

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

Warnekulasuriya      Jude      Fransis  
Fernando,

Accused-Appellant

**Vs.**

The Attorney General.

Respondent

C.A. 48/2012

H.C. Chilaw Case No: 03/2012

Before : Sisira J. de Abrew,J. (Acting P/CA) &  
P.W.D.C. Jayathilaka,J.

Counsel : Accused-appellant is absent.

Wasantha Nawaratna Bandara DSG. for the A.G.

Argued &

Decided on : 31.01.2014

Sisira J. de Abrew, J. (Acting P/CA)

Mr. Samantha Fernando Attorney-at-law is present in Court. He submits that he received instructions to file the petition of appeal and that he, acting on the instructions received by him from the accused-appellant, he filed the petition of appeal. But thereafter he did not receive any instructions from the accused-appellant. The accused-appellant who was tried in absentia is absent today as well. Mr. Samantha Fernando attorney-at-law submits that he has not received any instructions from the accused-appellant to appear for him today. Today is the date for the argument of this case.

We therefore acting under Section 325(2) decide to take up the appeal. Mr. Samantha Fernando Attorney-at-law who is present in Court is at liberty to address Court. He does not address Court. Learned DSG. made submissions.

Heard learned DSG. in support of this case. The accused-appellant in this case was convicted for committing the offence of grave sexual abuse on a girl named Warnakulasuriya Nilanka Hansini and was sentenced to a term of 10 years Rigorous Imprisonment, to pay a fine of Rs: 10,000/- carrying a default sentence of six months imprisonment and to pay a sum of Rs: 100,000/- as compensation to the victim carrying a default sentence of two years Rigorous Imprisonment. Being aggrieved by the said conviction and the sentence he has appealed to this Court. According to the

facts of this case on the day of the incident, victim Nilanka and Sujeewani were going in search of their friend Dilhara. They went to the house of Dilhara, and were returning home. When they were returning, they passed the compound of the accused-appellant. At this stage the accused-appellant told them that Dislhara was watching T.V. in his house. Thereafter both Dislhara and Sujeewani went inside the house of the accused-appellant. As they entered the accused-appellant closed the door of the house and undressed the cloths of both girls. Sujeewani however manage to escape from the house and was waiting near the house of the accused-appellant. The accused appellant thereafter kept his mail organ between thighs of Nilanka and committed grave sexual abuse on Nilanka. Thereafter the accused came out of the house and threatened both girls not to divulge this incident to anybody. However Sujeewani one month later brought this matter to the notice of her aunt. The said aunt brought this matter to the notice of the parents of Nilanka who made a complainant to the Police.

When Nilanka gave evidence, Nilanka stated that she made a complaint to the Police two years after the incident. This appears to be a mistake. Nilanka was admitted to the hospital on 23.07.1998. The incident has taken place on 24.06.1998. Therefore it appears that the complaint has been made one month after the incident. Police Officer says that victim Nilanka was produced before the Doctor soon after the complaint was made. We therefore hold that when Nilanka said the complaint was made two years after the incident it was a mistake. Accused did not give evidence as

at the time of the close of the prosecution case he absconded. We have considered the evidence led at the trial and are of the opinion that the prosecution has proved its case beyond reasonable doubt. We therefore ~~2~~ refused to interfere with the judgment and the sentence imposed by the learned trial Judge. We affirm the conviction and the sentence and dismiss the appeal.

*Appeal dismissed.*

Acting President of the Court of Appeal

P.W.D.C. Jayathilake, J.

I agree.

Judge of the Court of Appeal

Jmr/-