18-12-2019. She was a widowed mother of two grown up children. She was living alone in her house during the time relevant to this incident. On 17-11-2016 around 6.30 p.m. in the evening, she has been cleaning her cooking utensils just outside of the house. There was a slight drizzle at that time.

According to her evidence, the appellant who suddenly appeared from the direction of the latrine situated next to the house had forcibly lifted her and taken her inside the house. Although his face had been covered with a t-shirt, he is alleged to have said "මේං බලාපිය මම මාලාගේ පුතා", while in the process of forcibly taking her inside the house.

The mentioned Mala was a neighbor, who had a close relationship with her. She has known the appellant for over 12 years by that time. It has been her evidence that the appellant removed his face cover while committing the act on her, where she was able to clearly see his face. After taking her to the room of the house, he has pushed her onto the bed, forcibly lifted the clothes she was wearing and had

removed his clothes as well. It has been her evidence that, he forced her to engage in oral sex initially, and subsequently had sexual intercourse with her.

It is clear from the way she has narrated the incident of rape; she has been reluctant to describe it in conventional terms. She has used gestures towards her female sexual organ and has described the sexual intercourse committed by the appellant. She has been very specific that although the room had no electricity, since it was not dark at that time and because of the open room windows, she was clearly able to identify the appellant positively. She has stated that although she struggled with the attacker, she could not escape his grip, and though she screamed seeking help, no one heard her.

After engaging in sexual intercourse with her, the appellant has threatened her not to tell anyone, and has stated that if you tell anyone, I will kill you and I will also go to the camp and shoot myself. The victim had known that the appellant was serving in the army at that time.

On the following day the victim has gone to the house of her neighbour, and had informed the lady of the house the incident. This has resulted in the husband of the lady, giving a call to her daughter stating that her mother has faced an incident of this nature. After hearing the news, the daughter has come and gone to the house of the appellant to confront him, but since her daughter had been threatened, both the victim and her daughter have gone to the police.

However, it has been her evidence that, when she went to the police for the first time, she did not inform the police about the rape incident committed by the appellant, but the complaint had been to the effect of harassment. She has explained the reason saying that she was reluctant to come out with what happened to her because of the shame she felt and even did not tell the full incident in detail initially to her children due to the same reason.

This initial complaint has resulted in the police summoning the appellant and arranging for a settlement between the parties. However, when she and her daughter returned home, she has been subjected to threats by the sister of the

appellant, on the basis that the victim caused embarrassment to them and she will face consequences. There had been an incident of throwing stones at the house as well, after this incident.

This has resulted in the victim making a second complaint on 28-11-2016, as to the incident of rape committed by the appellant to her.

The defence taken up by the appellant at the trial, had been a complete denial of the incident.

Under cross-examination, the prosecutrix has well explained the light condition of the house at that time, and she was able to clearly identify the appellant as the person who committed the rape on her. She has also well explained the delay in making a complaint of rape, and the reasons for her initial complaint about harassment and not about a rape, stating that she was ashamed of what happened and the repercussions it may bring to her and her family and also the fear as a person living alone in a house. Explaining what she said to her neighbor on the following day, she has stated that what she told her was that Mala's son came and harassed because she felt embarrassed.

The Judicial Medical Officer (JMO) who examined the victim on 28-11-2016, some 10 days after the alleged incident, has given evidence and submitted his Medico-Legal Report (MLR) as P-01. In giving the history of the incident, the victim had informed the doctor that she was forced to have sexual intercourse by a person named Indika, meaning the appellant, and has described the incident in very much similar manner, as stated by her in her evidence before the High Court. The JMO has only seen a redness around the vulva of the victim in the genital examination.

However, he has expressed the opinion that due to the delay of the examination, penile penetration cannot be excluded or proven, and has observed psychological disturbances in the victim when he examined her. When giving evidence, the JMO has expressed the opinion that a redness he observed at the vulva of the

victim which can be a result of a forcible sexual assault or even due to natural causes like scratching or some other reason.

PW-02 called to give evidence, had been the neighbour to whom the victim has gone and informed about the incident on the following day. The victim has come to her house around 1.00 p.m. on that day and had informed her that, while she was washing her pots and pans around 7.00 p.m. on the previous day, Indika whom she knew as a person from the village, came and forced her inside the house. She has identified the appellant as the person named Indika. It has been her evidence that other than that the victim did not divulge any further details to her.

The daughter of the victim has given evidence as PW-03. It has been her evidence that on 18-11-2016, a neighbor of her mother gave her a call and informed her that her mother has faced an incident and to come. When inquired, she has been informed that Indika has done something vulgar to her. This has resulted in her visiting the mother on the same day and when questioned, the mother has cried. When questioned further, mother has informed that the appellant used to come and attempt to get into the house previously as well, and on the 17th he came and harassed and committed rape on her. She has identified the person named Indika as the appellant.

It has been her evidence that, the mother initially did not inform the full incident to her, but only subsequently she told her what happened. She has admitted that the initial complaint made by her mother was only regarding a harassment and not about the rape. She has admitted that the complaint of rape was made on the 28-11-2016 and that was after the members of the family of the appellant started harassing her mother for making a complaint against the appellant. She has stated that the mother did not want to complain about the rape committed on her due to shame, and that was the reason why the initial complaint was only about the harassment by the appellant.

The prosecution has closed its case after calling the relevant police officers who conducted the investigations in relation to the incident.

When the appellant was called upon for a defence, he has chosen to make a statement from the dock. He has stated that he is not guilty to the offence and at the time of this complaint, he was doing a good job in the army and when he was at home on leave, the police came and informed him about a complaint against him by the appellant for harassment and the matter was settled at the police station.

It had been his position that, there had been a dispute after that with his sister by the prosecutrix and her daughter, which resulted in the complaint made on 28-11-2016. He has pleaded that he did not commit the offence.

The Grounds of Appeal

At the hearing of this appeal, the learned Counsel for the appellant urged the following grounds of appeal for the consideration of the Court:

1. The learned High Court Judge has relied on inadmissible evidence to convict the appellant.
2. The evidence of the PW-01 fails the test of credibility.
3. The learned High Court Judge has relied on evidence not made available before the trial Court.
4. The learned High Court Judge has not evaluated the evidence impartially and independently.

Consideration of the Grounds of Appeal

Since all four grounds of appeal are interrelated, I will now proceed to consider the said grounds collectively.

It was the submission of the learned Counsel for the appellant that, the prosecution has failed to establish the penile penetration which is an essential ingredient to prove a charge of rape, and the evidence in that regard had been

elicited by putting leading questions to the victim which has resulted in a denial of a fair trial towards the appellant.

In order to prove a charge under section 364(1) of the Penal Code, the prosecution must prove the following ingredients beyond reasonable doubt.

1. Sexual intercourse was committed to the woman.
2. Sexual intercourse was committed to the woman by the accused-appellant.
3. Sexual intercourse was committed to the woman without her consent or against her will.

It appears that the contention of the learned Counsel that the prosecution has failed to prove the penile penetration had been based on the reluctance of the victim (PW-01) to come out as to what happened to her at the trial, where she has not directly stated about penile penetration.

However, if one looks at her evidence in the correct perspective, it becomes abundantly clear from what she has stated had been that the appellant inserted his penis into her vagina without her consent.

For matters of clarity, I would now reproduce some of the evidence of the victim in that regard.

At page 40 and 41 of the appeal brief:

ප්‍ර. ඊට අමතරව වෙනත් කිසියම් දෙයක් ඔහු විසින් කළාද?

උ. වෙනත් කළා. එහෙම කළාට වැඩිහරියක් කටට තමයි කෙරුවේ.

ප්‍ර. මොකක්ද ඔහු විසින් කරපු වෙනත් ක්‍රියාවන්?

උ. කළා.

ප්‍ර මොකක්ද ඔහු විසින් කරපු ක්‍රියාව?

උ. මෙහෙටත් කළා. (සාක්ෂිකාරිය විසින් ඇයගේ ශරීරයෙ ඉනෙන් පහළ කොටස පෙන්වා සිටී) මෙහට කළාට වැඩි හරියක් කටට තමයි කළේ...

ප්‍ර . ඔහුගේ ශරීරයෙ මොන අංගයකින්ද තමුන්ට මොනවා හෝ කළේ?

උ. ඒ කියන්නේ එයාගේ පිරිමි ඇඟ...

ප්‍ර. ඔහුගේ පිරිමි ඇඟේන් තමුන්ට මොකක්ද කළේ?

උ. මෙහෙම කළා.

ප්‍ර තමුන්ට මොනවාද ඔහු කළේ? තමුන්ගේ ශරීරයෙ කිසියම් ස්ථානයකට ඔහු මොනවා හෝ කළාද?

උ. එහෙමයි, ස්වාමිනී.

ප්‍ර. මොන ස්ථානයටද ඔහු විසින් එම ක්‍රියාව කළේ? මහත්මියගේ ගැහැණු ඇඟ ප්‍රදේශයටද?

උ. එහෙමයි, ස්වාමිනී.

At page 42 of the appeal brief:

ප්‍ර. ඔහු විසින් ඔහුගේ පිරිමි ඇඟේන් තුමන්ට වෙනත් කිසියම් දෙයක් සිදු කළාද?

උ. නැහැ, වෙන නැහැ, කටටයි, මෙහාටයි තමයි කළේ. (සාක්ෂිකාරිය විසින් ඇයගේ ශාරීරයේ ඉනෙන් පහළ කොටස පෙන්වා සිටී).

At page 44 of the appeal brief:

ප්‍ර මහත්මිය මොකක්ද කළේ?

උ. මම එපා කියලා කෑගැහුව. ළඟ පාත ගෙවල් නැහැ.

ප්‍ර . මහත්මිය ඔහුගේ ශාරීරයේ මොන ස්ථානයෙන්ද ඔහු කළේ?

උ. පිරිමි ඇඟන්

ප්‍ර. ඔහුගේ පිරිමි ඇඟේන් තමාගේ මොන ස්ථානයට මොකක්ද කළේ?

උ මෙහෙට (සාක්ෂිකාරිය ලිංග ප්‍රදේශය පෙන්වා සිටී)

At page 45 of the appeal brief:

ප්‍ර මහත්මියට මොකක්ද ඔහු කළේ?

උ. මේ පැත්තට තමා ඒක කළේ. (සාක්ෂිකාරිය ලිංග ප්‍රදේශය පෙන්වා සිටී) කරලා කරලා මට එහෙම වැඩක් නැහැ හිටපිය කියල තමයි කටට දැම්මේ.

ප්‍ර. මහත්මිය ඔහුගේ පිරිමි ඇඟේන් තමාගේ ගැහැණු ඇඟට මොකක් ද ඔහු කළේ?

උ. ඒ ම මනුස්සයා මෙහාට දාලා ඉතිං දැඟලුවා.

ප්‍ර. මහත්මියගේ ගැහැණු ඇඟට ඇතුලත් කළාද?

උ. ඔව්.

If one considers the above highlighted portions of the evidence as a whole, it would clearly show that what the witness has stated was that the appellant had sexual intercourse with her against her will. Hence, I am not in a position to agree with the submission of the learned Counsel for the appellant that the prosecutrix has failed to speak about the penile penetration.

The learned Counsel submitted further that, the relevant evidence has been elicited from the prosecutrix by putting leading questions to her and that has denied a fair trial towards the appellant.

There again, I am not in a position to agree. It is clear that the victim has spoken about what happened to her stating that the appellant had forcible sexual intercourse with her, although she has not stated that in direct terms, but indirectly when giving her evidence. It clearly appears that, the learned prosecuting State Counsel, in order to get a clear explanation as to what she narrated before the Court, has put questions to her, not with the intention of getting something out of her mouth that was not told by her to Court.

I am of the view that, this procedure has not dented the credibility of the evidence of the prosecutrix. She being an old woman and a reluctant witness with a village background, some persuasion for her to come out with what happened in detail would be necessary, and I do not see that as denying a fair trial towards the appellant.

Ranjith Silva, J. considering the way to assess credibility of a victim of a sexual crime stated in **Perera Vs. The Attorney General (2012) 1 SLR page 74**,

> *"It is inconceivable that one could apply the tests of contemporaneity or spontaneity in rape matters especially in child rape matters. A perusal of the proceeding itself will give an indication as to how reluctant the victim was to come out with the story at the trial in the High Court. A fair amount of coaxing and persuasion which justified under the circumstances was needed to extract the evidence from the victim"*

Another matter that should attract consideration is, whether the delay in making the complaint of rape and also not coming out with incident of rape in the initial complaint made by the prosecutrix to the police has shaken the credibility of the evidence adduced before the trial Court.

It is an admitted fact that the initial complaint by the prosecutrix was of harassment and was not of rape. Accordingly, police have summoned both parties and has settled the matter.

The prosecutrix has explained the reasoning behind making a complaint of harassment initially, stating that she was ashamed of what happened and since she was living alone in her home and also because of the death threats made to her by the appellant she only complaint about harassments by the appellant believing that it would stop him from further harassing her.

However, it appears that subsequent to the settlement, the family members of the appellant have threatened the prosecutrix and her family of legal action on the basis that she caused insult to their family. This has led to her making the second complaint, giving in detail what happened at the hands of the appellant.

The evidence of the neighbour clearly establishes the fact that the prosecutrix has gone and informed her that the appellant came to her house while she was washing her pots and pans and forced her inside the house. Although she has not given much detail, the evidence of the prosecutrix is clear that she has been reluctant to come out as to what really happened due to the factors I have considered before. Even to her own daughter, she has been reluctant to inform what happened.

It appears that although the daughter was made to understand what really happened, she has gone along with the prosecutrix's intention not to pursue the matter for various obvious reasons.

When considering the evidence in its totality, I am of the view that, the victim's initial reaction to the incident can be justified given the facts and circumstances unique to this case.

In the case of **Bandara Vs. The State (2001) 2 SLR 63** it was held that;

> *"If there is a valid reason or explanation for the delay and if the trial judge is satisfied with the reasons and the explanations given, no trial judge would apply the test of spontaneity and contemporaneity and reject the testimony of a witness in such circumstances. Delayed witnesses' evidence could be acted upon if there were reasons to explain the delay…*
>
> *Discrepancies and inconsistencies, which do not relate to the core of the prosecution case ought to be disregarded, especially when all probabilities factor echoes in favour of the version narrated by a witness."*

In the case of **D. Tikiri Banda Vs. The Attorney General, Bar Association Law Reports 2010 (V.L.R.) 92 it** was held that;

> *"If delay of making a statement is explainable, the evidence of a witness should not be rejected on that ground alone."*

For the reasons as considered above, I am of the view that, the prosecutrix has well explained the reasons for her not stating that she was raped in her initial complaint to the police and of the view that has not caused any doubt about the credibility of the version of events as narrated by the prosecutrix.

When the prosecutrix commenced her evidence at the trial, she has stated that she came to give evidence about the thief who entered the house and had thereafter narrated about the events that took place on the day of the incident.

The learned Counsel for the appellant submitted that, this shows the inconsistency of the evidence by the prosecutrix. However, I am not in a position to agree. The very fact of the way the prosecutrix commenced her evidence shows that she was very much reluctant to come out in open Court in greater detail as to what happened to her. Being a villager who has no exposure to this kind of an incident, her evidence has to be considered in its totality and not in its isolation. If taken in its totality, it is clear that the way the victim commenced her evidence was not a reason to consider that her evidence was inconsistent.

The learned Counsel for the appellant submitted that the version of the prosecutrix as to how she was able to identify the perpetrator as the appellant, was not probable.

He was of the view that being a person well known to the prosecutrix, no perpetrator of a crime of this nature will remove the cover he had on his face and expose himself to the victim if he was forcibly committing rape on her.

I am of the view that, this again is a matter that has to be considered in its totality. The evidence of the prosecutrix has been that when she was washing her pots and pans outside of the house around 6.30 in the evening, a person jumped in front of her suddenly and took her inside the house. She has stated that the person had his face covered by using a t-shirt. However, while the sexual act was in progress the perpetrator has removed his cover and threatened the prosecutrix with death if she reveals this incident to anyone.

Although the light condition at that time was not bright sunlight, the prosecutrix has given clear evidence as to the identity, because she knew the appellant well. It has been her evidence that on previous occasions too, the appellant attempted to enter her house and he could not succeed. This may be the very reason why the initial complaint was made on the basis of harassment, rather than of an incident of rape.

I am of the view that, when a person is so engrossed of a sexual act of this nature, there is a high probability for such a person to commit an error while in the act by exposing his identity believing that the victim may not complain due to fear or due to several other possible factors.

The evidence has established the fact that, the nearest house to the house of the prosecutrix had been about 40 meters away and the place of the incident was an isolated spot. The appellant being a person well conversant with the geography of the area, would know that his actions would go unnoticed to others, which may be the reason why he has committed the attack on the prosecutrix in the manner stated by her.

Under the circumstances, I find that the evidence of the prosecutrix as to the way she was able to identify the appellant was highly probable and could be relied upon.

The learned Counsel for the appellant contended that, since the evidence of the prosecutrix was not cogent enough, the Court should have looked for corroboration of the incident of rape and the learned High Court Judge was misdirected when the doctor's evidence was considered as corroboration. He submitted that the redness observed by the JMO in the vulva of the prosecutrix can be due to several reasons and that cannot be considered as corroborative evidence in relation to a penile penetration. It was submitted further that such a thing can happen due to other reasons as well, and the learned High Court Judge has failed to appreciate that fact in its correct perspective.

However, I find that the learned High Court Judge has not decided the matter only on the said observations by the JMO. She has considered the reasons as to why there could be no visible marks of forcible sexual intercourse in a 68-year-old woman, and has considered the opinion expressed by the JMO that, such an incident cannot be overruled.

I find that this should be the approach in relation to medical evidence in a matter of this nature.

The prosecutrix had been consistent in her version of events when she narrated the history of the incident to the doctor. This shows that the prosecutrix has been consistent in her version of events, which is a matter that should be considered in favour of her evidence, although history cannot be considered as corroboration.

At this juncture, I am reminded of the observations made by the Indian Supreme Court in **Boginbhai Hirjibhai Vs. State of Gujarat (1983) AIR S.C. 753,** wherein it was stated thus;

"In the Indian setting refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as whole is adding insult to the injury."

It is my considered view that, any perpetrator of a sexual crime like rape or grave sexual abuse, will commit it by making sure that no one sees his actions, and more often than not with pre-planning. An eyewitness account of such incidents is so rare, unless there are chance instances where somebody has seen such incidents under unexpected circumstances.

Therefore, I am of the view that the test should be whether the victim of a crime of this nature is telling the truth and whether her version of events is cogent enough and trustworthy and can be acted upon.

Although there may be some discrepancies in the evidence of a victim, of a sexual crime of this nature, that should not be viewed as the victim is telling untruth, unless those deficiencies go into the core of the matter to make the allegation against the accused highly improbable or false.

I find that although the case of **D. Tikiri Banda Vs. AG (supra)**, was a case of grave sexual abuse of a child, the determinations made are of relevance to a case of rape as well. It was held;

"Mostly victims of sexual harassment do not want to talk about the harrowing experience and would like to forget about the incident as soon as possible (withdrawal symptom). The offenders should not be allowed to capitalize or take mean advantage of these natural inherent weaknesses…

Insignificant omission of such a victim or her utterance of dreadful words should not be taken as a contradiction having effect or impact on the credibility of the victim."

Per Ranjith Silva, J.

"In the Indian as well as the Sri Lankan settings it can be safely said that rarely will a girl or a woman make false allegations of sexual assault

or will a mother instigate, induce or compel her small daughter to make such allegations for fear of lasting consequences. One cannot expect her to be so silly, not to appreciate the stigma attached and that she and the rest of her family would be virtually ostracized for the rest of her life. Under the circumstances of this case to suggest that the victim in this case made a false complain against the appellant because the mother of the victim or any member of the family had a strained relationship with the appellant or any member of his family is totally unacceptable."

I would like to express similar sentiments in relation to the evidence of the prosecutrix in this case as well. There is no probability of her making a false allegation of rape given her age and the relevant facts and circumstances, and the stigma attached to such a thing becoming common knowledge.

Another matter raised by the learned Counsel for the appellant was that, the learned High Court Judge has considered evidence not available on record in favor of the prosecution.

He referred to what had been stated by the learned High Court Judge at page 04 of the judgment (page 117 of the appeal brief) to the effect that the evidence of PW-02, who was the neighbour of the victim, and also that of PW-04 the daughter of the victim, has corroborated the evidence of victim to argue that none of the witnesses have come out with the fact that they were told about the incident of rape by the victim.

However, the careful scrutiny of the judgment shows that, the determination had not been that the victim told them that she was raped.

It was the evidence of PW-02, that although the victim did not tell her that she was raped, she told her that the appellant came and dragged her inside the house. The daughter of the victim has been informed by the victim that she was harassed and had come out with the incident of rape later. The learned High Court Judge has considered their evidence only in that context and nothing else.

Hence, I am in no position to agree that the evidence of the mentioned two witnesses had been considered on the basis of something not mentioned in their evidence.

For the reasons considered as above, I find that the learned High Court Judge was well aware as to the manner in which the evidence in a criminal case against an accused person should be considered and the requirement of proving the case beyond reasonable doubt.

The judgement clearly demonstrates that the learned High Court Judge has considered whether the basic ingredients that should be proved in a case of rape has been established beyond reasonable doubt. The question whether penile penetration has been established, whether the victim has identified the appellant positively and the probability and the credibility factors of the evidence of the prosecutrix has been well considered by analyzing the evidence in that regard.

The learned High Court Judge has also considered the delay in making the complaint and whether there should be corroboration as to the evidence of the prosecutrix.

After having satisfied that the prosecution has established a strong *pima facie* case against the appellant, for which I am in full agreement, the learned High Court Judge has considered whether the defence taken up by the appellant has created a reasonable doubt against the evidence of the prosecution or has provided acceptable explanation as to the evidence against him.

Having considered the dock statement made by the appellant and the value that can be attached to such a dock statement, and the evidence placed before the Court, the learned High Court Judge has considered that no doubt has been created or reasonable explanation has been provided in relation to the charge against the appellant.

I find that the learned High Court Judge has come to a correct determination in convicting the appellant to the charge preferred against him.

Accordingly, I find no reasons to interfere with the conviction and the sentence of the learned High Court Judge.

The appeal is dismissed. The conviction and the sentence dated 28-07-2022 is affirmed.

Since it was informed that the appellant is on bail pending appeal granted from the High Court, it is directed that the sentence of the appellant shall commence from the day this judgment is pronounced upon the appellant by the learned High Court Judge of Kegalle.

Judge of the Court of Appeal

P Kumararatnam, J.

I agree.

Judge of the Court of Appeal