

**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/ 0071/2022

Robert Ekanayake

High Court of Hambantota

Case No. HC/84/2017

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

BEFORE

**: P. Kumararatnam, J.
R. P. Hettiarachchi, J.**

COUNSEL

**: Asoka Weerasooriya with Chamath
Gamage and Akarsha Weerasooriya, Pasan
Karunaratne for the Appellant.
Sudharshana De Silva, ASG for the
Respondent.**

ARGUED ON : **30/07/2025**

DECIDED ON : **22/09/2025**

JUDGMENT

P. Kumararatnam, J.

The above-named Appellant was indicted by the Attorney General under section 364(2) read with Section 364 (2) (e) of the Penal Code for committing statutory rape on Rathnayake Kankanamge Madhuwanthi on 15.05.2015.

The trial commenced on 21/02/2019. After leading all necessary witnesses and marking Productions P1 to P3, the prosecution had closed the case on 23/06/2020. The Learned High Court Judge had called for the defence on the same day and the counsel for the Appellant had moved for a day to call witnesses on his behalf. The Appellant had given a statement from the dock and called two witnesses and marked contradictions V1 to V5 and closed his case.

The Learned High Court Judge after considering the evidence presented by both parties, convicted the Appellant as charged and sentenced him to 15 years rigorous imprisonment and imposed a fine of Rs.50,000/- subject to a default sentence of 06 months simple imprisonment. In addition, a

compensation of Rs.1000,000/- was ordered with a default sentence of 03 years rigorous 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. During the argument he was connected via Zoom platform from prison.

The Learned Counsel contends that based on the evidence offered, it is impossible to conclude that the prosecution has proven its case against the Appellant beyond a reasonable doubt.

The following appeal grounds were raised on behalf of the Appellant.

1. Did the Learned Trial Judge misdirect himself evaluating the evidence given by PW1 and PW2?
2. Did the Learned Trial Judge fail to analyse the importance of the date of offence in a criminal trial and thereby was there a miscarriage of justice in the light of belated statement?
3. Has the Learned Trial Judge failed to consider that the totality of the evidence led by the prosecution does not prove the case against the Appellant beyond a reasonable doubt?
4. Did the Learned Trial Judge misdirect himself by not correctly evaluating the dock statement and the defence evidence, and thereby was there a miscarriage of justice?
5. Has the Trial Judge failed to consider the matters in favour of the Appellant and thereby deprive him of a fair trial.

According to PW1, the victim in this case, the incident pertaining to this case had occurred when she attended a foundation laying ceremony held at one of her relation's properties. After the ceremony, the victim had gone to the

Appellant's house and stayed the night. Although, the Appellant's wife also travelled on the same motorbike along with the victim and the Appellant, she had gotten off the bike near her place of work and had only returned home the following day. The Appellant is PW1's mother's sister's husband.

After dinner PW1 had slept with the daughter of the Appellant. The Appellant had also slept among them. When the Appellant's daughter was fast asleep, the Appellant had touched PW1's body, removed her clothes and inserted his penis into her vagina for about five minutes. As he received a call, the Appellant had left the house leaving the victim. She has fallen asleep and when she woke in the morning, she had seen that her aunt had returned home.

Initially, she had told the incident to her father's sister's daughter PW3. PW3 had told the same to the victim's mother but her mother had not acted upon it. Thereafter, the incident has come to light when the victim wrote a letter about the incident and put the same into a complaint box fixed at her school. She had written the letter on World Children's Day. After about a week, her statement had been recorded by the Tangalle Police. The victim was only 11 years old when she had encountered this bitter ordeal.

PW3, Nadeera had confirmed the details in her evidence.

PW4, JMO Seveviratne gave evidence upon the Medico Legal Report of the victim. After obtaining the history verbally from PW1, the JMO had examined the victim's genital area and stated that the examination revealed some findings which are seen in sexual manipulation of vulva.

Now I consider whether the evidence given by the prosecutrix could be accepted without any corroboration to prove the charge of rape against the Appellant.

In **Sunil and Another v. The Attorney General** [1986] 1 Sri.L.R. 230 the court held that:

“It is very dangerous to act on the uncorroborated testimony of a woman victim of a sex offence but if her evidence is convincing such evidence could be acted on even in the absence of corroboration”.

In **State of Andra Pradesh v. Garigula Satya Vani Murty** 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”.

As stated earlier, the incident pertaining to this case had only been revealed to the police after the letter written by the victim and dropped in the complaint box came to light. In that letter, she had elaborated the sexual act performed on her. Even in her evidence she had only mentioned that the Appellant had only kept his penis on her vagina. She was silent about the act performed by the Appellant with his penis. But she answered ‘yes’ to a leading question with regard to sexual intercourse put forward by the prosecution. Until such time she was silent about the sexual act.

The medical evidence also does not specify sexual penetration. The JMO has not given direct evidence of sexual intercourse. The JMO’s evidence more or less corroborated the evidence given by the victim.

The relevant portion of PW1’s evidence is re-produced below:

Pages 73-75 of the brief.

ප්‍ර : ඔබ සඳහන් කළා ඔබගේ හැට්ටේ තිබුණු පිප්ප් එක ගලවලා සහ සාය පහත් වෙලා තිබුණේ කියලා ?

උ : ඔව්.

ප්‍ර : කවුරු විසින් ද ඒ දේවල් සිදු කළේ ?

උ : බාප්පා.

ප්‍ර : මළිසා ඔබ සඳහන් කළා ඔබට කරදරයක් වුණා කියලා ?

උ : ඔව්.

ප්‍ර : ඒ කරදරය ඔබට කළේ ඔබේ ශරීරයේ මොන කොටසකටද ඔබ කුමන කාර්ය සඳහා භාවිතා කරන කොටසටද ඒ කරදරය කළේ ?

උ : උත්තරයක් නැත.

ප්‍ර : විත්තිකරුගේ කුමන අවයවයෙන්ද මේ කරදරය සිදු කළේ ?

උ : මුත්‍රාශය.

ප්‍ර : කාගේ මුත්‍රාශය ද ?

උ : දෙන්නාගේම මුත්‍රාශය.

ප්‍ර : ඔබ මුත්‍රා කිරීමට භාවිතා කරන අවයවයට තමයි මේ කරදරය සිදු කළේ ?

උ : ඔව්.

ප්‍ර : ඔබගේ ස්ත්‍රී ලිංගයට කිවුවොත් පිළිගන්නවාද ?

උ : ඔව්.

ප්‍ර : විත්තිකරුගේ පුරුෂ ලිංගය කිවුවොත් හරිද ?

උ : හරි.

ප්‍ර : විත්තිකරුගේ පුරුෂ ලිංගය ඔබගේ ස්ත්‍රී ලිංගයට කොයි ආකාරයෙන් ද කරදරය සිදු කළේ?

උ : උත්තරයක් නැත.

ප්‍ර : මළිසා ඔබ සඳහන් කළා ඔබගේ සායට යටින් ෂෝට් එකක් ඇඳ ගෙන සිටියා කියලා ?

උ : ඔව්.

ප්‍ර : ඒ සිද්ධිය වන විට ඔබගේ ෂෝට් එක කොහේද තිබුණේ ?

උ : පහළින්.

ප්‍ර : ඒ වන විට ඔබගේ ස්ත්‍රී ලිංගය නිරාවරණය වෙලාද තිබුණේ ?

උ : ඔව්.

ප්‍ර : ඔබ සඳහන් කළා ඔබගේ ස්ත්‍රී ලිංගයට කරදරයක් වුණා කියලා ?

උ : ඔව්.

ප්‍ර : ඔබ මේ සිද්ධිය සම්බන්ධයෙන් ලියුමක් පවා ලියලා තියනවා නේ ?

උ : ඔව්.

ප්‍ර : සාක්ෂිකාරිය ඔබගේ ස්ත්‍රී ලිංගයට කරදරය වුණු අවස්ථාවේ දී චිත්තිකරුගේ පුරුෂ ලිංගය කොහේද තිබුණේ ?

උ : උත්තරයක් නැත.

The relevant portion with regard to the leading question directed by the prosecution is re-produced below:

Pages 75-76 of the brief.

ප්‍ර : ඔබගේ ශරීරයේ යම් අවයවයක් උඩද තිබුණේ ?

උ : ඔව්.

ප්‍ර : මොන අවයවයද ?

උ : ස්ත්‍රී ලිංගය.

ප්‍ර : ස්ත්‍රී ලිංගය මතද යටද ඇතුළත ද ?

උ : මත.

ප්‍ර : ස්ත්‍රී ලිංගය මත පුරුෂ ලිංගය තියලා ඊට පස්සේ මොකක්ද සිදු වුණේ මත තබා ගෙන සිටියාද ?

උ : ඔව්.

ප්‍ර : ඊට අමතරව වෙන කොහේ හරි තැබුවා ද ?

උ : වෙන කොහේ වත් තිබිබේ නෑ.

ප්‍ර : ඔබ මත කියලා අදහස් කරන්නේ කොහේද ?

උ : ස්ත්‍රී ලිංගයේ.

ප්‍ර : ස්ත්‍රී ලිංගයේ කියන්නේ ස්ත්‍රී ලිංගය ඇතුළේ ද ?

උ : ඔව්.

ප්‍ර : ඔබගේ ස්ත්‍රී ලිංගය ඇතුළට පුරුෂ ලිංගය දාලා මොකක්ද කළේ කියලා කියන්න ඔහු යම් වෙලාවක් සිටියා ද ?

උ : ඔව්.

ප්‍ර : කොච්චර වෙලාවක් ද ?

උ : විනාඩි 5 ක් විතර.

ප්‍ර : විත්තිකරුගේ පුරුෂ ලිංගය දැමීමට පස්සේ ඔබට මොකක්ද දැනුනේ වේදනාවක් දැනුනා ද ?

උ : ඔව්.

In **Iswari Prasad v. Mohamed Isa** 1963 AIR (SC) 1728 at 1734 His Lordship held that;

“In considering the question as to whether evidence given by the witness should be accepted or not, the court has, no doubt, to examine whether the witness is an interested witness and to enquire whether the story deposed to by him is probable and whether it has been shaken in cross-examination. That is - whether there is a ring of truth surrounding his testimony.”

Under these circumstances, accepting prosecutrix’s evidence without corroboration for the charge of rape will cause great prejudice to the Appellant’s right to have a fair trial. Hence, I conclude that finding the

Appellant guilty to the charge of rape is untenable considering the circumstances of this case. Therefore, his conviction entered by the Learned High Court Judge of Hambantota is hereby set aside.

Therefore, now I consider whether the Appellant could be found guilty to a lesser offence considering the available evidence.

According to the facts of this case, the Appellant being the uncle of the prosecutrix, using his authority and breaching the trust as a guardian/elderly relation has used force intentionally on the prosecutrix and removed her under garment and performed a sexual act on her vagina.

Section 345 of Penal Code as amended states:

“Whoever, by assault or use of criminal force, sexually harasses another person, or by the use of words or actions, causes sexual annoyance or harassment to such other person commits the offence of sexual harassment and shall on conviction be punished with imprisonment of either description for a term which may extend to five years or with fine or with both and may also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person.”

EXPLANATION

1. Unwelcome sexual advances by words or action used by a person in authority, to a working place or any other place, shall constitute the offence of sexual harassment.
2. For the purposes of this section an assault may include any act that does not amount to rape under section 363 or grave sexual abuse under section 365B.
3. "injuries" includes psychological or mental trauma.

Hence, acting under Section 335(2) (b) of the Code of Criminal Procedure Act No. 15 of 1979, I substitute a conviction under Section 345 of the Penal Code as amended and impose upon the Appellant a period of four years rigorous imprisonment and a fine of Rs.10,000/- with a default sentence of 01-year simple imprisonment. Further, the Appellant is ordered to pay a sum of Rs.300000/- to the PW1 as compensation and in default serve 2 years simple imprisonment.

Considering all the circumstances of this case I order the sentence to take effect from the date of conviction i.e., 15/02/2022.

Subject to the above variations, the appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL