

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

C.A. No. 56/2010

HC. Kalutara Case No. 377/2004

Mirissage Padmasiri,
Pothuwila,
Payagala.

Accused Appellant

Vs.

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

Respondent

C.A. 56/2010 : Kalutara High Court Case No. 377/2004

Before : Anil Gooneratne, J. &
P.R. Walgama, J.

Counsel : Indika Mallawarachchi for the accused-appellant
Haripriya Jayasundera, D.S.G. for the Respondent

Argued &

Decided on : 03.10.2014

Anil Gooneratne, J.

We have heard both counsel for the accused-appellant and the learned Deputy Solicitor General. The accused-appellant was indicted in terms of Section 365 B(2)(b) of the Penal Code as amended. According to the indictment, the offence had been committed during the period 01.04.2001 and 03.06.2001. The victim was only 12 years and 3 months. The incident which took place has been described by the prosecutrix in her testimony in Court. When she gave evidence in the High Court, at the time of giving evidence in the High Court she was 17 years old. According to the version of the prosecutrix, the accused-appellant had on the day of the incident returned home by about 9.30 a.m. in the morning. At that time only the victim, her two sisters were at home. The youngest is 3 years old who was sleeping at that time. Evidence revealed that the accused had got the other sister (witness No. 2) to buy some yoghurt from the nearby shop and she was sent away from the

house. There is also evidence to the effect that as she left the house the doors of the house were locked. The sexual act has been described by the victim witness No. 2 also saw the victim being abused by the accused. Although she (witness No. 2) was sent out of the house to purchase yoghurt she returned without purchasing and she according to her evidence had an opportunity to view not the exact sexual act, but some form of abuse being caused to the victim.

Learned counsel for the defence took up several objections and raised the following matters and invites this court to consider same.

- (1) Testimonial trustworthiness of the prosecutrix.
- (2) Medical evidence does not support the version of the prosecutrix
- (3) Evidence as submitted by the learned counsel implicating the accused-appellant is in conflict.

Both learned counsel having submitted each other case, at a certain point agreed that if this Court reduce and vary the sentence, ends of justice would be met. As per the said section of the Penal Code a minimum sentence would be 7 years rigorous imprisonment. The

accused-appellant was convicted on 09.06.2010. As at today, the accused-appellant has served about 4 years in Prisons Custody. This Court having heard both counsel is of the view that the sentence need to be altered. As such, we proceed to sentence the accused for a period of 7 years rigorous imprisonment. The fine and the compensation awarded by the learned High Court Judge would not be altered. Sentence as stated above (7 year period) commence to run from the date of conviction namely, 09.06.2010.

Subject to above variation of sentence, this appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

P.R. Walgama,J.

I agree

JUDGE OF THE COURT OF APPEAL

Cr/-