

**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**

Democratic Socialist Republic of Sri
Lanka

Court of Appeal

Case No. CA HCC 0028/2024

High Court of Matara

Case No. CRI 142/2017

MC Matara

Case No. BR 3562/12

Complainant

Vs.

Chandana Prasanna Suwadarathna

Accused

AND NOW BETWEEN

Chandana Prasanna Suwadarathna

Accused-Appellant

Vs.

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

Complainant-Respondent

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

Counsel: Asela Seresinhe with Thimila Pullaperuma for the Accused-Appellant.

Dileepa Peiris, A.S.G. for the Respondent.

Argued on: 29.09.2025

Judgment on: 27.10.2025

JUDGMENT

AMAL RANARAJA, J.

1. The accused appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court in Matara* in High Court case number CRI 142/2017.

The charges in the indictment are as follows;

- i. That on or about December 13, 2013, in *Matara*, within the jurisdiction of this Court, the appellant procured *Kidalpitiya Deepthi Chandrika* to become a prostitute within Sri Lanka, and have thereby committed an offence punishable under section 360A(1) of the Penal Code as amended by the Penal Code (Amendment) Act No. 22 of 1995 and 16 of 2006.
- ii. That on the same date, place, time and in the same course of transaction as in the first charge, the appellant procured *Arachchige Ganga Kumari* to become a prostitute within Sri Lanka, and have thereby committed an offence punishable under section 360A(1) of the Penal Code as

amended by the Penal Code (Amendment) Act No. 22 of 1995 and 16 of 2006.

2. At the conclusion of the trial, the learned High Court Judge has convicted the appellant of the first charge and acquitted him of the second. Thereafter, sentenced the appellant as follows; seven years rigorous imprisonment together with the fine of Rs. 25,000 with a term of six months rigorous imprisonment, in default.
3. Further, the appellant has been directed to pay a sum of Rs. 100,000 as compensation to PW01 with a term of six months rigorous imprisonment, in default.
4. The appellant aggrieved by the conviction, disputed judgment together with the sentencing order has preferred the instant appeal to this Court.

Case of the prosecution

5. PW01 and PW02 had known each other for sometime. On the day in question, they have been making their way back after attending an alms-giving ceremony.
6. While they were in transit in *Matara*, PW02 has informed PW01 about a potential opportunity to earn an extra income. PW02 has mentioned that there was a hotel in the *Fort in Matara* where they could engage in sexual activity with two men who would be present, for payment.
7. This has implied that they could participate in prostitution to earn money at the hotel. PW01 has agreed to the idea and thereafter, both have proceeded to the hotel.

8. The appellant has been managing the hotel as its owner. When PW01 and PW02 arrived at the hotel, PW02 has engaged in a conversation with the appellant. The appellant has offered them a meal which PW01 and PW02 have accepted.
9. Following this, the appellant had allegedly informed PW01 and PW02 that two men would arrive at the hotel and that PW01 and PW02 could engage in sexual activity with these men for payment, allowing them to leave the hotel after the transaction has completed.
10. Sometime later, the appellant had informed PW01 about the arrival of the men, introduced PW01 to one of them and suggested that she go into a room with him. PW01 has agreed to engage in sexual activity with the man for payment.
11. Once they entered the room, the man has revealed that he was an officer of a raiding party and proceeded to arrest PW01. Subsequently, both PW02 and the appellant have also been arrested.

Case of the appellant

12. The appellant has maintained that he was familiar with PW02, as she had previously visited the hotel with male companions and had rented rooms on multiple occasions. He further maintains that on the day in question, PW02 had contacted him by phone to inform him that she was coming to the hotel with another. Upon their arrival, the appellant has served lunch to both PW01 and PW02.
13. Subsequently, two men have entered the hotel expressing a desire to rent a room. However, as they were unable to provide valid identification, the appellant had declined their request.

14. In response to this refusal, the men have identified themselves as police officers, part of a raiding party, and proceeded to arrest the appellant. The appellant has vehemently denied the charges brought against him.

Grounds of appeal

15. When the matter was taken up for argument, the Counsel for the appellant urged the following grounds of appeal:

- i) The versions of PW01, PW02 and PW03 are entirely contradictory and the learned High Court Judge has failed to consider the reasonable doubt which arises in the prosecution version.
- ii) The evidence of PW03 should be considered and evaluated as evidence of a decoy. However, the learned Trial Judge has failed to consider the applicable legal principles.
- iii) The learned Trial Judge has failed to consider that evidence given by the appellant from the witness box creates a “reasonable doubt” in the prosecution case.
- iv) Without prejudice to the above grounds of appeal and without conceding that the conviction against the appellant is lawful, it is respectfully urged that the punishment imposed on the appellant is excessive.

16. The term “procure” refers to the act of obtaining something, often through careful effort or by employing specific means.

17. In the context of law, particularly under section 360A of the Penal Code, procurement carries significant implications, especially when it involves the exploitation of individuals for the purpose of prostitution.
18. To establish an offence that falls under 360A, the prosecution bears the responsibility of presenting compelling evidence that demonstrates the offender's actions in securing a person's involvement in prostitution – whether or not the victim consented to such involvement. The prosecution must prove both the intent and the actions of the accused.
19. The prosecution's narrative suggests that PW02 has proposed to PW01 the idea of visiting a hotel located in the *Fort in Matara*. The purpose of this visit has been to engage in sexual activity with two men who would be present in the hotel for payment (financial compensation).
20. Although PW01 has not raised any questions regarding PW02's suggestion, she has agreed to accompany her to the hotel without hesitation.
21. In this context, it is essential to recognize that the primary motivation for both PW01 and PW02 to go to the particular hotel was the prospect of engaging in sexual activity with two men for payment. This arrangement essentially amounts to prostitution.
22. It is also important to note that PW01 and PW02 have arrived at the specific hotel independently, motivated by prior arrangement or anticipation of meeting their clients.
23. This decision to engage in sexual activity for payment has been made solely by PW01 and PW02, reflecting their own actions in the situation.

24. It is crucial to emphasize that the actions of PW01 and PW02 were not managed by the appellant. Their arrival at the hotel was a result of their own planning and initiative, indicating that they were not pressurized or manipulated into these circumstances. The expectations they held regarding their clients suggests a voluntary engagement rather than one imposed upon them.
25. In the circumstances outlined, the appellant has not had the opportunity to secure the PW01's and PW02's involvement in prostitution.
26. Further, in the case of *Rosemary Judy Perera vs Democratic Socialist Republic of Sri Lanka* [SC APPEAL 154/14] decided on 14.12.2020. Aluvihara J. stated that,

“As decided in the case of R Vs. Ubolcharoen (Phanda) and Thonarin (Bhuppa) (2008) [2009] EWCA Crim. 3263 referred to earlier, a section 52(1) offence (Sexual Offences Act 2003 [UK]) which is similar to that of section 360A(1), cannot be committed if the complainant (the person) has already been involved in prostitution, either home or abroad.

I am of the view that the same interpretation as above, is applicable in the Sri Lankan context as well. In the Penal Code (Amendment) Act No. 22 of 1996, section 360A(1) is placed under the heading ‘Of kidnapping and abduction’. This classification also supports the meaning which can be derived from a plain reading of section 360A(1); that the offence of procuration is committed where a person who is not a prostitute is employed anew in prostitution rather than a person who is already a prostitute.”

27. In light of the matters discussed, the evidence presented by the prosecution is wholly inadequate to support a conviction of the appellant of the charges outlined in the indictment.

28. Furthermore, the Court concludes that, given the merit of the aforementioned ground of appeal, there is no need to consider the other grounds of appeal.

29. Accordingly, as I am inclined to interfere with the conviction, the disputed judgment together with the sentencing order, I set aside the same and acquit the appellant of the charge convicted of.

I make no order regarding costs.

Appeal allowed.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree

Judge of the Court of Appeal