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.

The Democratic Socialist Republic of Sri Lanka

COMPLAINANT

Vs.

Court of Appeal Case No.
CA/HCC/0173/2023
High Court of Anuradhapura
Case No. SHC/261/19

Gunasinghage Gamini Jayasinghe

ACCUSED

AND NOW BETWEEN

Gunasinghage Gamini Jayasinghe

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

BEFORE	:	**P. Kumararatnam, J.** **R. P. Hettiarachchi, J.**
COUNSEL	:	**Anuja Premaratne, PC with Imasha Senadeera and Nishadi Thanthreege for the Appellant.** **Yuhan Abeywickrama, DSG, for the Respondent.**
ARGUED ON	:	**18/02/2026**
DECIDED ON	:	**18/05/2026**

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JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General in the High Court of Anuradhapura on the following charges:

1. That between 1st August 2001 and 31st August 2011 the Accused kidnapped Ranasinghe Arachchige Imesha Dewindi, who was under the age of 16 years, from the lawful guardianship of Ranasinghe Arachchige Gamini, thereby committing an offence punishable under Section 354 of the Penal Code.
2. In the course of the same transaction, the Accused committed rape of Ranasinghe Arachchige Imesha Dewindi, who was under the age of 16 years, thereby committing an offence punishable under section 364 (2) of the Penal Code as amended by Act No. 22 of 1995.
3. In the course of the same transaction, the Accused committed criminal intimidation on Ranasinghe Arachchige Imesha Dewindi, who was under the age of 16 years, thereby committing an offence punishable under section 486 of the Penal Code.

Upon the Appellant pleading not guilty to the charges, the trial commenced. The prosecution had called 5 witnesses in support of their case. Productions P1 to P3 were also marked. As the evidence led by the prosecution warranted a case to be answered, the Learned High Court Judge had called for the defence and explained the rights of an Accused in a criminal trial. On 28.11.2022, the Appellant made a dock statement and closed his case.

After the trial, the Appellant was convicted for count numbers 2 and 3 only.

For the 2nd count, the Appellant was sentenced to 10 years Rigorous Imprisonment. Additionally, a fine of Rs.10,000/ was imposed with a default sentence of 06 months rigorous imprisonment.

For the 3rd count, the Appellant was sentenced to 02 years Rigorous Imprisonment**.** Additionally, a fine of Rs.5,000/ was imposed with a default sentence of 06 months rigorous imprisonment.

The Learned High Court Judge had ordered the sentence imposed on count number two and three to run concurrently with each other.

The Appellant was acquitted from count number 1 by the Learned High Court Judge.

Being aggrieved by the aforesaid conviction and sentence, the Appellant preferred this appeal to this court.

The Learned Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence. Also, at the time of argument, the Appellant was connected via the Zoom platform from prison.

The Counsel for the Appellant advanced the following grounds of appeal:

1. Has the Learned High Court Judge failed to consider the improbability of the version of the prosecutrix?
2. Has the Learned High Court Judge failed to consider the belatedness of the complaint made against the Appellant?
3. Has the Learned High Court Judge failed to consider that acting on the uncorroborated testimony of a prosecutrix in a sexual assault case is unsafe?
4. Has the Learned High Court Judge failed to appreciate that the ingredients of the offence of Rape have not been established?

Background of the case

In this case the prosecutrix was 12 years old when she faced this bitter ordeal. She had lived with her father and her siblings at Medawachchiya and addended the school. The Appellant was their neighbour and had a small child. The victim's sister used to go to the Appellant's house to play with the little child. One day, the victim had gone to the Accused's house to bring her sister back. When she went to the Appellant's place, the Appellant had invited her to come to his room to convey a message to her. At that time the Appellant, brandishing a sword and showing a gun, frightened the victim that he would kill off her and her family if she divulges this incident to

anybody. Thereafter, the victim was taken to his room, and the Appellant had tried to remove her clothes and his sarong. At that time, the victim had escaped from his custody and had run away from the scene.

The second incident had happened a week after the first incident. Within that week when she was returning from a boutique, the Appellant had called and told her that her mother was in his house and wanted her. Believing that, when she went to his house, the Appellant had dragged her into a room, put her on a bed, undressed her, had laid on top of her body after lowering her undergarment up to knee, and had kept his penis into her vagina and committed rape on her. Before committing the act, he had threatened her with death to and her family. These threats had persisted several times even after committing the offence. Due to fear, she did not divulge this incident to anybody.

Due to this bitter ordeal, the victim had fallen sick and contracted epileptic fits. As such, she was examined by a psychiatric at the Anuradhapura General Hospital. At that time, she had revealed this incident to the doctor. She had revealed this incident for the first time after about one year of the incident.

Although it was suggested by the defence that she had fabricated this complaint since her father and the Appellant had a fight two weeks before she went to the police, she had denied the same.

PW2 Gamini, her father and PW3, Hema Kumari the mother of the victim, both denied that there were problems between the Appellant and PW2. Both PW2 and PW3 denied that they instigated their daughter to lodge a false complaint against the Appellant. The victim had not attained her age when she faced this incident.

PW9, JMO Karunatilaka had examined the victim on 21.07.2012, one year after the incident. According to JMO, there was evidence of vaginal penetration.

As the appeal grounds raised by the Appellant are interconnected, all will be considered together hereinafter.

In this case, the victim had given evidence without any contradictions or omissions. Her evidence is clear and no ambiguities were noted. The victim was only 12 years old when she was raped.

It is not disputed that the complaint to the police was made about one year after the incident. The reason for the delay was that she was frightened by the Appellant's threat to kill her and her family. Therefore, she was scared to lodge a complaint with the police. Further, she had developed an epileptic condition after this incident. Due to her tender age and her education standard, she could not remember the date of the offence clearly. But she gave evidence regarding the incident without hesitation. When she gave evidence, she was 21 years and married.

In the case of **CA/HCC/0431/2019** decided on 02.12.2022, it was held by his Lordship Justice Priyantha Fernando that:

> *"Child victims in sexual crimes of this nature, are often reluctant to inform their parents or guardians about the abuse immediately unless they are compelled to do so. Most importantly, one cannot expect a child of tender age to keep a record of the exact date on which he/she was abused or raped, unless there is some special significance on the date in which the abuse took place."*

In criminal cases, the prosecution bears the weight of proving the defendant's guilt to the jury and to sufficiently explain why a conviction is justified. "Beyond a reasonable doubt" refers to the legal principle that the evidence and arguments brought forward by the prosecution must be so strong and convincing that any rational person could accept the guilt of the defendant as fact. Such a standard would ensure no uncertainties exist when a defendant is convicted.

In the case of **State of Andra Pradesh v. Garigula Satya Vani Murthy** AIR 1997 SC 1588, it was held that:

> *"…the courts are expected to show great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity."*

The prosecutrix in her evidence admitted and clearly stated how she was raped by the Appellant after he had instilled fear in her. Although the Counsel for the Appellant contended that a dispute erupted between PW2 and the Appellant, which led the victim to implicate the Appellant in this case, the victim had never mentioned that an animosity existed with the Appellant over this incident or with her father.

In **State of Punjab v. Gurmit Singh [1996] 2 SCC 384** it was held that:

> *"The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour…."*

In the case of **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat** (1983) 3 SCC 217 it was held:

> *"Rarely will a girl or a woman in India make such false allegations of sexual assault, whether she belongs to the urban or rural society, or, sophisticated, or, not-so sophisticated, or, unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites."*

In **Sarath Menikpura v. Attorney General**, CA/HCC/61/22, 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 father 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 may 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."

In the case of **R. v. B. (G.),** 1990 CanLII 7308 (SCC) ; [1990] 2 S.C.R. 30, it was stated;

"... it seems to me that he was simply suggesting that the judiciary should take a common-sense approach when dealing with the testimony of young children and not impose the same exacting standard on them as it does on adults. However, this is not to say that the courts should not carefully assess 13 the credibility of child witnesses and I do not read his reasons as suggesting that the standard of proof must be lowered when dealing with children as the appellants submit. Rather, he was expressing concern that a flaw, such as a contradiction, in a child's testimony should not be given the same effect as a similar flaw in the testimony of an adult. I think his concern is well founded and his comments entirely appropriate. While children may not be able to recount precise details and communicate the when and where of an event with exactitude, this does not mean that they have misconceived what happened to them and who did it. In recent years we have adopted a much more benign attitude to children's evidence, lessening the strict standards of oath taking and corroboration, and I believe that this is a desirable development. The credibility of every witness who testifies before the courts must, of course, be carefully assessed but the standard of the "reasonable adult" is not necessarily appropriate in assessing the credibility of young children."

In **Don Kuruppu Arachchige Indika Gayan v The Republic of Sri Lanka,** CA/205/2007 Ranjith Silva, J. held that:

"A small child who had undergone such harrowing experience mental and physical torture and trauma, is bound to make mistake with regard to the

dates and also bound to confuse several acts of sexual intimacy from one another."

It is important to note that corroboration is not a sine qua non to secure a conviction in a rape case. The refusal to act on the victim's evidence of sexual assault due to the lack of corroboration would be adding insult to injury. If the victim's evidence does not lack basic infirmity and does not lack credence according to the probability factor, there would be no reason to insist on corroboration. These principles have been clearly laid down in a number of Supreme Court decisions and must be given importance when considering the evidence of the prosecutrix. It has been clearly established that the prosecutrix cannot be considered an accomplice. However, as a rule of prudence, it has been emphasized that some corroboration of her testimony would normally be looked at to satisfy the courts that the prosecutrix is telling the truth and that the person accused of abduction or rape has not been falsely implicated.

E.R.S.R Coomaraswamy in his "Law of Evidence" Volume 2 Book 2 at page 658 has stated referring to child witness;

"There is no requirement in English law, that the sworn evidence of a child witness needs to be corroborated as a matter of law. But the jury should be warned, not to look for corroboration, but of the risks involved in acting on the sole evidence of young girls and boys, though they may do so if convinced of the truth of such evidence…….This requirement is based on the susceptibility of children to the influence of others and to the surrender to their imaginations".

At page 659 it states, "As regards the sworn testimony of children, there is no requirement as in England to warn of the risk involved in acting on their sole testimony, though it may desirable to issue such a warning, though the failure to do so will generally not affect the conviction".

Barry Nurcombe, M.D., F.R.A.C.P. in his article "The Child as Witnesses: Competency and Credibility" states:

> "Before the trial, the child is expected to recount the details of the alleged offense, again and again, to strangers. Repeated court appearance may be required. In court, the child will eventually be confronted by the accused who is exercising his or her constitutional rights. In contrast to the accused, the child has no advocate. His or her testimony is open to direct challenge on the grounds of incompetence, confabulation, or fabrication. These considerations deter victims from reporting offenses, lead to false restrictions, and erode the apparent credibility of honest witnesses." Considering the above cited judicial decisions and the writings, as the credibility of the evidence of a child witness would predominantly depend on the circumstances of each case, it is the duty of the Learned Trial Judge to assess and decide on the evidence given by the child witness.

It is settled law that the evidence of a witness need not be necessarily corroborated, especially so in a case of a sexual offence.

Finally, the Learned President's Counsel contended that the Learned High Court Judge had failed to appreciate that the ingredients of the offence of Rape have not been established by the prosecution.

<u>Explanation given under Section 363 of Penal Code (Amended Act) No. 22 of 1995 sates:</u>

> "Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.'

The victim had vividly explained how she was raped by the Appellant under the pretext that her mother was in his house. The JMO had noted a healed hymeneal tear at the 6 O'clock position in her vagina which had confirmed the sexual penetration. Hence, prosecution has sufficiently proved the

penetration which is necessary to prove the charge of rape under Section 363 of the Penal Code.

In this case, plausible reasons were given by the victim on why she had lodged the complaint almost one year after the incident. There were no contradictions or omissions in her evidence. She had clearly and vividly given her evidence on this experience that she had encountered in the hands of the Appellant.

It is extremely important that every point in the accused's favour is considered and placed before the Judge, when an accused is facing a serious criminal charge, even when such points would seem trivial. It is possible that such matters when placed before the Judge may create a reasonable doubt, where the benefit to the accused must be given.

In this case, the Learned High Court Judge had considered the evidence by the prosecutrix and the defence and had considered that the evidence by the prosecutrix is in fact convincing and reliable, therefore concluding that the prosecution has proved the case beyond a reasonable doubt.

After careful consideration of the evidence presented during the trial, I am of the view that the evidence presented by the prosecution has not been tainted with any serious shortcomings or ambiguity. As such, I consider it safe to act on such evidence of the prosecution against the Appellant.

As seen under the appeal grounds brought by the Appellant, strong and incriminating evidence has been adduced against the Appellant by the prosecution. Thus, the Learned High Court Judge has correctly analysed all the evidence presented by both parties to conclude that the prosecution has indeed proved the case beyond a reasonable doubt.

As the Learned High Court Judge had correctly convicted the Appellant for the charges mentioned in the indictment, I affirm this conviction and the sentence imposed.

After considering the circumstances of this case, I order the sentence imposed on the 2nd and 3rd counts to run concurrently. The fine will remain the same, and additionally I order a compensation of Rs. 200,000/- payable to the victim, with a default sentence of one-year simple imprisonment. Subject to the above variations, the appeal is dismissed.

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL