

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

*An Appeal in terms of the
Provisions of the Criminal
Procedure Code Act of 1979.*

CA 243/2013

HC Anuradhapura 177/13

The Democratic Socialist Republic
of Sri Lanka.

Vs.

Hattuwana Pedige Sugath
Karunaratne

ACCUSED

And

Hattuwana Pedige Sugath
Karunaratne

ACCUSED – APPELLANT

Vs.

Hon. Attorney General
Attorney General Department,
Colombo.

COMPLAINANT – RESPONDENT

**Before : P.R. Walgama, J
: K.K. Wickramesinghe, J**

Counsel : Tenny Frenendo for the Accused – Appellant.

: Lakmali Karunanayake, SSC for the state.

Argued on : 29.11.2016

Decided on : 22.05.2017

P.R. Walgama, J

This appeal projects a challenge to the judgment dated 18.12.2013, rendered by the Learned Trial Judge, wherein the Accused – Appellant was convicted for kidnapping the victim from the lawful custody, who was under 16 years of age and thereby committed an offence punishable under Section 354 and having raped the victim, and thereby committed an offence punishable under Section 364 (2) (e) of the Penal Code as amended by Act No. 22 of 1995.

As stated above the 1st count in the indictment refers to a period from 1.12.2011 to 20.12.2012 during which the alleged offence was committed. Before the conclusion of the trial the Accused – Appellant pleaded guilty to the charges contained in the indictment and was sentenced to 7 years Rigorous Imprisonment on the 1st, 3rd and 5th counts accordingly.

The 2nd count in the indictment refers to the same period during which the alleged offence of rape was committed, punishable under Section 364(2) (e) of the Penal Code as amended by Act No. 22 of 1995, and sequel to the conviction the Accused – Appellant was sentenced to

20 years of Rigorous Imprisonment on 2nd, 4th and 6th counts respectively.

The count Nos 5 and 6 refers to the charges of the same nature but committed on 21.02.2012 and after the conviction, Accused – Appellant was sentenced to 7 years and 20 years of Rigorous Imprisonment.

Nevertheless it is seen from count 3 and 4 in the indictment that there is no reference to a specific date of the commission of the offence stated therein but had referred to the period within which the alleged offence of kidnapping and rape was committed by the Accused – Appellant. Therefore it is abundantly clear that when the Accused – Appellant opted to plead guilty to the charges, he was aware of the commission of the said offences, and was not taken by surprise. Therefore this court holds that no injustice had been caused to the Accused – Appellant at the trial in the High Court.

In perusing the sentence, it is seen that for charges 1, 3, and 5 in the indictment a jail term of 7 years Rigorous Imprisonment was ordered to run consecutively and for charges 2,4, and 6 in the indictment a jail term of 20 years Rigorous Imprisonment was imposed to run consecutively.

In addition to the afore said, a sum of Rs. 2500/ was imposed as a fine for each count Nos 2,4 and 6. Besides a sum of Rs. 50,000/ each count No: 2, 4 and 6 as compensation was ordered to be paid to the victim.

The ground norm or the grounds of appeal as per confutation of the counsel for the Accused – Appellant are for not affording a fair trial to the Accused – Appellant. In that it is said no specific date has been mentioned as to the commission of the alleged crime, although the period within which the said offence was committed as one year period has been mentioned in the indictment. Therefore it is contended by the counsel for the Accused – Appellant that the said flaw in the indictment is contrary or obnoxious to the Section 165 read along with Section 174 of the Criminal Procedure Code.

Hence in the above setting it is urged by the counsel for the Accused – Appellant that he is entitled to be acquitted on that score alone as the charge in the indictment does not specify the date of the commission of the alleged offence.

For the reasons as state above it is contended by the counsel for the Accused – Appellant that the Accused – Appellant was denied a fair trial on following basis ;

1. That the trial was commenced on a defective indictment in contravention of the Criminal Procedure Code,
2. That the trial continued on a defective indictment and as a result the trial is rendered invalid'
3. That the Accused – Appellant was denied a fair trial on the basis that he was not properly defended by the counsel assigned for him by court.

4. Pleading guilty for defective indictment has no legal binding as the proceedings in this matter has become defective from the commencement of this case.

The categorical position of the counsel for the Respondent was that by court assigning a counsel to defend the Accused - Appellant had taken necessary steps to safeguard the rights of the Accused - Appellant and as such has counteracted the position taken by the counsel for the Accused - Appellant.

It is worthy to mention that, if the contention of the counsel for the Accused - Appellant is to attach weight, the court will have to consider the efficiency and capability of the counsel in determining the case. But this court is of the view that the performance of the counsel at the trial in the original court is not a criteria in deciding the matter in court. Further it is seen from the indictment, as the victim was raped many times the period within which the Accused - Appellant committed the alleged offence is stated therein. Therefore it is to be noted that the Accused - Appellant was never misled and he was well aware of the charges and he decided to plead guilty.

In the above setting this court see no reason to interfere with the judgment and the sentence imposed by the Learned Trial Judge. Accordingly we dismiss the appeal.

Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

K.K. Wickramesinghe, J

I agree,

JUDGE OF THE COURT OF APPEAL