

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

In the matter of an Appeal under  
Section 331 of the Code of Criminal  
Procedure Act No.15/1979

C.A.No.0079/2018

H.C. Gampaha No.HC 29/2011

Kiriyadurage Sunil Somaratne

Accused-Appellant

Vs.

The Democratic Socialist Republic of  
Sri Lanka

Complainant-Respondent

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**BEFORE** : DEEPALI WIJESUNDERA, J.  
ACHALA WENGAPPULI, J.

**COUNSEL** : Yalith Wijesurendra (Assigned Counsel) for the  
Accused-Appellant.  
Azard Navavi D.S.G. for the respondent

**ARGUED ON** : 06<sup>th</sup> February 2019

**DECIDED ON** : 05<sup>th</sup> April, 2019

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**ACHALA WENGAPPULI, J.**

The Accused Appellant (hereinafter referred to as the “Appellant”) invokes the appellate jurisdiction of this Court seeking to set aside his conviction for the offence of rape under Section 364(2)(e) of the Penal Code as amended by Act No. 22 of 1995 and his sentence of 12 years imprisonment. He was also imposed a fine of Rs.1,000.00 with a default term of imprisonment of two weeks. The trial Court ordered the Appellant to pay Rs. 100,000.00 as compensation and in default one year imprisonment.

Being aggrieved by the said conviction and sentence, the Appellant sought intervention of this Court on the basis that the trial Court had erroneously entered a conviction against him when the prosecution has failed to prove that he committed the offence within the time period

specified in the indictment. He also relied on the ground of appeal that the evidence of the prosecutrix is not probable.

It transpired in evidence that the prosecutrix, *Andige Dilrukshi Sugandhika* was born on 03.02.1994. *Sugandhika* was raised by one *Lokutantri Arachchilage Sunil Shantha* of 29, *Rambutanwatta Road, Kirindiwela*, after she was separated from her mother due to poverty. She practically lead a life of a domestic aid under him, although she was admitted to a nearby school for education. The Appellant *Kiriyadurage Sunil Somaratne's* younger sister is married to said *Lokutantri Arachchilage Sunil Shantha*. The Appellant lived in a house bearing assessment number 82A, *Kirindiwela Road, Radawana*.

Referring to the incident on which the Appellant was indicted, *Sugandhika* had said that one day in either 2004 or 2005, she was asked by the Appellant's sister, the wife of *Lokutantri Arachchilage Sunil Shantha*, to borrow a coconut from the Appellant. *Sugandhika* went to his house in *Radawana*. The Appellant took her to his kitchen and having removed her garments, inserted his penis into her vagina. She was threatened with death by the Appellant when she raised cries.

The probation officer of the area, *Kumudini* stated that she was alerted by a childcare official about *Sugandhika* in October 2005. She had then interviewed *Sugandhika* at her school. Her change of behaviour in school had alarmed the class teacher who then reported her observations to higher authorities. When the witness learnt about the traumatic experience of *Sugandhika*, a formal complaint was made. It was revealed during investigation that the guardian of *Sugandhika* has regularly abused



her sexually. Further investigations conducted into this incident revealed that the Appellant too was involved in sexually abusing *Sugandhika*.

When *Sugandhika* was produced before the Judicial Medical Officer on 08.10.2005, upon examination of her genitalia, he has observed that she had hymenal tears at 3,5,6,7 and 9 O'clock positions. He also observed that her vaginal opening had accommodated two of his fingers without causing any pain, an observation compatible with regular vaginal penetration.

Turning to the ground of appeal raised by the Appellant in the backdrop of the evidence presented by the prosecution, it is noted that *Sugandhika* initially stated the incident involving the Appellant happened either in 2004 or 2005. The indictment specified the date of offence as a period commencing on the 1<sup>st</sup> January 2003 and ending with 31<sup>st</sup> December 2003. There was no attempt by the prosecution to amend the indictment to align the time periods to reflect the evidence in examination in chief. However, during cross examination, when she was asked whether this incident happened in 2003, she replied it in the affirmative and thereby bringing in the incident well within the time period specified in the indictment. With her affirmative answer, the cross examiner did not probe beyond that point on the issue and her evidence therefore remain firm that the incident happened in 2003.

It appears that the second ground of appeal is based on the question of which "*Sunil mama*" she referred to in her evidence. She described both these individuals as "*Sunil mama*". But, in relation to the charge in the instant appeal, there cannot be any ambiguity with regard to the identity of the individual who has had sexual relations with her. She was emphatic

that it was the Appellant. She repeatedly pointed out the Appellant in describing the incident. She knew the relationship of the two *Sunils* and where they lived. When referring to the house of the Appellant she added details of the inmates of the house. She stated in her evidence when she went there to ask for a nut, only the Appellant and the old lady who was his tenant were there. She made no mistake about the house in which the Appellant committed rape on her.

The trial Court, in its well-reasoned out judgment has considered all these aspects and arrived at the conclusion that the Appellant was guilty of the offence which he was charged with. We have examined the evidence placed before the trial Court as well as the contents of the impugned judgment. We concur with the conclusion reached by the trial Court as to the guilt of the Appellant. We see no merit in the appeal of the Appellant.

Therefore, the conviction and sentence imposed on the Appellant are affirmed by this Court.

The appeal of the Appellant is accordingly dismissed.

JUDGE OF THE COURT OF APPEAL

DEEPALI WIJESUNDERA, J.

I agree.

JUDGE OF THE COURT OF APPEAL