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

In the matter of an appeal in terms of Article 138 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 331 of the Criminal Procedure Code and Section 19 (B) of the High Courts of the Provinces (Special Provisions) Act No 19 of 1990.

Court of Appeal Case No:
CA/HCC/ 0275/2023

High Court Vavunia Case No:
HCV/2960/2020

The Democratic Socialist Republic of Sri Lanka

Complainant

Vs

Balachandran Sivam

Accused

AND NOW BETWEEN

Balachandran Sivam

Accused – Appellant

Vs

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

Complainant – Respondent

Before : **P. Kumararathnam, J.**
Pradeep Hettiarachchi, J.

Counsel : Accused – Appellant is produced in court via zoom platform by the Prison Authorities.
Kavithri Hirusha Ubeysekara for the Accused – Appellant.
Jayalakshi De Silva, SSC for the Respondent.

Argued on : 04.07.2025

Decided on : 04.09.2025

Pradeep Hettiarachchi, J

JUDGEMENT

1. The accused–appellant (hereinafter referred to as "the appellant") was indicted before the High Court of Vavunia for committing rape on Prabaharan Kajitha on or about the 10th or 12th day of February, an offence punishable under Section 364(1) of the Penal Code, as amended by Act No. 22 of 1995.

2. The trial was heard before the Judge of the High Court of Vavunia, and at its conclusion, the learned High Court Judge found the appellant guilty of the charge and convicted him. Accordingly, the appellant was sentenced to ten years of rigorous imprisonment and fined Rs. 5,000, with a one-month default sentence. Furthermore, the court ordered the appellant to pay the prosecutrix a sum of Rs. 500,000.00 as compensation, carrying a default sentence of two years' rigorous imprisonment. It is against that conviction and sentence that the appellant has preferred the present appeal. In the appeal, only the appellant has filed written submissions.

3. The grounds of appeal advanced by the appellant are as follows:

    1. It was erroneous for the High Court Judge to hold that the charge under 364(2) (e) was proven when in fact the Appellant is charged under section 364(1) of the Penal Code

    2. The learned High Court Judge had failed to consider glaring discrepancies in prosecution evidence and therefore, had erred in concluding that the charge been proved beyond reasonable doubt.

    3. The learned High Court Judge had misdirected himself in addressing the issue of consent.

    4. The learned High Court Judge had failed to duly consider the defence.

    5. The judgment does not accord with the provisions of Section 283 of the Code of Criminal Procedure Act.

    6. That the conviction and the sentence is bad in law.

Background to the appeal:

4. According to the prosecution, the appellant was married to the sister of the prosecutrix's father. The evidence of the prosecutrix was that, when she was at home alone, the appellant entered her house and raped her. A child was subsequently born as a result of this incident. It was only after the birth of the child that the prosecutrix made a statement to the police. Initially, the appellant denied paternity of the child, but following the submission of the child, the appellant, and the prosecutrix for a DNA test, the appellant admitted paternity. At the trial, the appellant contended that the sexual intercourse with the prosecutrix was consensual.

5. The first ground of appeal is that the conviction under section 364(2)(e) is erroneous because the prosecution did not establish that the prosecutrix was under 18 years of age at the time of the alleged offense.

6. As is evident from the indictment, the charge against the appellant was for committing an offence punishable under section 364(1) of the Penal Code, whereas in his judgment, the learned High Court Judge held that the charge of rape under section 364(2)(e) of the Penal Code had been proven against the appellant. Thus, there is a clear distinction between the charge initially brought against the appellant and the charge on which he was ultimately convicted after trial.

7. It must be noted that, for a conviction under section 364(2)(e), the prosecutrix must be under 18 years of age. In the present case, however, no birth certificate of the prosecutrix was produced in evidence. Nevertheless, whether the conviction falls under section 364(1) or section 364(2)(e) does not vitiate the conviction, as the distinction becomes material only at the stage of sentencing. Therefore, I am not inclined to consider that discrepancy as a ground fatal to the conviction.

8. Since most of the grounds of appeal are interrelated, I shall not consider them individually but address them collectively. In considering the grounds of appeal, the following issues arise for determination:

    - Has the prosecution satisfactorily explained the belatedness of the complaint?

- Can the trial judge's findings in that regard be sustained in light of the evidence adduced at the trial?
- Can the conviction be upheld in view of the contradictions and omissions highlighted in the evidence of the prosecutrix and other witnesses?
- Does the trial judge's failure to evaluate the appellant's statement made from the dock amount to a miscarriage of justice?
- Is the judgment in compliance with section 283 of the Code of Criminal Procedure Act, No. 15 of 1979?

9. I shall consider the belatedness of the complaint and whether the prosecution has adduced sufficient reasons to justify the delay in making a complaint to the police. At the same time, I shall also consider whether the discrepancies apparent in the prosecution evidence escaped the attention of the learned trial Judge, and whether, as a result, the prosecution failed to establish the charge against the appellant beyond reasonable doubt.

10. It is evident that the appellant was married to the sister of the prosecutrix's father, who resided in close proximity to the prosecutrix's house. As admitted by PW2, the mother of the prosecutrix, this fact was not in dispute.

11. As observed from the impugned judgment, the learned trial Judge concluded that there were sufficient reasons to justify the belatedness of the complaint. The first complaint relating to the alleged rape was made to the police 14 days after the child was born. This was only after the police had visited the prosecutrix's house upon receiving information from the Child Protection Authority.

12. When determining the issue of belatedness in making the complaint, the learned High Court Judge, in his judgment, concluded that since the appellant had threatened to kill the prosecutrix's father, the prosecutrix refrained from making a complaint to the police until they came to her house after the birth of the child. However, it transpired during cross-examination that nowhere in her statement to the police had the prosecutrix mentioned any such threat allegedly made by the appellant.

13. It is to be noted that the explanation when offered by PW1 and PW2 on being questioned on the aspect of delayed complaint, by the defense has to be tested by the

Court on the touchstone of credibility. If the explanation is plausible then no adverse inference can be drawn. On the other hand, if the explanation is found to be implausible,

certainly, the Court can consider it to be one of the factors to affect credibility of the witnesses who made the complaint belatedly.

14. More significantly, according to the evidence of PW2, the mother of the prosecutrix, she had come to know of the incident six months after the prosecutrix became pregnant and had thereafter informed her husband.

PW2 testified as follows:

Q. Witness you got to know that the girl was pregnant around 6 months?

A. Yes

Q. But you said that the complaint to the Police was made only 15 days after the baby was born, isn't that so?

A. Yes

Q. For what reason didn't you make the complaint for so long?

A. He used to call the girl and threatened her. That was the fear. There was no body on our side. I told my husband and I had to send the other children to school. We found it difficult for food and that is why I did not reveal the story.

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15. However, during his cross-examination, PW3 stated that he only learned of his daughter's pregnancy when she delivered the baby, which contradicts PW2's version.

PW3 testified as follows:

Q. Witness, when did you get to know that your daughter was pregnant?

A. I knew only when she delivered the baby.

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16. The testimony also shows that PW3, the victim's father, attempted suicide upon discovering his daughter's pregnancy. Furthermore, PW2 stated that PW3 was unaware of who was responsible for her condition. If this were true, PW2 would have

been able to file a police complaint without fear and request a formal investigation to identify the perpetrator.

17. Furthermore, no evidence was presented to suggest the appellant had a bad character or a violent nature. Therefore, even if we presume the victim was under some form of threat, there was no reason for her parents (PW1 and PW2) to withhold information about the alleged rape or threat, as there was no evidence that either of them had been threatened by the appellant.

18. Moreover, the victim's testimony was that she feared the appellant would harm her father due to their professional relationship. In direct contradiction, however, PW2 testified that her husband and the appellant had never worked together, a point she confirmed unequivocally when questioned.

PW2 testified as follows:

Q. Did your husband work in any Organization?

A. No

Q. Did your husband and this accused person work together in any place?

A. No

[Page 155 of the brief (English translation)]

19. Notably, the learned High Court Judge failed to analyze the evidence of PW2 and, in particular, failed to take into account the victim's omission to mention any such threat in her statement to the police. Similarly, the learned Judge failed to pay adequate attention to the lack of *inter se* consistency on material points among the evidence of PW1, PW2, and PW3.

20. It is true that a court is not inclined to reject a witness's testimony merely because their statement is belated, provided the reasons for the delay are justifiable and probable. It would depend upon several factors. To determine if the reasons are sufficient, the court must meticulously analyze them within the context of the specific case. If the explanation offered for the delayed complaint is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion. Conversely, if the explanation is found to be implausible, the Court may

regard it as a factor diminishing the credibility of the witness who lodged the complaint belatedly

21. On the other hand, if the explanation is found to be implausible, certainly the Court can consider it to be one of the factors to affect credibility of the witnesses who made the complaint belatedly.

22. In the present case, the evidence of PW1, PW2, and PW3, when considered in its entirety, does not persuade this Court to accept the reasons advanced to justify the belatedness of the complaint.

23. It is also pertinent to emphasize the short history given by the prosecutrix to the Judicial Medical Officer, which indicates the existence of a romantic relationship between the prosecutrix and the appellant. Surprisingly, and without any supporting evidence, the learned trial Judge questioned the very possibility of a romantic relationship between the appellant and the prosecutrix, who was 16 years and 5 months old at the relevant time.

24. Nowhere in the victim's testimony did she deny or dispute the history she provided to the Judicial Medical Officer (JMO). In fact, the Medico-Legal Report was admitted as evidence under Section 420 of the Code of Criminal Procedure. Therefore, there is no basis for the learned High Court Judge to question the existence of the romantic relationship between the victim and the appellant, as it had already become an admitted fact upon the admission of the Medico-Legal Report.

25. It is important to emphasize that, in a case of this nature, the testimonial trustworthiness and credibility of the prosecutrix, particularly the probability of her version of events, must be assessed by the trial judge with the utmost care and caution.

26. In ***State of Andra Pradesh vs Garigula Satya Vani Murty AIR 1997 SC 1588,*** it was held that:

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

27. In ***Goverdhan & Anr. Vs State of Chhattisgarh Criminal Appeal No. 116 OF 2011*** decided on January 09, 2025, Indian Supreme Court elaborately discussed the concept of "reasonable doubt" and stated as follows. "It means that such doubt must be free from suppositional speculation. It must not be the result of minute emotional detailing, and the doubt must be actual and substantial and not merely vague apprehension. A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense as observed in Ramakant Rai v. Madan Rai, (2003) 12 SCC 395 wherein it was observed as under : " *Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an overly emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case."*

28. The aforementioned discrepancies in the prosecution evidence undoubtedly create a reasonable doubt with regard to the prosecution case. In such circumstances, the learned trial Judge ought to have extended the benefit of the doubt to the appellant and acquitted him. In ***Pantis Vs The Attorney General [1998] (2) Sri.L.R, 148 at 151***, the sufficiency of the accused's statement in creating a reasonable doubt was discussed as follows.:

> *The burden of proof is always on the prosecution to prove all ingredients of the charge beyond reasonable doubt and there is no burden in our law for the accused to give any explanation (unless in certain cases where specific provision is made by law). In my view it is sufficient if the accused gives an explanation which satisfies the court or at least is sufficient to create a reasonable* ***doubt*** *as to his guilt.*
>
> *It should be kept in mind that the trial Judge was a trained judge who would have been aware of the fact that the burden of proof is always on the prosecution to prove a case beyond reasonable doubt. Therefore, if a reasonable doubt was created in his mind, no doubt he would have given the benefit of that doubt to the accused and acquitted him on the charges.*

29. One of the arguments advanced on behalf of the appellant is that because the trial judge failed to properly analyze and evaluate the evidence, the impugned judgment does not conform to Section 283 (1) of the Code of Criminal Procedure Act No. 15 of 1979.

30. In this case, the defense's contention was that the sexual intercourse took place with the mutual consent of the appellant and the victim. Therefore, it was incumbent upon the trial judge to analyze and evaluate the evidence presented by both sides before determining the fate of the appellant.

31. It is desirable to emphasize that a judgment must be structured, transparent, and reasoned, rather than being a mere order. It should set out the basis for the court's decision, including an analysis of the evidence, consideration of the parties' arguments, application of the relevant legal principles, and a clear demonstration of how the conclusion logically follows.

32. Such reasoning ensures fairness, enables the losing party to understand why the decision was rendered against them, and facilitates meaningful appellate review. Where a trial Judge fails to comply with these requirements, the judgment cannot be sustained.

Section 283 reads:

The following provisions shall apply for the judgments of courts other than the Supreme Court or Court of Appeal: -

(1). The judgment shall be written by the Judge who heard the case and shall be dated and signed by him in open court at the time of pronouncing it, and in a case where appeal lies shall contain the point or points for determination, the decision thereon, and the reasons for the decision.

(2). It shall specify the offence if any of which and the section of the law under which the accused is convicted and the punishment to which he is sentenced.

(3). If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted.

33. In ***Chandrasena and Others Vs.Munaweera (1998) 3 SLR 94 at 96***, Jayasuriya, J. while referring to several previous decisions observed the following,

*In **Ibrahim v. Inspector of Police 59 NLR 235** the Supreme Court emphasised that the mere outline of the prosecution and defence without reasons being given for the decision but embellished by such phrases as I accept the evidence of the prosecution and I disbelieve the defence is by itself an insufficient discharge of duty cast upon the Judge by the provisions of section 306(1) of the Criminal Procedure Code. Vide also the decision in **Thusaiya v. Pathaimany 15 CLW 119** by Nihill J - According to the presently applicable section 283(1) of the Code of Criminal Procedure Act No. 15 of 1979, the Judgment shall contain the point or points for determination, the decision thereon and the reasons for the decision. In **Verupadian v. Sollamuttu 1901 1 Brown's Repost 384.** the Supreme Court stressed that the object of the statutory provision is to enable the Supreme Court to have before it the specific opinion of the Judge in the tower Court on the question of fact, so that it may enable the Court to ascertain whether the finding is correct or not. The weight of authority is to the effect that the failure to observe the imperative provisions of this section (see 306) is a fatal irregularity and that even in a simple case that the provisions of this statute must be complied with.*

34. In the case of ***James Silva Vs. The Republic of Sri Lanka (1980) 2 SLR 167,*** the trial Judge stated, "I had considered the defence of the accused and I hold that it is untenable and false in the light of the evidence led by the prosecution."

Held: There is a serious misdirection in law. It is a grave error for trial Judge to direct himself that he must examine the tenability and truthfulness of the evidence of the accused in the light of the evidence led by the prosecution. To examine the evidence of the defence of the accused in the light of the prosecution witness is to reverse the presumption of innocence.

*Per Rodrigo, J. "A satisfactory way to arrive at a verdict of guilt or innocence is to consider all the matters before the Court adduced whether by the prosecution or by the defence in its totality without compartmentalizing and, ask himself whether as a prudent man, in the circumstances of the particular case, he believes the accused guilty or not guilty. - See the Privy Council judgement in **Jaya sena Vs. The Queen 72 NLR 313**."*

35. The following judgments of the Supreme Court of India have emphasized the importance of compliance with Section 354(1) of the Indian Code of Criminal Procedure, which bears close similarity to Section 283 of the Code of Criminal Procedure Act, No. 15 of 1979.

36. ***Mukhtiar v. State of Punjab 1995 Supreme Court cases (Cri) 296*** `, in which the judgment of the trial court was not sustained for the following reasons:

> *"The trial court appears to have been blissfully ignorant of the requirements of section 354 (1) (b) CPC. Since, the first appeal lay to the Supreme Court, the trial court should have reproduced and discussed at least the essential parts of the evidence of the witnesses besides recording the submissions made at the bar to enable the appellate court to know the basis on which the 'decision' is based. A 'decision' does not merely mean the 'conclusion' - it embraces within its fold the reasons which form the basis for arriving at the 'conclusions'. The judgment of the trial court contains only the conclusions and nothing more. The judgment of the trial court cannot, therefore, be sustained"*

37. In another Indian case of State of ***Andhra Pradhesh v. Gowthu Ranghunayakulu & Others, 1995 Supreme Court cases (Cri) 540***. It was held that:

> *"in the absence of a proper formulation of the points for decision, the examination of evidence and specific pointwise finding, the judgment was not in accordance with section 354 and not proper".*

38. Regrettably, in the present case, the learned trial Judge has failed to conduct a proper analysis of the evidence. A careful examination of the impugned judgment reveals that there is minimal evaluation of the evidence. The bulk of the judgment consists of reproductions of evidence, case law, medico-legal reports, and DNA reports, rather than a reasoned analysis leading to a conclusion.

39. Consequently, the judgment is clearly contrary to the requirements of Section 283 of the Code of Criminal Procedure Act, No. 15 of 1979. The High Court judgment (English translation) spans 65 pages. The first forty-five pages consist largely of reproductions of evidence, medico-legal reports, DNA reports, and references to decided cases. Pages 47 to 61 are devoted almost entirely to discussions of case law.

At page 45, the learned trial Judge has merely narrated the evidence of PW1 regarding the reasons for the delay in making the complaint, without indicating whether he found those reasons satisfactory.

40. It is also noteworthy that the learned Judge did not adequately evaluate the dock statement and failed to state why he was not inclined to accept it. The learned Judge simply reproduced a summarized version of the dock statement but did not explicitly state whether he refused to accept it or not. Thus, it is obvious that the judgment was not in accordance with Section 283 (1) of the Code of Criminal Procedure Act No. 15 of 1979.

41. In summary, the learned High Court Judge failed to appreciate the doubt discernible in the prosecution's evidence and erred in not extending the benefit of that doubt to the

    Appellant. He further failed to take into account the material discrepancies in the testimonies of the prosecution witnesses and, in particular, neglected to evaluate the dock statement of the appellant. These omissions amount to a serious misdirection in law, vitiating the safety of the conviction.

42. For the reasons set out above, I allow the Appeal and proceed to quash the convictions and sentences imposed on the Appellant by the learned High Court Judge of Vavunia. Accordingly, the Appellant is acquitted from the charge.

Judge of the Court of Appeal

P. Kumararatnam, J

I agree,

Judge of the Court of Appeal