

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

In the matter of an appeal in terms of Article 138(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 331 of the Criminal Procedure Code and Section 19 (B) of the High Courts of the Provisions (Special Provisions) Act No.19 of 1990.

The Democratic Socialist Republic of Sri Lanka

Complainant

Vs

Angampodige Sunil Shantha

Accused

AND NOW BETWEEN

Angampodige Sunil Shantha

Accused - Appellant

Vs

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

Complainant - Respondent

Before : **Hon. P Kumararatnam, J.**
Hon. Pradeep Hettiarachchi, J.

Counsel : Isuru Somadasa for the Accused-Appellant.
Anoop De Silva, D.S.G. for the Respondents.

Argued on : 27.05.2025

Decided on : 18.07.2025

Pradeep Hettiarachchi, J

JUDGMENT

1. This is an appeal by the Appellant-Accused (hereinafter referred to as the Appellant) against the conviction and sentence imposed by the Learned High Court of Embilipitiya.
2. The Appellant was indicted in the High Court of Embilipitiya for committing rape of Madawala Gamage Dinusha (hereinafter referred to as the prosecutrix) on or around 24.05.2018 an offence punishable under section 364 (1) of the Penal Code as amended by the Act No.22 of 1995.
3. The grounds of appeal advanced by the Appellant are as follows;
 - a. The Judgment dated 20th September 2023 of the Learned High Court Judge of Embilipitiya is contrary to the facts and law.
 - b. The Learned High Court Judge has failed to analyze and consider the credibility of the evidence led by the prosecution and also the tests of probability.
 - c. The Learned High Court Judge has not applied the legal principle pertaining to the facts elicited by the evidence produced at the trial.

Background to the appeal:

4. The Appellant is the step-father of the prosecutrix. According to the prosecutrix's evidence, the Appellant had sexual intercourse with her on several occasions over a period of two-years, until 21.05.2008.
5. The complaint was filed with the police one week after the last alleged incident of rape. According to the testimony of the prosecutrix, at the time of the last incident, her mother was not present at home. She had reportedly gone to visit her elder daughter, who was unwell.
6. Although the Appellant had raped the prosecutrix on several occasions, she did not resist because she feared that the Appellant would harm her mother.
7. In the appeal, Counsel for the Appellant primarily relied on the history given by the prosecutrix to the Judicial Medical Officer (JMO) during her medical examination. The

relevant Medico-Legal Report, dated 28.06.2008, was marked in evidence as P3. The history recorded by the Judicial Medical Officer is as follows:

“අම්මාගේ තුන්වෙනියා. මල්ලි බාප්පා ගොවිතැන් කරන්නේ. අම්මා ඉඳලා හිටලා අක්කලා ගෙදර යනවා. මම ගෙදර ඉන්නේ නංගිලාත් ඒකක. අවුරුදු 2ක් විතර රැට බාප්පා මම ළගට ඒනවා. කටින් අත පපුව අල්ලනවා. මුන ඉඹිනවා. යටින් ඒයා වූව දාලා කරනවා. පුරුෂ ලිංගය මගේ ඒකට ඇතුල්කරනවා කෑ ගහන්න දෙන්න. සුදු පාට ගැවෙනවා. විනාඩි 5ක් විතර කරනවා අම්මට කිව්වොත් මරනවා කිව්වා. ඒ නිසා කිව්වේ නෑ. මම අක්කට කිව්වා අක්කා පොලිසි ගියා.”

8. However, during the cross-examination of the prosecutrix, the defense did not challenge her version of events, specifically her claim that it was the Appellant who raped her. More significantly, defense counsel made no reference to the history recorded by the Judicial Medical Officer when questioning the prosecutrix. It is noteworthy that, during the cross-examination of the prosecutrix, the defense did not highlight any material contradictions in her testimony.
9. In his testimony, the Judicial Medical Officer stated that the hymen of the prosecutrix was ruptured and that healed tears were observed at the 3, 6, and 9 o'clock positions. Furthermore, according to the JMO's opinion, there was evidence of repetitive vaginal penetration. Notably, the JMO opined that the hymenal tears he observed had occurred at least three months prior to the date of examination. More importantly, he also noted depressive features in the prosecutrix and, as a result, referred her to a consultant psychiatrist.
10. It is to be noted that the prosecutrix consistently stated in her evidence that her stepfather, the Appellant, was the one who raped her over a period of two years. Although the Judicial Medical Officer (JMO) recorded the history provided by the prosecutrix as “අම්මාගේ තුන්වෙනියා.” this does not weaken the credibility of her testimony for the following reasons.
11. In the history provided to the JMO, the prosecutrix clearly stated that her stepfather had been raping her at night for the past two years. Significantly, the Medico-Legal Report contains the phrase “අම්මාගේ තුන්වෙනියා.” This phrase does not imply the prosecutrix's mother's third brother. Instead, its meaning becomes clear when considering the cross-examination of the prosecutrix's mother. When the defense counsel proposed that the Appellant was her third husband, she confirmed it. This testimony directly supports the

short history given to the JMO, where she also used "අම්මාගේ තුන්වෙනියා." Consequently, it is undeniable that the prosecutrix identified the accused-appellant by this term.

12. On a plain reading of the short history, I see no ambiguity as far as the identity of the perpetrator is concerned. It is clear that it was "අම්මාගේ තුන්වෙනියා." meaning mother's 3rd man. Furthermore, there was no evidence that any of the prosecutrix's mother's brothers lived with them. The only reasonable inference from this history is that the stepfather (බාප්පා) committed the offence. Importantly, during cross-examination, it was never suggested to the prosecutrix that any of her mother's brothers had raped her.
13. Nowhere in the prosecution evidence had it transpired that any of the brothers of the prosecutrix's mother was living at the house, where the prosecutrix lived. Notably, the prosecutrix stated that the Appellant had sex with her even at the sugarcane cultivation when the former was asked to accompany the latter to work at the sugarcane cultivations.
14. Throughout the prosecution evidence, the fact that the Appellant had sex with the prosecutrix was evident. Also, the fact that the prosecutrix was under threat or in fear that any harm may be caused to her or her mother by the Appellant was proved.
15. Hence the only uncertainty in the case is the history given by the prosecutrix to the JMO. Regrettably, the prosecuting counsel has failed to get it clarified from the prosecutrix either during examination-in-chief or re-examination.
16. The state counsel had not paid much attention to the history recorded in the Medico Legal Report and had not made any attempt to get it clarified. Had the state counsel acted with due diligence, he could have questioned the prosecutrix in that regard and could have eliminated any doubt as to the person whom the prosecutrix referred to as "අම්මාගේ තුන්වෙනියා."
17. Nevertheless, as stated earlier, during cross examination, the mother of the prosecutrix has clearly confirmed that the Appellant is her third husband. Thus, there is no doubt as to who was referred to as "අම්මාගේ තුන්වෙනියා." by the prosecutrix when she was interviewed by the JMO
18. Therefore, in view of the uncontradicted evidence of the prosecutrix and her mother, the history recorded by the JMO in the Medico Legal Report would not materially contradict the prosecutrix's version as to the person who had sex with her. As stated

earlier, during cross-examination, the prosecutrix was never questioned on that. Not even a suggestion was put to the prosecutrix that the alleged offence was committed by somebody else other than the Appellant.

19. More importantly, the JMO in his evidence testified as follows:

At page 202,

ප්‍ර : වෛද්‍යතුමා සඳහන් කලා මේ තැනැත්තිය ඇයගේ රෝග ඉතිහාසය තුළ සඳහන් කලා කියලා බාප්පා කියන පුද්ගලයා යටින් ඒයාගේ වූව දාලා කරනවා. පුරුෂ ලිංගය මගේ ඒකට ඇතුල් කරනවා කියලා සඳහන් කලා කියලා ?

උ : ඒහෙමයි.

20. During cross-examination, it was suggested to the prosecutrix that she had an affair with a youth, and that the Appellant, upon discovering and objecting to it, was then falsely implicated by her in this incident. The prosecutrix flatly denied this in no uncertain terms. It is noteworthy that the defense failed to even suggest the name of this alleged youth. Had the prosecutrix truly had such an affair as alleged by the Appellant, there would have been no reason for him to refrain from informing her mother. Hence, I am disinclined to believe the suggestion of the defense that the appellant was falsely implicated by the prosecutrix because the former had found the latter with a youth and objected to it.

21. Another ground advanced by the Appellant is that the belatedness of the prosecutrix's complaint was not properly considered by the learned High Court Judge. In this regard following authorities are of much relevance.

22. In *Dharmasiri Vs. Republic Of Sri Lanka [2010] 2 SRIL.R 241* it was held that: *Because the witness is a belated witness, Court ought not to reject his testimony on that score alone. Court must inquire into the reason for the delay and if the reason for the delay is plausible and justifiable the Court could act on the evidence of the belated witness.*

23. Similarly, in *Sumanasena V. Attorney General – (1999) 3 Sri L.R. 137*, it was held that:

“Just because the witness is a belated witness Court ought not to reject his testimony on that score alone, Court must inquire into the reason for the delay and if the reason

for the delay is plausible and justifiable, the Court could act on the evidence of a belated witness”.

24. Accordingly, even when considering an offence committed against an adult, a delay in making a statement to the police about the incident alone is not a reason to disbelieve the testimony of the victim, if an acceptable reason is given for the delay.
25. In the present case, the prosecutrix has adequately explained the circumstances under which she first disclosed the alleged incident to her elder sister. The reason she gave for not informing anyone earlier or lodging a complaint with the police was her fear of the consequences of speaking out, as specified in her testimony. She further stated in her evidence that the Appellant had threatened her not to disclose the incident.
26. Evidently, the victim remained silent for almost two and a half years, not reporting the rape or sexual harassment committed by her stepfather. They lived under the same roof, and evidence showed that the victim's mother had two previous marriages, with the Appellant being her third husband. It's important to note that the prosecutrix and other family members were heavily dependent on the Appellant, given their socio-economic background.
27. When the complaint was made, the prosecutrix was just 18 years old. Considering her tender age, social status, and particularly the Appellant's dominance over the family, these factors would have compelled her to remain silent for a considerable period before making a complaint.
28. In ***The Crown Court Compendium Part I (published in May 2016 - page 10-22)***, a child’s reason for silence is explained as follows:

“Experience has shown that children may not speak out about something that has happened to them for a number of reasons. A child may

- *be confused about what has happened or about whether or not to speak out;*
- *blame him/herself for what has happened or be afraid that he/she will be blamed for it and punished;*
- *be afraid of the consequences of speaking about it, either for him/herself and/or for another member of the family;*
- *may feel that she may not be believed;*

- *may have been told to say nothing and threatened with the consequences of doing so;*
- *may be embarrassed because she did not appreciate at the time that what was happening was wrong, or because she enjoyed some of the aspects of the attention they were getting;*
- *simply blank what happened out and get on with their lives until the point comes when they feel ready or the need to speak out {e.g. for the sake of a younger child who s/he feels may be at risk};*
- *may feel conflicted: loving the abuser but hating the abuse.”*

29. In the instant case, although the prosecutrix was 18 years old at the time of making the complaint, one or more of the aforementioned factors would have undoubtedly prevented her from disclosing the horrendous experience she had endured for a considerable period.

30. In the circumstances, I find that a satisfactory explanation has been provided for the delay in making a statement to the police. Therefore, the belatedness of the complaint does not adversely affect the prosecution's case.

31. For the reasons stated above, the Judgment of the learned High Court Judge is factually and legally correct. Thus, the grounds advanced by the Appellant are far from satisfactory and cannot be accepted.

32. Hence, I find no reason to interfere with the Judgement of the learned High Court Judge. The Judgment dated 20.09.2023, the convictions and the sentences passed on the Accused Appellant are affirmed. Accordingly, the appeal stands dismissed.

Judge of the Court of Appeal

Hon. P. Kumaratnam,J

I agree,

Judge of the Court of Appeal