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

In the matter of an appeal against the Order of the High Court under section 331 of the Code of Criminal Procedure Act N0 15 of 1979 as amended.

Suppan Chandramohan

Accused Appellant

C.A.Case No:- 111/2004

H.C Chilaw Case No:-18/07

V.

The Attorney General

Attorney General's Department

Colombo 12.

Before:-H.N.J.Perera, J. &

K.K.Wickremasinghe, J.

Counsel:-Indica Mallawarachchi for the Accused-Appellant

R.Abeysuriya D.S.G for the Respondent

Argued On:-27.05.2015

Written Submissions:-16.06.2015

Decided On:-04.08.2015

H.N.J.Perera, J.

The accused-appellant was indicted before the High Court of Chilaw for abducting Achala Ruwandika from her guardianship an offence punishable under section 354 of the Penal Code and for committing rape on the said victim who was below the age of 16 years for an offence punishable under section 364(2)(e) of the Penal Code. After trial the accused-appellant was found guilty as charged and the learned trial Judge sentenced the accused-appellant to 7 years R.I and to a fine of Rs.10,000/- carrying a default term of 1 year simple imprisonment for the first count and also sentenced the accused-appellant to 20 years R.I. and to a fine of Rs. 20,000/- carrying a default term of 1 year and further ordered that compensation of Rs,700,000/- be paid to the victim and in default a term of 2 years simple imprisonment for the second count and ordered the sentences to run consecutively. Aggrieved by the said conviction and sentence the accused-appellant had preferred this appeal to this court.

When this matter was taken up for argument before this court, the Counsel for the accused-appellant stated to court that she will confine this appeal to the sentence imposed on the accuse-appellant.The main contention of the Counsel for the accused-appellant was that the imposing of the maximum sentence by the learned trial Judge is disproportionate and excessive and that this is not a fit and proper case for the learned trial Judge to impose such an excessive punishment. It was also submitted that the learned trial Judge had not taken into consideration that the accused-appellant was a first offender at the time of imposing the sentence.

The evidence led in this case disclose that the prosecutrix was only 14 years old at the time of the incident. The accused-appellant was married to the cousin of the prosecutrix and was living in the same house. The

prosecutrix has admitted in cross examination that the accused-appellant had consistently proposed to her and she agreed to elope with him. She had further testified that they had planned to elope on the said date and she had gone to school. The accused-appellant had submitted a letter to the school authorities to the effect that the sister of the prosecutrix was sick and had taken her out of school at around 11.30 am on the said date.

The prosecutrix has testified that thereafter she had changed her school uniform on the way and she together with the accused-appellant had come to the accused-appellant's aunt's house in Wellampitiya. It was her evidence that the accused-appellant had sexual intercourse with her on the said night. It was the position of the defence that although the prosecutrix had denied she consented to the said sexual acts, the prosecutrix in her complaint to the police had admitted that they had cohabited twice on the said night with mutual consent. Evidence reveals that upon a complaint being lodged by the Aunt of the prosecutrix, the police had arrived at the Wellampitiya residence the following morning and had found both the accused-appellant and the prosecutrix.

The learned Counsel for the accused-appellant submits to court that the evidence led at the trial amply demonstrate that the accused-appellant and the prosecutrix had in fact eloped and concede the fact that since the prosecutrix was below 16 years of age, the element or consent on the part of the prosecutrix is immaterial in the instant case.

It was contended on behalf of the accused-appellant that the instant is devoid of any aggravating factors mentioned in the case of Attorney General V. Ranasinghe and others 1993 (2) S.L.R 81. But however the Counsel also submits that the modus operandi employed by the accused-appellant in taking the prosecutrix out of school on the pretext that the victim's sister was sick and submitting a letter to the school authorities

should not be condoned and should be considered as an aggravating circumstance in imposing the sentence. However the contention of the Counsel for the accused-appellant that the said plan was hatched with the full knowledge and connivance of the victim and that the victim was not duped and taken away from school with her knowledge cannot be accepted. The accused-appellant was a married man and also was fully aware of the fact that the prosecutrix was only 14 years of age at the time of the incident had also tendered a false document to the school authorities to get the victim out from school. The evidence led in this case clearly demonstrates that the accused-appellant had committed the said offences with the full knowledge that he is committing a serious crime against the wishes of the guardian of the underage girl.

In this case the age of the girl has not been disputed and admittedly was under the age of 16 being about 14 years. Therefore, this is a case where there was a statutory rape of a child under the age of 16 committed by an adult. In this case the opportunity was granted to the accused-appellant to place the circumstances for the mitigation of his sentence before the High Court. The sentence of the learned trial Judge is in accordance with the law. Thus there is no illegality in the sentence imposed and the fine ordered. Considering the attendant and extenuating circumstances, the trial Judge had decided to impose this sentence.

I have carefully considered the submissions of learned Counsel regarding the sentence.

Basnayake A.C.J in the case of Attorney General V. H.N.De Silva 57 N.L.R 121 observed as follows:-

"A Judge should, in determining the proper sentence, first consider the gravity of the offence as it appears from the nature of the act itself and should have regard to the punishment provided in the Penal Code or

other statute under which the offender is charged. He should also regard the effect of the punishment as a deterrent and consider to what extent it will be effective."

In State of Karnatake V. Krishnppa A.I.R 2000 S.C 1470 it was observed that:-

"Sexual violence apart from being a dehumanizing act is an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity-it degrades and humiliates the victim.....The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized Judge, is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos."

The learned Counsel for the accused-appellant has submitted that this plan was hatched with full knowledge and connivance of the victim and the latter was not duped and taken from school without her knowledge. The victim had been a minor who was only 14 years old at the time of the incident, her father had left them and the mother was abroad and she was living with her mother's elder sister. The accused-appellant was married to the cousin of the prosecutrix and they were living in the same house. The learned trial Judge had taken into account the age of the victim, the circumstances under which the offence was committed and the gravity of the offence committed by the accused-appellant.

In Rajive V. State of Rajastan (1996) 2 SCC 175 it was held that the court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong.

In State of M.P V. Bablu Natt (2009) 2 SCC 272 it was held that :-

"The principle governing imposition of punishment would depend upon the facts and circumstances of each case. An offence which affects the morale of the society should be severely dealt with. Socio economic status, religion, race, caste or creed of the accused and the victim although may not be wholly irrelevant, should be eschewed in a case of this nature, particularly when Parliament itself had laid down minimum sentence."

Therefore after considering all the above circumstances we set aside the sentence of imprisonment imposed by the learned trial Judge on count 2 of the indictment and sentence the accused-appellant to a term of 12 years rigorous imprisonment. Sentences of imprisonment on count 1 and 2 to run consecutively. The fine imposed by the learned trial Judge on count 1 and 2 should stand and in default 1 year simple imprisonment on both counts. We also set aside the order of the learned trial Judge ordering Rs.700,000/- as compensation to the victim and order a sum of Rs.100,000/- to be paid as compensation to the victim in this case and in default 1 year Simple imprisonment. The High Court Judge of Chilaw is directed to issue a fresh committal accordingly. Subject to the variation of the sentence in the 2nd count the appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

K.K.Wickremasinghe, J

I agree.

JUDGE OF THE COURT OF APPEAL