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 to be read with Article 138 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA-HCC-94/23

HC of Vavuniya Case No:

HC 2901/19

The Democratic Socialist Republic of Sri Lanka

Complainant

Vs.

Sinnaiah Balakrishnan

Accused

And Now

Sinnaiah Balakrishnan

Accused-Appellant

Vs.

The Hon. Attorney General

Attorney General's department

Colombo 12.

Complainant-Respondent

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

Amal Ranaraja, J

Counsel: Indika Mallawaratchy with Ershan Ariaratnam for the Accused-Appellant

Suharshi Herath, DSG for the Respondents

Written Submissions On : 18.01.2024 (by the Accused-Appellant)
02.04.2024 (by the Respondent)

Argued On: 24.06.2025

Judgment On: 22.07.2025

JUDGMENT

B. Sasi Mahendran, J.

The Accused-Appellant (hereinafter referred to as 'the Accused') was indicted before the High Court of Vavuniya for having committed the offence of abduction and rape on Nagarathnam Brintha on 05.10.2016, punishable under Section 354 and Section 364 (2)(e) of the Penal Code as amended by No. 29 of 1998 and no. 16 of 2006.

At the trial prosecution led the evidence through 11 witnesses and marking productions P1 and P2, and thereafter closed its case. The Accused, in his defence made a dock statement.

At the conclusion of the trial, the Learned High Court Judge found the accused guilty on both counts. Accordingly, the Learned High Court judge imposed 2 years of rigorous imprisonment with a fine of Rs. 5000/- with a default sentence of 1 month rigorous imprisonment and for the 2nd count, 12 years of rigorous imprisonment along with a fine Rs. 5,000 with a default sentence 1 month rigorous imprisonment. Furthermore, compensation in the sum of Rs. 100,000 carrying in default term of 01-year simple imprisonment.

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

The following grounds for appeal were set out in the written submission.

1. The trial has been conducted in violation of the provisions of Section 142 of the Evidence Ordinance, thereby occasioning a deprivation of a fair trial
2. Evidence of the prosecutrix is ambiguous and inconsistent on the question of penetration

The facts and circumstances are that;

According to the testimony of PW 01, Nagarathnam Brintha, who was in grade 8 when the offence was committed on 05.10.2016 and 16 years old at the time of giving evidence. The accused, who resided next door to the prosecutrix, called as 'Priya' and asked for a water bottle. Responding to the Accused's request, PW 01 brought the bottle near the fence. He then asked her to come closer to see why he was calling her. Trusting him, she walked toward the gate. When the PW 01 tried to shout, the Accused trapped the child's mouth and laid her down on the bed. After he had sexual intercourse with her, and asked the child to leave.

She has told this incident to her neighbour, witness no. 04. According to the witness No. 04, namely Sasi kumar, he has seen the accused taken the child to the accused's house.

The main ground urged by the accused was that the state counsel had asked leading questions about the penetration, which is a violation of the provisions of the Evidence Ordinance.

What is a leading question?

Section 141 of the Evidence Ordinance

"Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question."

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ප්‍ර: මොනවද වුනේ?

උ : මට අඩ ගැහුවා. මම ගියා.

ප්‍ර : ගියාට පස්සේ මොකද වුනේ??

උ : අඩ ගැහුවා. මොකද්දෝ කළා. මම දැන් නෑ.

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ප්‍ර: වතුර බෝතලය දුන්නට පස්සේ මොකද්ද වුනේ කියලා කොහොමද ඒක වුනේ?

උ : එයාගේ ගෙදරදී

ප්‍ර ; එයාලගේ ගෙදර කියන්නේ කාගේ ගෙදරද?

උ ; මෙයාගේ ගෙදර (වුදිත පෙන්වා සිටී)

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ප්‍ර : ගේ ඇතුලේ කොහාටද ගියේ ?

උ : වැටෙන් අඩ ගහලා මම ගේ ඇතුලට ගියා.

ප්‍ර : ගේ ඇතුලට ගියාට පස්සේ මොකක් හෝ උනාද ඔබට?

උ : ගේ ඇතුලට අඩ ගහලා දොර වහලා මොකක් දෝ කළා.

ප්‍ර : ගේ ඇතුලට අඩ ගහලා කරපු දේ ඔයාට මතකද?

උ ; එහෙමයි.

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ප්‍ර : ඔබ මොකද්දෝ කළා කිව්වේ එක කලේ කාමරය තුලද හෝල් එකේද?

උ : දේව කාමරයේ.

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ප්‍ර : ඔබ මොකද්දෝ කලා කියලා කිව්වේ ඒ දේ දේව කාමරයේ ඇදේ සිදුවුනාද බිම සිදු වුනාද?

උ : ඇදේ .

ප්‍ර : ඇදේ වූ සිද්ධිය සම්බන්ධයෙන් සාක්ෂි ලබා දෙන්න ආවේ?

උ : එහෙමයි.

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ප්‍ර : මෙට්ටය උඩ බෙඩ් ෂීට් එකක් තිබුනාද?

උ : නැහැ. මෙට්ටය විතරයි.

ප්‍ර : ඔබ මෙට්ටයේ කොහොමද හිටියේ ?

උ : මගේ ඇග උඩ නිදාගෙන සිටියා.

ප්‍ර : අයි ඔබ නිදාගෙන හිටියේ?

උ : මෙයා මට තර්ජනය කළා. නිදා ගන්න කිව්වා. මම නිදා ගත්තා ඇද උඩ .

ප්‍ර : දැන් සඳහන් කළා මෙට්ටයේ නිදා ගෙන සිටියා කියලා. ඒ වගේ එක වතාවක්ද වුනේ?

උ : ඔව්.

ප්‍ර : ඔබ කිව්වා නේද මෙට්ටය උඩ නිදාගෙන සිටින විට ඇඳුම් ඇඳගෙන සිටියා කියලා. ඒ ඇඳුම් කොහොමද තිබුනේ?

උ : ස්කර්ට් එක තෙමිලා තිබුනා.

ප්‍ර : ෂිට් ෂෝට් එකට මොකද වුනේ?

උ : ගැලෙව්වා. මොකද්දෝ කළා.

ප්‍ර : ෂිට් ෂෝට් එක ගලවලා මොකද කලේ?

උ : මගේ බඩ ප්‍රදේශය අත ගෑවා.

ප්‍ර : බඩේ කොයි ප්‍රදේශයද?

උ ; සාක්ෂිකාරිය බඩ ප්‍රදේශය පෙන්වා සිටී.

ප්‍ර : ඔයාගේ ෂිට් ෂෝට් එක ගලවලා මොකද්ද කළා කිව්වා?

උ : ඔව්.

ප්‍ර : මොහු මොහුගේ කුමන අංගයකින්ද එහෙම කලේ?

උ ; නිදාගෙන උඩ නැගලා මොකද්ද කළා.

ප්‍ර : ඔයාගේ ෂිට් ෂෝට් එක ගැලෙව්වට පස්සේ මොකද්ද පේන අංගය?

උ : චූ දාන තැන.

ප්‍ර : ඔයාගේ චූ දාන තැන කියන්නේ ස්ත්‍රී ලිංගයද?

උ : එහෙමයි.

ප්‍ර : ඔයාගේ චූ දාන අංගයට මොකද කලේ ?

උ : මෙයාගේ චූ දාන එක දැම්මා.

අධිකරණයෙන්

ප්‍ර : එයාගේ වු දාන අංගය කියන්නේ එයාගේ පුරුෂ ලින්ගයද?

උ : එහෙමයි.

ප්‍ර : ඔයාට එයාගේ වු දාන එක ඔයාගේ වු දාන එකට තියලා මොකද්ද කළා කියලා කිව්වා?

උ ; ඔව්.

ප්‍ර : ඔයාගේ වු දාන එකට වුදිතගේ වු දාන එක දමන විට දැනුනද නැත්නම් දැක්කද?

උ : දැනුනා.

ප්‍ර : මීට පෙර මෙහෙම දෙයක් වුදිත කලාද?

උ : නැහැ.

ප්‍ර : වෙන කව්රු හරි මෙහෙම දෙයක් කලාද?

උ : නැහැ.

ර : මේ පළමු සිද්ධියද?

උ : එහෙමයි.

ප්‍ර : මේ සිද්ධිය කාට හරි කිව්වද?

උ : පොලිසියට කිව්වා.

ප්‍ර : පොලිසියට කියන්න පෙර කාට හෝ කිව්වද?

උ : අල්ලපු ගෙදර අක්කාට කිව්වා.

ප්‍ර : අල්ලපු ගෙදර අක්කාගේ නම මොකද්ද?

උ ; මොහානා අක්කාට හා සශි අයියාට කිව්වා.

ප්‍ර : සශි කියන්නේ කාටද?

උ : සශි අයියා.

ප්‍ර : එයාගේ නම සශි කුමාර් ද?

උ : සශි කියලා කියනවා.

ප්‍ර : ඔබ කිව්වා එයාගේ වූ කරන එක ඔයාගේ වූ කරන එකට මොකද්ද කළා කියලා. වූ කරන තැනට මොකද්ද කලේ?

උ : මොකද්ද කළා.

ප්‍ර : කොච්චර වෙලාවක් කලාද?

උ : ගොඩක් වෙලා කළා.

Upon reviewing the testimony of PW1, it is evident that no leading questions were posed by the state counsel. However, the counsel did ask follow-up questions that stemmed directly from the answers provided by the prosecutrix.

An analysis of the aforementioned questions and responses reveals that the child was hesitant to disclose the details of the incident. Our courts have consistently recognized that victims of rape or sexual harassment often seek to avoid the emotional distress and embarrassment associated with recounting such experiences. This is particularly true for children, who tend to suppress or avoid discussing traumatic events and may wish to forget the incident as quickly as possible.

We are mindful of the observation made by **W.L. Ranjith Silva, J** in the case of **D.Tikiribanda v. Attorney General, 2010 BLR 92,** held that;

"It is not surprising that there is an omission as distinct from a contradiction (omissions on material points may amount to contradictions) in the evidence of the victim as to the description/narration as to the offence and as to how the preparation of the offence took place. A victim of sexual harassment is more often than not compelled to make statements and give evidence in court. We must realize that she's not doing so for the pleasure of it but because she is compelled to do so. Even though such complaints may appear to be voluntary yet they may not be voluntary in the true sense. This is what is called secondary victimization. This is somewhat like adding insult to injury. Any victim of rape or sexual harassment would like to avoid the embarrassment of talking about, let alone repeating the narration of such a shameful incident, if she could, Naturally it is reasonable and realistic to believe that a victim of sexual harassment would be in a trauma before, soon after the incident and sometimes even thereafter. In most of the Child abuse and child rape cases the complainants are belated due to a sense of shame, fear, embarrassment or ignorance. These incidents are brought to light invariably after much questioning and persuasion. Mostly the victims of sexual harassment prefer not to talk about the harrowing experience and would like to forget about the incident as soon as

possible (withdrawal symptom). The offenders should not be allowed to capitalize or take mean advantage of these natural and inherent weaknesses of small children. Under such circumstances it is only a counsel who appears for an accused who cloud even suggest that such trivial contradictions should be considered as decisive."

Therefore, it cannot be reasonably expected from a person in the prosecutrix's circumstances to recall the horrendous turn of events she experienced as a child with absolute precision. Furthermore, it is not uncommon for a victim of an unfortunate event to feel diminished and remain silent rather than be vocal about it.

The Accused claims that the PW 01 had not testified that the Appellant had inserted his male organ into her Virgina.

We are satisfied that the prosecution has established the fact of penetration. Although the prosecutrix did not explicitly name the male organ, she adequately described how the penetration occurred. It is important to note that the prosecutrix, a Grade 8 student, lacks the maturity and knowledge required to articulate the specifics of a sexual assault. She is, undeniably, a victim of such an assault.

Furthermore, we take into account the findings of the Judicial Medical Officer (JMO) who examined the prosecutrix. According to the Medico-Legal Report (MLR), the JMO observed mild redness and tenderness in the lower part of both labia minora and the vulva, specifically in the lower half of the introitus. These clinical observations, as recorded in the MLR, substantiate one of the essential elements of the offence of namely, penetration.

Section 142 of the Evidence Ordinance.

"Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief or in a re-examination, except with the permission of the court."

Accordingly, the defence counsel failed to raise any objection to the question posed by the state counsel. In applying Section 142 of the Evidence Ordinance, it is clear that no objection was recorded at the time the question was asked during the trial.

With regard to the defence version, the Learned High Court Judge has thoroughly analysed the evidence and reached a reasoned conclusion. We are satisfied that the

testimony of the prosecutrix is consistent and credible, with no compelling grounds to disbelieve her account.

We are also mindful of the well-established principle that the Court of Appeal will not readily interfere with the trial judge's findings on the acceptance or rejection of witness testimony, unless such findings are manifestly erroneous.

In my considered opinion, the prosecution has proved its case beyond a reasonable doubt. For the foregoing reasons, I find no justification to interfere with the judgment of the Learned High Court Judge.

Accordingly, the conviction and sentence are affirmed.

The appeal is hereby dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL