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/ 0175/2023
High Court of Ratnapura
Case No. HC/39/2017

Ramar Udayakumar alias Appu

APPELLANT

Vs.

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

RESPONDENT

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

COUNSEL	:	**Mohan Senavirathne with Nandana Malkumara and L. Rajapaksha for the Appellant.** **Hiranjan Peiris, ASG for the Respondent.**
ARGUED ON	:	**28/10/2025**
DECIDED ON	:	**09/12/2025**

****

JUDGMENT

P. Kumararatnam, J.

The above-named Appellant was indicted by the Attorney General on 25.11.2016 under Section 365 B (2) (b) of the Penal Code for committing three counts of grave sexual abuse on Punniyadevan Parwathi between the period of 23.11.2012 to 23.11.2013.

The trial commenced on 13.03.2021. After leading all necessary witnesses, the prosecution closed the case. The learned High Court Judge had called for the defence, and the Appellant had given evidence from the witness box and had called his wife and closed his case.

The learned High Court Judge after considering the evidence presented by both parties before him and his predecessor, convicted the Appellant on the 1st count and sentenced the Appellant to 10 years of rigorous imprisonment and imposed a fine of Rs.10,000/- subject to a default sentence of 03 months rigorous imprisonment.

In addition, a compensation of Rs.150,000/- was ordered with a default sentence of 06 months rigorous imprisonment.

The Appellant was acquitted from count No. two and three.

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 the Zoom platform from prison.

The Facts of this case albeit briefly are as follows.

PW1 - the victim of this case, had been about 14 years old and was schooling when she faced this grave violation. When she gave evidence, she was 22 years old. The victim has three siblings and she had been in grade 08 at the time of this incident.

On the day of the incident the victim had gone to the Appellant's house in search of his wife. At that time the Appellant was the only occupant of the house. The Appellant, using this opportunity, dragged the victim to the kitchen, forcibly made her lie on the ground, removed her clothes, and performed intercrural sex on the victim. The Appellant had told her not to shout when performing the sexual act on her. In the evening of the incident, the Appellant had come to her house and held her hand. On a previous occasion the Appellant had held the victim from behind while she was working at the vegetable garden.

A few days afterwards, the victim had divulged the incident to the Appellant's wife, who in turn had informed the same to the victim's father. The victim's father had taken the victim and the wife of the Appellant to the police station

to lodge a complaint. After making a statement to the police, the victim was produced before the JMO for examination. According to him, she did not tell anything to the doctor, but the history was narrated by the wife of the Appellant.

The JMO who had examined the victim had not excluded the possibility of sexual abuse. But he ruled out the possibility of rape being committed on the victim.

After the closure of the prosecution's case, the defence was called, and the Appellant denied the charges while giving evidence from the witness box, and further, called his wife to give evidence on his behalf.

In the first ground of appeal, the Learned Counsel for the Appellant strenuously argued that the Appellant was not afforded a fair trial which has been guaranteed under Article 13(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka, as the prosecution has failed to tender the second statement recorded from the victim either to the court or to the defence, upon the instruction of the Hon. Attorney General on 03.03.2015.

PW9 W/IP Subaratne Menike giving evidence before court admitted that she had recorded a further statement from the victim on 03.03.2015 on the direction of the Hon. Attorney General. The relevant portion is re-produced below:

<u>Pages 168-169 of the brief</u>

ප්‍ර : ඔබ අද දින ගරු අධිකරණයට පැමිණියේ කවර කාරණයක් සම්බන්ධයෙන් සාක්ෂි දෙන්න ද?

උ : 2013.11.24 වැනිදා රක්වාන පොලිසියේ ළමා හා කාන්තා කාර්යාංශය භාරව රාජකාරී කලා. 2013.11.24 දින පැය 1.30 ට පොලිස් ස්ථානයට පැමිණිල්ලක් වාර්තා වී තිබෙනවා ඇන්දාන ලිපිනයේ වයස අවුරුදු 14ක් වන පුණ්‍යදේවන් පාර්වතී කියන බාලවයස්කාර දැරියට ස්ත්‍රී දූෂනයක් සිදු කලා කියන පැමිණිල්ල වාර්තා වුනා. පැමිණිල්ල සම්බන්ධයෙන් විමර්ශන කටයුතු සිදු කරලා පැමිණිල්ල සටහන් කරලා තියෙන්නේ වෙනත් නිලධාරිනියක්. ඒ සම්බන්ධයෙන් විමර්ශන කරලා නැවත නීතිපති දෙපාර්තමේන්තුවට

උධෘත යැවීමෙන් පසු මැතිණියනි එම පුණ්‍යදේවන් පාර්වතී යන බාලවයස්කාර දැරියගේ ප්‍රකාශයේ පරස්පරතාවයන් තිබෙනවා කියලා නැවත ප්‍රකාශයක් ගන්න පොලිස් ස්ථානයට දන්වලා එවලා තිබුනා. ඒ අනුව තමයි නැවත ප්‍රකාශයක් සටහන් කරන්නේ මම 2015.03.03 වැනිදා.

ප්‍ර : එතකොට දැන් ඔබ මෙම නඩුවෙහි විත්දිත තැනැත්තිය එනම් පුණ්‍යදේවන් පාර්වතී යන තැනැත්තියගේ මුල් කටඋත්තරය ලබා ගැනීමක් සිදු කලා ද?

උ : මම මුල් පැමිණිල්ල සටහන් කලේ නෑ මැතිණියනි.

ප්‍ර : ඔබ නැවත ප්‍රකාශයක් සටහන් කලා කියලා ඔබ ගරු අධිකරණයට කිව්වා?

උ : ඔව්.

ප්‍ර : ඔබ කවර දිනයකදීද සටහන් කලේ?

උ : 2015.03.03 වැනිදා.

ප්‍ර : කවර වෙලාවකදීද?

උ : පැය 10.40 ට.

ප්‍ර : කවර ස්ථානයකදීද සටහන් කලේ?

උ : රක්වාන පොලිස් ස්ථානයේ දී.

According to PW9, the reason for recording the second statement is the fact that the Hon. Attorney General had observed a contradictory position in the 1st statement of the victim. To be clear, the police were directed to record a second statement, and I most definitely consider the availability of the same to be very essential to dispense justice.

In **Hattuwan Pedige Sugath Karunaratne v Hon.Attorney General** SC Appeal 32 of 2020 dated 20.10.2020 his Lordship Aluvihare held that:

> *"…… No doubt the duty of a State Counsel is to present the Prosecution in an effective manner to the best of their ability in furtherance of securing a conviction, if the evidence can support the charge. The Prosecutor, however, is an officer of the court and their role is to assist the*

court to dispense justice. Thus, it is not for a Prosecutor to ensure a conviction at any cost, but to see that the truth is elicited, and justice is meted out. A Prosecutor is not expected to keep out relevant facts either from the court or from the Accused. If the investigation has revealed matters which are favourable to the Accused and the Accused is unaware of the existence of such facts, it is the bounden duty of the Prosecutor to make those facts available to the court and to the defence. Rule 52 of the Supreme Court Rules (Conduct and Etiquette for Attorneys at Law) Rules 1988 requires an Attorney at Law appearing for the prosecution to bring it to the notice of the court any matter which if withheld may lead to a miscarriage of justice……"

In **Wijepala v The Attorney General** [2001] 1 SLR 46 at pages 49 and 51 His Lordship Mark Fernando, J. held that:

"Quite apart from that being a failure to make such disclosure as the statutory provisions require, the non-disclosure of that statement to the defence and to the Court resulted - for the reasons I set out below - in the impairment of the right of the Appellant to a fair trial which was his fundamental right under Article 13(3). That Article not only entitles an accused to a right to legal representation at a trial before a competent Court, but also to a fair trial, and that includes anything and everything necessary for a fair trial. That would include copies of statements made to the police by material witnesses".

"The failure to disclose to an accused the existence and contents of the first information - which might have cast serious doubt on the informant's credibility - may well result in a miscarriage of justice. Rule 52 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules, 1988, requires an Attorney-at-Law appearing for the prosecution to bring to the notice of the Court "any matter which if withheld may lead to a miscarriage of justice". That is a professional obligation founded on a constitutional right to a fair trial".

In the case of **Rowe and Davis v the United Kingdom** [2000] ECHR, The European Court of Human Rights held:

> *"… in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party."*

The Supreme Court in **The Queen v Liyanage and Others** (1963) 65 NLR 337, stated that:

> *"… on a trial upon Indictment, by the very essence of the pre-trial procedure, an accused person becomes aware of all the evidence relied upon by the Crown in support of the Indictment and which the Crown intends to place against him at the trial. He is entitled in law to know such evidence before he is called upon to plead to the Indictment. It is a right of his, inherent in that procedure."*

A fair trial would refer to the legal procedure which has been set in place to guarantee the fair and just treatment of individuals accused of crimes, which includes rights such as public hearings by an independent and impartial court within a reasonable time period. Other key rights include the presumption of innocence until proven guilty, the right to legal representation, the ability to present one's case and the right to question and cross examine evidence against them. Such a legal guarantee is an internationally recognised human right which is absolutely necessary to ensure democracy and a just legal system.

Accordingly, in my view, the failure to provide the copy of the second statement to both the defence and the court has resulted in a great prejudice against the Appellant. Further, such a critical point not being noticed by the Learned High Court Judge has resulted in it being even more unjust to the Appellant.

Secondly, the Learned Counsel for the Appellant, submitting certified copies of the case record bearing number HCR/38/2017 of the High Court of

Ratnapura, contended that the Appellant had already been indicted and convicted by the Learned High Court Judge of Ratnapura upon his guilty plea regarding the same incident.

In HCR/38/2017, the Appellant was charged for committing rape on the victim Punniyadevan Parwathie, under section 364(2)(e) of the Penal Code between 23.11.2012 and 06.06.2013.

On the 09.02.2022, upon indicating that the Appellant was willing to plead guilty to a lesser offence, the Learned State Counsel had filed an amended indictment and had brought the rape charge from section 364(2) of the Penal Code to sexual harassment under section 345 of the Penal code. The prosecution had used the same Medico Legal Report of the victim which had been filed in HCR/39/2017 to re-consider the charge.

The Appellant pleaded guilty to the amended indictment 29.03.2022 and was sentenced to two years rigorous imprisonment suspended for five years with a fine of Rs.5000/- subject to default sentence of 03 months simple imprisonment. Additionally, a compensation of Rs.150,000/- was ordered with a default sentence of 01-year simple imprisonment. The Appellant had already paid the fine and the compensation.

Both the indictments were filed on the same day, that was on 25.11.2016 at the High Court of Ratnapura.

As the prosecution reduced the charge of rape to sexual harassment considering the same Medico legal report of the victim, I conclude that the prosecution should not have forwarded the indictment pertaining to this case under section 365 B (2) (b) of the Penal Code in the High Court of Ratnapura. Once the MLR is compromised, it cannot be used to file additional charges against an Accused.

The Learned Additional Solicitor General, in keeping with the highest tradition of the Attorney General's Department, endorsed that there is merit in the appeal grounds discussed above.

The Appellant has been in remand since 09.05.2023, the date of judgment.

Considering the evidence led in this case and guided by the judgements mentioned above, I conclude that this is an appropriate case to acquit the Appellant from the conviction. Hence, he is acquitted from this case.

The appeal is allowed.

The Registrar of this Court is directed to send this judgment to the High Court of Ratnapura along with the original case record.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL