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

In the matter of an Appeal in terms of Section 331 of the Code of Criminal Procedure Act No. 15 of 1979 and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No:

CA / HCC / 79 / 2021

High Court of Matara Case No:

HC 176 / 2017 A

Democratic Socialist Republic of Sri Lanka.

Complainant

Vs.

Ranasinghe Hewage Chandraprema alias Chandrasoma

Accused.

AND NOW BETWEEN

Ranasinghe Hewage Chandraprema alias Chandrasoma

Accused – Appellant

Vs.

Hon. Attorney General

Attorney General's Department

Colombo 12.

Complainant – Respondent

Before: Menaka Wijesundera J.

B. Sasi Mahendran J.

Counsel: Jagath Abeynayake with Sachin Jayalath and Aranga Dewanarayana

for the Accused – Appellant.

Chathurangi Mahawaduge, SC for Respondent.

Argued on: 11.05.2023

Decided on: 07.06.2023

MENAKA WIJESUNDERA J.

The instant appeal has been filed to set aside the judgment dated 29.4.2021of the High Court of Matara.

The accused appellant (hereinafter referred to as the appellant) has been indicted for a charge of grave sexual abuse under the Penal Code.

The appellant had pleaded not guilty and upon the conclusion of the trial the appellant had been found guilty for the charge and had been sentenced to 12 years rigorous imprisonment with a fine and a default sentence.

The grounds of appeal raised by the Counsel for the appellant were as follows,

1) The victim had not signed the statement to the police ,
2) The time of the offence not being clearly established by the prosecution,
3) The evidence of the lay witnesses and the police observations being contrary to each other,
4) The case history given by the victim to the doctor being contrary to the observations of the doctor,

5) As such the story of the prosecution being highly improbable.

The version of the prosecution is that the appellant had been living with the mother of the victim and the mother of the victim has had four other children by another man. On the day of the incident the victim had been in the house of the appellants' sister and the appellant had brought her home and had sexually abused her. On the very same day the victim had told the mother and the incident had been reported to the police. The doctor who examined her had given evidence and the history given by the victim to the doctor is that of sexual abuse but the doctor had detected a redness in the vaginal area and he had said that it could be due to a bacterial infection.

The appellant had given evidence on oath and he had said that he had been married earlier and he had met the victim's mother at the bus halt at Matara and the children had been begging and he had brought them home and they had started a family but there had been constant disputes and one fine day the victim's mother had entered hospital with two of the children, and later he had been arrested by the police. He has totally denied the charge.

The Counsel for the appellant stated that the statement of the victim had not been signed and he said that as such it amounts to not having made a statement because it carriers no and not even the thumb impression of the victim. As such the Counsel for the appellant averred that it almost amounts to the victim not having made a statement to police which means that the evidence adduced in Court is narrated for the first time after the incident.

The Counsel appearing for the respondents conceded that the statement has not been dully signed by the victim and she averred that it could be accepted because she was a minor. But this Court sees no merit in the said submission because

section 110(10) of the Code of Criminal Procedure Code has very clearly stated that every statement made by a witness should be dully signed and any alteration made during recording also should be dully initialed by the witness, therefore, the section nowhere states that a minor need not sign a statement made to the police. If the statement had not been signed it amounts to the fact that the evidence led in Court is of less value because it amounts to being narrated in Court for the first time which challenges the truthfulness of the evidence. Therefore, we are unable to agree with the Counsel for the respondents.

The next point raised by the Counsel for the appellant is that the time of the incident had not been established by the prosecution, which the counsel for the respondents also conceded although the victim had said at different times in her evidence that the incident took place in the afternoon. But she was not very certain about it but if her narration of the incident is being told first time in Court every other thing, she had said creates a doubt in the case for the prosecution which should be held for the benefit of the appellant.

The next point raised by the Counsel for the appellant is the fact that in the evidence of the victim she says that she was brought home by the appellant from his sister's house which is also situated nearby. But the evidence of the mother is that the appellant had brought both children home from Kadir's house which throws a serious doubt because if so, how come the appellant had an opportunity to sexually abuse the victim because she had not been alone with the appellant. Secondly it throws a serious doubt in the credibility of the evidence of the victim and is contradicting the mother's evidence which reduces the credibility of the prosecution version and raises a serious doubt with regard to the probability of the story of the prosecution.

The Counsel for the prosecution strenuously argued that in spite of all these infirmities that the story for the prosecution is worthy of acceptance but we are unable to agree with her because we believe that in a criminal case the burden is on the prosecution to prove its case beyond a reasonable doubt and not the accused .

The Counsel for the appellant further averred that the history recorded by the doctor is contrary to the findings of his, and we too observe that it is so and we find that the trial judge had narrated evidence of the prosecution but had not analyzed the same because had he done so he was bound to have noticed the infirmities mentioned above.

As such we find the story of the prosecution to be highly improbable and that they had not exercised their duty in proving their case beyond a reasonable doubt.

As such we set aside the conviction and the sentence of the trial judge and we allow the instant appeal.

Judge of the Court of Appeal.

I agree.

B. Sasi Mahendran J.

Judge of the Court of Appeal.