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

In the matter of an Appeal under Section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

CA-HCC-46/2021

HC of Ratnapura Case No:

HC 63/2018

The Democratic Socialist Republic of Sri Lanka

Complainant

Vs.

Perumal Kamaraj

Horton Gardens- Lower section

Kalawana

Accused

And Now

Perumal Kamaraj

Horton Gardens- Lower section

Kalawana

Accused-Appellant

Vs.

The Hon. Attorney General

Attorney General's department

Colombo 12.

Complainant-Respondent

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

Amal Ranaraja, J

Counsel: Faisz Musthapha, PC with Keerthi Tillekeratne and Bishran Zibul for the Accused-Appellant

Yohan Abeywickrama, DSG for the Respondents

Argued On: 21.05.2025

Written

Submissions: 26.07.2022(by the Accused-Appellant)

On 06.09.2022 and 07.11.2023(by the Respondent)

Judgment On: 03.07.2025

JUDGMENT

B. Sasi Mahendran, J.

The Accused-Appellant (hereinafter referred to as 'the Accused') was indicted before the High Court of Ratnapura alongside an individual named Farhan, who was subsequently acquitted after the prosecution's evidence was evaluated. The charge pertained to the alleged grave sexual abuse of Govinda Sami Kaniamma, an offence punishable under Section 365B(2) of the Penal Code, as amended by Act No. 22 of 1995."

The Prosecution presented its case through the testimony of six witnesses and by producing documents marked P1 to P2. In his defence, the Accused opted to make a dock statement. Upon conclusion of the trial, by judgment dated 1st April 2021, the Learned Trial Judge found the Accused guilty of the charge and imposed a sentence of twelve years' rigorous imprisonment along with a fine of Rs. 20,000/-. Additionally, the Accused was ordered to pay Rs. 200,000/- as compensation to the Victim.

Being aggrieved by the afore-mentioned conviction and sentence, the Accused has preferred this application to this Court.

1. 1.Credibility of the witness Kaniamma (PW01)
2. Gross discrepancy as to where the incident took place
3. 3.The purported incident could not have taken place inside the Gold shop
4. 4.Delay in making the Complaint.
5. No, force , threat or intimidation or fear of death or hurt was used and she was not in lawful detention.
6. No evidence whatsoever to suggest that PW01 was subject to the said purported gross indecency.
7. Dock statement of the Accused-Appellant was not considered in light of the attended circumstances.

In addition to the foregoing, it was contended that there had been an undue delay in filing the indictment, which the court failed to take into account when determining the sentence imposed on the Accused.

Before proceeding to examine the prosecution's case, it is essential to first consider the judicial approach adopted by our Courts in evaluating the testimony of child witnesses who have been subjected to sexual harassment.

With regard to the belatedness of making a complaint to the police

Sarath Menikpura v. Attorney General, CA/HCC/61/20, Decided On 27.06.2024, Wickum A. Kalurachchi, J held that;

"Delay in making a complaint about an offence committed against a child is different. In the case at hand, the victim girl kept silent without informing anybody about the rape or sexual harassment committed by her farther for three and a half years. A child's reason for silence has been explained in the *Crown Court Compendium Part I* (published in May 2016 - page 10-22), as follows:

"Experience has shown that children mau 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 s/ he may not be believed;
- may have been told to say nothing and threatened with the consequences of doing so;

- may be embarrassed because s/he did not appreciate at the time that what was happening was wrong, or because s/he 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."

In addition, in, *The Crown Court Bench Book* (published in March 2010 - at page 367) it is stated as follows:

"Children do not have the same life experience as adults. They do not have the same standards of logic and consistency, and their understanding may be severely limited for a number of reasons, such as their age and immaturity. Life viewed through the eyes and mind of a child may seem very different from life viewed by an adult. Children may not fully understand what it is that they are describing, and they may not have the words to describe it. They may, however, have come to realise that what they are describing is, by adult standards, bad or, in their perception, naughty."

With regard to the corroboration

Sisira De Abrew, J. in CA/129/2002, decided on 28.06.2007, Appellate Court Judgments (Unreported) 2007 Volume I, and held that

> "Court can, however act on uncorroborated testimony of a prosecutrix if her evidence appears to the Court to be completely, satisfactory and there are attending circumstances which make it safe for the Court to act upon her evidence without corroboration. If I may put it in another way that is if her evidence is capable of convincing the Court that she is speaking the truth, Court can act on such testimony without corroboration. In this regard, I am guided by the judgment of Justice Alles with whom Justice Weeramanthry and Justice Thamodaram agreed in Premasiri vs. Queen 77 NLR page 86. Justice Alles stated thus: In a charge of rape it is proper for a jury to convict on an uncorroborated evidence of the complainant only when such evidence is of such character as to convince the jury that she is speaking the truth."

In Dingiribandage Sumanadasa v. The Republic of Sri Lanka, CA No'147/2005, Decided on 18.07.2008, Sisira de Abrew, J. Appellate Court Judgment(Unreported) 2008 (Volume II) Cri.

> "I hold that the medical evidence does not support the evidence of the prosecutrix. Thus the case depends only on the evidence of the prosecutrix. Can an accused person in a case of rape be convicted on uncorroborated evidence of the victim? In this connection I would like to consider certain judicial decisions.

In ***Bhoginbhai Hirjibhai Vs. State of Gujarat (2983) AIR S.C. 753*** Indian Supreme Court *stated thus:-*

> "In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury".

However, in **Gurcharan Singh vs. State of Haryana AIR 1972 S.C. 2661** the Indian Supreme Court held thus;

> " As a rule of prudence, however, court normally looks jor some corroboration on her testimony so as to satisfy its conscience that she is telling the truth and that the person accused of rape on her has not been falsely implicated".

In **King vs. Athukorale 50 NLR 256 Justice Gratiaen** states thus:-

> "Where an accused is charged with rape, corroboration of the story of the prosecutrix must come from some independent quarter and not from the prosecutrix herself. A complaint made by the prosecutrix to the Police in which she implicated the accused cannot be regarded as corroboration of her evidence"."

The facts and circumstances of the case are as follows:
According to the testimony of PW1, who was 14 years old at the time of the incident on 4th August 2025, she visited the Kalawana Hospital at approximately 11:30 hours to obtain medication. As she was unable to obtain a registration number, she was instructed to remain at the hospital until 14:00 hours. Upon exiting the hospital premises, she noticed two individuals following her. In response, she proceeded to a nearby gold jewellery shop owned by Kamaraj, who is the accused in this case, a friend of her brother.

PW1 informed the accused of her concerns, and he advised her to remain inside the shop. While she was inside, she observed the same two individuals walking past. Subsequently, the Accused escorted her into an inner room of the jewellery shop.

While she was inside the inner room of the jewellery shop, the Accused allegedly pushed her against the wall, unzipped his trousers, and subjected her to inappropriate physical contact, pressing himself against her for approximately 30 minutes. During this period,

PW1 experienced marked physical discomfort. Thereafter, the Accused directed her to dress and leave the room.

PW1 then returned to the front area of the shop where she had been previously seated. She subsequently proceeded to a nearby wade shop and sat down. While there, she recalled that she had left her umbrella at the jewellery shop and returned briefly to retrieve it. She remained at the wade shop for approximately one hour.

Later, a person by the name of Narayana arrived. PW1 informed him that she was feeling unwell and requested to be taken to the residence of Pushparani. Narayana complied and escorted her to Pushparani's house.

On the following day, PW1's brother arrived and took her to his residence. Initially, PW1 did not disclose the incident to her sister-in-law; however, she recounted the events the next day. PW1 stated that she had been visibly distressed—crying, feeling faint, and experiencing headaches. When her sister-in-law inquired about her condition, PW1 narrated the sequence of events that had taken place at the Accused's shop.

Thereafter, the sister-in-law informed PW1's brother, and both accompanied her to the Kalawana Police Station on 7th August 2025. A formal police entry was made, and a statement was recorded from PW1.

Following the lodging of the complaint, PW1 was escorted by police officers to the Kalawana Hospital for a medical examination. She was subsequently referred to the Ratnapura Hospital for further medical examination.

During cross-examination, it emerged that, in her police statement dated 22nd August 2005, PW1 had described the location of the incident as a "jewellery shop." However, she also indicated that the incident occurred inside a room within the gold jewellery shop. The learned Counsel for the Accused emphasized this inconsistency, asserting that there was a significant discrepancy regarding the exact location where the alleged incident took place.

According to the testimony of the witness, the incident took place in a rear section of the jewellery shop, which was said to contain a room. However, when police officers later visited the location, no such room was found at the rear of the gold jewellery shop. It was noted, however, that there was a room adjoining the shop.

It is important to recognize that both shops were located adjacent to one another. The Accused, in his evidence, stated that the prosecution witness had initially been inside the adjoining shop, and that he subsequently emerged with her before both entered the jewellery shop. Notably, the adjoining shop was found to contain a small room at its rear.

The police, accompanied by Kanniamma, visited the site on three separate occasions. The Accused did not contest the claim that the witness had entered the jewellery shop. In fact, the witness herself stated that she had first entered the jewellery shop, following which the Accused came out with her and then led her back inside.

Moreover, it is relevant to note that the witness had entered the shop seeking refuge from two individuals who had been following her. At the time she gave her police statement, she was a 14-year-old girl.

While there may be discrepancies in the description of the exact location such as referring to the premises as a "toy shop" versus a jewellery shop the fact remains that the adjoining premises contained a small room. It is well established in our jurisprudence that even truthful witnesses may differ in minor, incidental details due to varying powers of observation and the passage of time.

It is acknowledged that the particular jewellery shop did not have a room at its rear. However, this inconsistency does not strike at the root of the prosecution's case. Our Courts have consistently held that contradictions will only render evidence unreliable if they materially affect the prosecution's case.

I am mindful of the observation made by Lord Roche in Bhojraj v. Sita Ram, 1936 AIR, page 60 where he held that;

"Evidence substantially true not infrequently assumes too perfect a form and witnesses such as children not infrequently get a story by heart which is none the less a true story. The real tests are : how consistent the story is with itself, how it stands the test of cross-examination and how far it fits in with the rest of the evidence and the circumstances of the case."

This dictum was considered by *Ranjith Silva, J in Renuka Subasinghe v. Attorney General, 2007 (1) SLR 224.*

Upon careful consideration, we observe that apart from this minor discrepancy, the testimony of PW1 remained consistent throughout her account of the incident. Her evidence withstood cross-examination and was not discredited. Furthermore, she provided a reasonable explanation for the delay in lodging her complaint. We further observed that her evidence was consistent.

The Learned High Court Judge was justified in rejecting the dock statement of the Accused, as it did not possess sufficient evidential weight to raise a reasonable doubt. The Court rightly observed that the Accused failed to cast any doubt on the highly incriminating evidence presented against him.

It is well established that, throughout the course of a criminal trial, the presumption of innocence remains in favour of the Accused, and the burden of proof rests squarely on the Prosecution. However, once the Prosecution adduces evidence that is prima facie incriminating, a corresponding duty arises on the part of the Accused to offer a credible explanation or defence to rebut the inference of guilt.

We hold that the learned high court judge correctly rejected the evidence of the accused.

Upon a careful examination of the evidence and the testimony of the prosecutrix, certain contradictions were noted. However, the Learned Trial Judge has duly considered these discrepancies in the course of arriving at his decision. In our view, the identified contradiction does not go to the root of the case, nor does it give rise to a reasonable doubt in favour of the Appellant.

Accordingly, we are of the considered opinion that there is no justifiable basis to discredit or disregard the testimony of PW1.

Therefore, we affirm the conviction.

In relation to sentencing, it is true that the incident occurred on 4th August 2005, while the indictment was filed only on 7th March 2018, and the judgment was delivered on 1st April 2021. The Accused endured the burden of a pending criminal charge for over a

decade. This prolonged delay is a significant factor that cannot be overlooked in considering the overall fairness of sentencing.

With regard to sentencing, it is acknowledged that the incident occurred on 4th August 2005, while the indictment was not filed until 7th March 2018, that is, after nearly 13 years, and the judgment was ultimately delivered on 1st April 2021. This appeal came up on 08.12.2021. Finally, on 21.05.2025 argument concluded and judgment reserved for 03.07.2025. As discussed above, we have affirmed the conviction. The question is whether the sentence imposed by the learned high court judge could be suspended.

The following judicial decision has recognised that undue delay may be a mitigating factor concerning the sentence imposed.

Rajaratnam J in K.R. Karunaratne, v. The State, 78 NLR 413 held that;

"This appeal came up in May 1973 for the first time when learned Counsel for the State moved for the appeal to stand out. In February 1974 when the appeal was listed a second time the Senior State Counsel appearing for the prosecution stated to Court that he had not been furnished with the brief in this case and the case was again re-listed but was not reached. The 4th date of listing, I find, is the only occasion on which the postponement was due to the appellant and that was when his counsel fell ill. On the 5th and the 6th occasions the appeal was not heard due to no application made on behalf of the appellant.

At this stage, therefore, the delay of 10 years to finally conclude this matter is, in my view a very relevant circumstance to be taken into consideration before allowing the sentence of 2 years imprisonment to operate immediately. I am not aware of any case where an accused person has been kept in suspense for so long a period due to no fault of his own. The accused has always been present in Court and ready to receive justice at the hands of the Court. He has made no contribution to the delay."

In the present case, there was a delay exceeding thirteen years in filing the indictment, a delay for which the Accused bears no responsibility. We are of the view that such an inordinate lapse of time is sufficient to warrant interference with the sentence imposed by the Learned Trial Judge, along with in terms of Section 333 of the Code of Criminal Procedure Act, No. 25 of 2024.

"6. Section 333 of the principal enactment is hereby amended in subsection (5) thereof, by the substitution for the words "received into prison under the sentence.", of the following:-

"received into prison under the sentence:

Provided that, the Court of Appeal may, in appropriate cases, order that the time spent by an appellant in custody pending the determination of his appeal and any time spent in custody prior to the conviction, such time not having been considered as part of his sentence passed at the time of his conviction by the court of first instance, be considered as part of his sentence ordered at the conclusion of his appeal.".

In the present case, the Accused-Appellant has served a period of four years of imprisonment following his conviction.

Accordingly, the sentence of twelve years' rigorous imprisonment imposed by the Learned High Court Judge is hereby set aside and substituted with a sentence of two years' rigorous imprisonment, suspended for ten years from the date of the judgment of the High Court of Ratnapura (01.04.2021). The fine, compensation, and the default term imposed by the Trial Judge are affirmed.

The Registrar of the Court is directed to communicate this judgment to the High Court of Ratnapura for necessary compliance.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL