

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

Sandanam Jeewaratnam

ACCUSED-APPELLANT

C.A. 97/2012

(H.C. Kandy 29/2011)

Vs.

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

RESPONDENT

BEFORE: Anil Gooneratne J. &
Malinie Gunaratne J.

COUNSEL: Amila Palliyage with Thusitha Ranasinghe
For the Accused-Appellant

Madawa Tennakoon S.S.C., for the Respondent

ARGUED ON: 02.07.2014

DECIDED ON: 21.07.2014

GOONERANTE J.

The Accused-Appellant was indicted in the High Court of Kandy under Section 364(2)(e) of the Penal Code, as amended, for committing rape on a child who was only 12 years old at the time of incident. Trial Judge convicted the Accused-Appellant for 20 years rigorous imprisonment and a fine of Rs. 5000/- which carries a default sentence of 6 months R.I. Court also made an award of compensation payable to the victim in a sum of Rs.100,000/-, and in default of payment of compensation, 2 years rigorous imprisonment.

At the hearing of this appeal learned counsel for the Accused-Appellant submitted to court that he does not wish to contest the conviction and only invited this court to consider whether the sentence could be reduced according to law. The learned counsel for the Accused as well as learned Senior State Counsel assisted this court by referring to the facts relevant to this court and both of them were in agreement as regards all material facts. The incident of rape was on or about 8.11.2007. Accused was about 45 years old and the prosecutrix was only 12 years old as at that date. The Accused and

the victim were living in close proximity in an estate usually describe as line rooms. On the date in question at about 3.30 p.m. only the victim was in the house and her father and other family members were not in the house. The Accused had come over to the house of the victim and had told her to increase the volume of the radio which was on and had got the victim to close the window of the house. Thereafter the Accused had forced the victim to drink illicit liquor. The victim had been in a dazed state and then after that the Accused has had sex with the victim by force. Evidence reveal that due to a state of intoxication the victim was helpless and the Accused had committed the offence of rape. Accused had also threatened the witness.

The learned trial Judge has very correctly analysed the evidence and considered very relevant items of evidence and convicted and imposed a suitable punishment on the Accused. We see no basis to interfere with the judgment on any respect. I am thankful for the learned Senior State Counsel as well as learned counsel for the defence to have placed the facts in its correct perspective. Learned Senior State Counsel also cited the following case laws which no doubt is a guide to the trial court, to be applied in all the circumstances of this case.

In A.G Vs. Ranasinghe and Others 1993(2) SLR 81..

(1) An offence of rape calls for an immediate custodial sentence. Reasons are –

- (1) to mark the gravity of the offence
- (2) to emphasize public disapproval
- (3) to serve as a warning to others
- (4) to punish the offender
- (5) to protect women.

Aggravating factors would be –

- (a) use of violence over and above force necessary to commit rape.
- (b) use of weapon to frighten or wound victim
- (c) repeating acts of rape
- (d) careful planning of rape
- (e) previous convictions for rape or other offences of a sexual kind
- (f) extreme youth or old age of victim
- (g) effect upon victim, physical or mental
- (h) subjection of victim to further sexual indignities or perversions

In a contested case of rape a figure of five years imprisonment should be taken as the starting point of the sentence subject to aggravating or mitigating features. Where the public interest (synonymous with the welfare of the state) outweighs the previous good character, antecedents and age of offender, public interest must prevail.

(2) the fact that the Attorney General has not exercised his right of appeal in terms of section 15(b) of the Judicature Act in respect of any inadequacy in the sentence imposed on an accused, does not preclude the Attorney General from inviting the Court of Appeal to exercise its revisionary jurisdiction in terms of section 364 of the Code of Criminal Procedure Act No. 15 of 1979.

(3) A delay of six months to make the application for revision of sentence will not be considered unreasonable in view of the circumstances of the case – see (6) below.

(4) The Court has a wide power of review in revision.

(5) There is no provision to discharge the accused with a warning in the High Court where the accused is tried upon indictment and he pleads guilty to the charge. The provisions of section 306 of the Code of Criminal Procedure Act apply only in relation to the Magistrates' Court.

(6) The aggravating circumstances in the case were removal of the prosecutrix when she was sleeping with her mother, the fact that she was very young (11 years old) below the age where she may consent to sexual intercourse, the degree of preplanning and the repeated commission of the offence for 2 days before rescue by the Police. Public interest demands a custodial sentence in such circumstances.

In all the above circumstances we see no real basis to interfere with the conviction and sentence of the learned High Court Judge. We affirm the conviction and sentence, and proceed to dismiss this appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL