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

In the matter of an appeal from the High Court in terms of section 331 of the Code of Criminal Procedure Act No.15 of 1979 as amended.

Liyanawaruge Alexander Balangne
alias Sanda

Accused-Appellant

C.A.Case No:-110/2014

H.C.Chilaw Case No:-17/2007

V.

Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondent

Before:-H.N.J.Perera, J. &
K.K.Wickremasinghe,J.

Counsel:-Chanaka Ramanayake (Assigned) for the Accused-Appellnt
P.Kumararatnam D.S.G.for the Respondent

Argued On:-09.03.2014

Written Submissions:-02.04.2015/21.04.2015

Decided On:-29.05.2015

H.N.J.Perera,J.

The accused-appellant was indicted before the High Court of Chilaw for committing rape on a girl under the age of 16, namely Warnakulasooriya Anjalee Nadishani Ferando between 1st October to 12th October 2001, an offence punishable in terms of section 364(2)(e) of the Penal Code as amended by Act N0.22 of 1995.

After trial the accused-appellant was found guilty as charged and was sentenced to a term of 20 years imprisonment and imposed a fine of Rs.20;000/-with a default term of 2 years simple imprisonment. In addition the accused-appellant was ordered to pay Rs.1.2 million as compensation to the victim and ordered a default term of 5 years simple imprisonment.

Being aggrieved of the aforesaid conviction and sentence the accused-appellant had preferred this appeal to this court. Learned Counsel for the accused-appellant urged 9 grounds of appeal as militating against the maintenance of the conviction but at the hearing of this appeal restricted his argument only to the 3rd ground of appeal. At the argument the Counsel for the accused-appellant took up the position that evidence given by the victim contained number of contradictions and therefore it is not safe to convict the accused-appellant on that evidence.

The case for the prosecution was that the victim Nadishani was 14 years old at the time of the incident. Her mother had gone abroad and her father was a fisherman who went for deep sea fishing leaving the younger children under her care. Due to this she could not attend school. The accused-appellant was her neighbor and he is also known as 'Sanda

Seeya". The accused was about 60 years of age at the time the offence was committed.

According to victim's evidence, the accused-appellant has come to her house twice secretly and she was raped on the second visit. Nobody was at home on both occasions and the victim was able to escape on the first occasion. It is the evidence of the victim that on the second occasion the accused-appellant entered the house and threatened her with a knife. Even though she struggled which led to breaking of a cabinet glass the accused-appellant raped her forcibly. She was threatened by the accused-appellant with death and due to fear she did not inform this incident to anybody until she was questioned by her neighbors.

The incident came to light because of the voluntary utterance of the accused-appellant to witnesses No.2 and 4. According to PW 2 Sajani the accused-appellant had voluntarily informed that he molested the victim. This was heard by witness N0.4 Ruwanmali as well. After this revelation, both Sajani and Ruwanmali had interrogated as well. Victim then came out with the entire incident. This was promptly conveyed to victim's father PW3 and the police.

It is very clear that the victim has not disclosed this incident to anyone due to the fear instilled on her by the accused-appellant.

In Sumanasena V. Attorney General [1999] 3 Sri L.R 137 it was held that:-

1. Evidence must not be counted but weighed and the evidence of a single witness if cogent and impressive could be acted upon by a Court of law.
2. Just because the witness is belated witness court ought not to reject his testimony on that score alone, Court must inquire into the reason the evidence the reason for the delay and if the reason

for the delay is plausible and justifiable the court could act on the evidence of a belated witness.

The judge has come to such a favourable finding in favor of witness Nadishani as regards her testimonial trustworthiness and credibility. The learned trial Judge has very clearly stated that the evidence of witness Nadishani is supported by the evidence adduced at the trial emanating from other witnesses.

Witness N0.7, the Medical Officer has stated that the prosecutrix was admitted to the Chilaw hospital on 14.10.2001 and was examined on 16.10.2001.The Medico-Legal Report and Medico-Legal Examination Form were marked as P4 &P5.The witness in her evidence has stated that the prosecutrix, in her short history, stated that the sexual intercourse took place at around 8.P.M on 12.10.2001.

The said witness has further stated to court that there were no external injuries found in the prosecutrix. The said witness failed to find any injuries Pertaining to the sexual intercourse complained of but detected an old tear in the hyman. Further the said witness speaking in relation to the old injury has stated that the old injury could have taken place beyond 10 days or within several months and the same heals within a week's time. Furthermore the witness in her evidence has stated that, the healing matches with the sexual intercourse one and a half weeks prior to 12.10.2001 incident complained by the prosecutrix. He has further stated that there is evidence of full penetration by a penis.

The crucial issue that arose for determination by the learned trial Judge in the instant case was whether this girl Nadishani had been subjected to rape on 12.10.2001 by the accused-appellant as alleged by the prosecutrix. The medical evidence does support the evidence of the prosecutrix that she has been raped.

On a perusal of the judgment of the learned trial Judge it is very clear that the trial Judge had considered all the material evidence that had been led before him at the trial by both parties. The evidence given by the accused-appellant too had been analysed and properly considered by the trial Judge in detail and further proceeded to give reasons for disbelieving the defence version of the case.

In King V. Musthapha Lebbe 44 N.R.R 505 Court of Criminal Appeal held that:-

"The Court of Criminal Appeal will not interfere with the verdict of a jury unless it has a real doubt as to the guilt of the accused or is of the opinion that on the whole it is safer that the conviction should not be allowed to stand."

In this case the indictment had been served on 27.10.2006. The judgment had been delivered on 14.07.2014 eight long years from the date of indictment. The learned trial judge has imposed 20 years R.I and a fine of Rs.20,000/-, carrying a default sentence of 2 years simple imprisonment , and additionally to pay a compensation of Rs1,200,000/- to the prosecutrix, carrying a default sentence of 5 years simple imprisonment. The accused-appellant has no previous convictions or pending cases against him. Presently he is of 72 years of age. He has been languishing in remand from the date of conviction. We set aside the sentence of 20 years and substitute a sentence of 12 years. We also set aside the Rs.1,200,000/- compensation ordered by the learned trial Judge and substitute Rs100,000/- carrying a default sentence of 1 year simple imprisonment. We affirm the Rs. 20,000/- fine imposed by the trial Judge but substitute a default sentence of 6 months simple imprisonment.

Subject to the said variation of the sentence the appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

K.K.S.WICKREMASINGHE, J.

I agree.

JUDGE OF THE COURT OF APPEAL