

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

In the matter of an appeal made in terms  
of Section 331 of the Code of Criminal  
Procedure Code Act No: 15 of 1979.

The Democratic Socialist Republic of Sri  
Lanka.

HC Negambo

Vs

Case No:72/2011

CA Appeal No: CA 328/2012

Mahathanthri Arachchige Don Ambrose  
alias Chuti Mudalali

Accused.

And Now Between

Mahathanthri Arachchige Don Ambrose  
alias Chuti Mudalali

Accused Appellant

Vs.

Hon. The Attorney General,  
Attorney General Department

Respondents

Before : M.M.A Gaffoor, J &  
K.K. Wickremasinghe, J.

Counsel : Niranjan Jayasinghe A.A.L. for the Accused-Appellant.  
Thusith Mudalige D.S.G for the Attorney-General.

Agued on : 12<sup>th</sup> May 2016

Written Submissions by both parties filed on: 20<sup>th</sup> May 2016

Judgment on: 21<sup>st</sup> July 2016

The Accused Appellant together with two others were indicted for committing statutory rape of one Mallawa Arachchige Wasana Dirukshi , which is punishable under 364(2) (e) of the Penal Code. He was convicted after trial and was sentenced to 12 years Rigorous Imprisonment, fine of Rs 5000/= with a default sentence for a term of three months SI, Compensation of Rs. 20000/= recoverable as a fine with a default sentence to serve a term of one year SI on the 14<sup>th</sup> December 2012.

When this appeal was taken up for argument, the Counsel for the accused appellant conceded that the appellant was rightly convicted and confined his submissions only to canvas the sentence. It was contended that the sentence imposed on the Accused Appellant was excessive and It was further submitted that minimum sentence of 10 years would be ordered and to back date the same in terms of section 359 of the Criminal Procedure Code, having considered the evidence in the case and the circumstances relevant to the accused appellant. Learned Deputy Solicitor General submitted that considering the fact that the counsel for the appellant canvasses only the sentence, decision is solely rest within the discretion of court.

Following grounds were brought to the attention of court by the counsel for the Accused Appellant:-

1. Though the prosecutrix had stated that the male organ was inserted into the vagina (vide page 49) medical evidence does not support the evidence of the prosecutrix. The doctor has stated that there were no injuries on labia majora and minora, further stated that there was a scratch mark (3- 5mm) on the epidermis in between the anal passage and labia majora and minora. The opinion of the doctor was that it could also have been caused by a nail. Therefore labial penetration is doubtful.
2. But he had not taken any steps
3. Defence application to call the doctor as a defence witness was refused by the Learned High Court Judge
4. According to evidence there was no damage to the hymen.
5. Appellant has no previous convictions and now he is 60 years of age.

The evidence of the doctor reveals that there was recent inter labial penetration and the victim had an emotional disturbance related to the incident.

Therefore it is evident that though the offence had committed the hymen was intact.

Considering the age of the accused and above circumstances of the case we reduce the sentence up to the minimum mandatory sentence of 10 years Rigorous Imprisonment. Furthermore, the sentence is backdated from the date of conviction and sentence namely 14.12.2012. We also make order to pay Rs. 50, 000 as compensation to the victim. In default of compensation as above, a default sentence of 1 year rigorous imprisonment is imposed.

Subject to above variation of the sentence, this appeal stands dismissed.

Judge of the Court of Appeal

M.M.A. Gaffoor J

I agree

Judge of the Court of Appeal