

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

In the matter of an Appeal in terms of
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.

The Democratic Socialists Republic of
Sri Lanka

COMPLAINANT

Vs

Ranpiti Devayalage Priyangika
Saman Kumari alias Ganga

ACCUSED

Case No. CA 119/2017

HC (Anuradhapura) Case No. 144/2013 AND NOW BETWEEN

Ranpiti Devayalage Priyangika
Saman Kumari alias Ganga

ACCUSED – APPELLANT

Vs

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

COMPLAINANT – RESPONDENT

BEFORE : Deepali Wijesundera J.

: L.U. Jayasuriya J.

COUNSEL : Amila Palliyage for the
Accused – Appellant
Riyaz Bany S.S.C. for the
Attorney - General

ARGUED ON : 12th December, 2017

DECIDED ON : 12th January, 2018

L.U. Jayasuriya J.

The accused appellant (hereinafter referred to as the appellant) was indicted in the High Court of Anuradhapura under the following counts.

1. That during the period from 20th May 2011 to 18th May 2012 the appellant committed grave sexual abuse on a person named Weerasinghe Arachchilage Dhanuka Prabath Perera, which is an offence punishable under section 365 (2) b (2) of the Penal Code as amended.
2. During the same period except the occasion referred to in count No.1, the appellant committed grave sexual abuse on the said Weerasinghe Arachchilage Dhanuka Prabath Perera, which is an

offence punishable under section 365 (2) b (2) of the Penal Code as amended.

3. The during the same period except the period referred to in count No. 1 and No. 2 the appellant committed grave sexual abuse on the said Weerasinghe Arachchilage Dhanuka Prabath Perera, which is an offence punishable under section 365 (2) b (2) of the Penal Code as amended.

After trial the appellant was convicted and sentenced to a term of 7 years RI and a fine of Rs. 500/= was imposed each for the first and second counts. He was acquitted on the third count but the High Court imposed 7 years RI and a fine of Rs. 500/= was imposed for the third count as well. This appeal is from the said conviction and sentence.

The incident in this case was revealed as a result of a statement recorded from the appellant in respect of another child abuse complaint made against the appellant. The said complaint was made by Prosecution Witness No. 2 namely Nelsonge Asanka Diloshini.

The story of the prosecution is that when the victim was studying in grade 8 or 9, the appellant who was living all alone in her house has persuaded him to remove his garments and had sexual intercourse with

him mounting on top of him. The appellant says that the act of intercourse took place about 3 – 4 occasions.

Under cross examination the appellant has shifted from the original position and says that they had sex on a bed in his house where three other ladies were also sleeping in the same room.

The grounds of appeal urged by the counsel are as follows.

1. Whether the prosecution has established that the offence alleged have been committed by the appellant, falls within the period stipulated in the indictment and thereby place no charge to answer by the appellant.
2. Whether the learned High Court Judge has failed to consider that the case for the prosecution does not satisfy the test of spontaneity.
3. Whether the learned High Court Judge erred in law by failing to consider the evidence favourable to the appellant.
4. Whether the learned High Court Judge had failed to consider that the evidence of the victim does not satisfy the test of probability.

According to I.P. Roshantha the victim's statement was recorded on 05.05.2012 (vide page 142 of the brief) and he has conducted investigation on the directions of his superior officer.

The victim under cross examination admits that he made the statement to the police two years after the alleged incident (vide page 82 of the brief). If the victim's evidence is relied upon the first incident would have occurred on or about 05.05.2010 which falls outside the time period stipulated in the first count. We find that this item of evidence has not been considered in favour of the appellant by the learned High Court Judge.

In view of the above finding of this court the question of dealing with the rest of the grounds urged by the appellant would not arise. Therefore we decide to allow the appeal and accordingly quash the conviction and the sentence imposed on the appellant.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL