

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

Lokuge Don Jayalath Pathmasiri

No. 233/15, Jaya Mawatha,
Kudamaduwa, Siddamulla,

Piliyandala.

ACCUSED - APPELLANT

CA NO. 113/13

HC Panadura No. 1582/2002

Vs

Hon. Attorney General

Attorney General's Department

Colombo 12.

RESPONDENT

BEFORE

: Deepali Wijesundera J.

: L.U. Jayasuriya J.

COUNSEL

: Accused - Appellant is absent and

Unrepresented.

A. Navari SSC for the

Attorney General

ARGUED AND DECIDED ON

: 07th December, 2016

Deepali Wijesundera J.

In this case the accused appellant was indicted under Sec. 365 (2) (b) (2) of the Penal Code. The appellant was tried in absentia and after a lengthy trial he has been convicted for the said offence and convicted for 12 years RI and imposed a fine of Rs. 5,000/=. The appellant was ordered to pay Rs. 200,000/= as compensation for the victim.

The story of the prosecution is that on the day of the incident while the victim was travelling in a school van owned by the accused appellant she was sexually abused by the accused appellant. She has complained to the mother and the mother has taken her to the police station from where she has been produced before the Judicial Medical Officer. It appears from the evidence that the victim's mother has confronted the appellant before proceeding to the police station.

The victim has been 4 years at the time of the incident and she has given evidence in the High Court when she was 11 years of age. Age of the victim has not been disputed. We observe that she has been a competent witness according to the Evidence Ordinance. Evidence of the victim has been corroborated by the mother's evidence and the evidence on the incident had been corroborated by the doctor's evidence.

The learned High Court Judge has evaluated at length the evidence placed before court. There has been no contradictions which went to the root of the case.

The defence has led the evidence of two witness who failed to cast a doubt on the prosecution evidence. We find that the learned High Court Judge has applied the tests properly and has rejected the evidence of the defence.

For the afore stated reasons we see no reason to interfere with a well considered judgment of the High Court. Therefore we decide to affirm the judgment and conviction dated 05/06/2013 and refuse the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya J.

I agree.

JUDGE OF THE COURT OF APPEAL