

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

In the matter of an Appeal in terms of  
Article 331(1) of the Code of Criminal  
Procedure Act No. 15 of 1979 read with  
Article 138(1) of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka.

Court of Appeal No:  
CA/HCC/197/2017

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

High Court of Hambantota  
Case No: 28/2011

**Complainant**

Vs.

Amadoru Kuppathige Suranga Lakmal

**Accused**

**AND NOW**

Amadoru Kuppathige Suranga Lakmal

**Accused – Appellant**

Vs.

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

**Complainant-Respondent**

Before : Menaka Wijesundera J.  
Wickum A. Kaluarachchi J.

Counsel : Darshana Kuruppu with Tharushi Gamage for the  
Accused-Appellant.  
Rohantha Abeysuriya, ASG for the Respondent.

Argued on : 11.07.2024

Decided on : 01.08.2024

**MENAKA WIJESUNDERA J.**

The instant appeal has been filed to set aside the judgement dated 18<sup>th</sup> of July 2017 of the High court of Hambantota.

In the instant matter, the accused appellant (hereinafter referred to as the appellant) has been indicted for committing grave sexual abuse on a girl under 16 years of age, under the provisions of the Penal code.

The appellant had pleaded not guilty and the trial has commenced. Prosecution has led the evidence of 2 lay witnesses and official witnesses. The appellant had given evidence on oath and called a witness. Upon the conclusion of the trial, the trial judge had convicted the appellant for the offence stated in the indictment. The appellant being aggrieved by the said judgement and sentence had lodged the instant appeal.

The main grounds of appeal raised by the appellant are,

1. The learned trial judge had not given any reasons for his conclusion.
2. The learned trial judge has not considered the contradictions and omissions in the case for the prosecution.

The story of the prosecution is that, PW-01, who had been 15 years of age at the time of the offence, had returned from school and had been lying on her

bed resting. The victim had been alone at home and the mother had gone for a meeting. The accused had been a known party and according to her he had lived about 10 houses away. The victim had said in evidence that while she was lying on the bed, the accused had walked into the room and had sexually abused her. She had struggled but had not been successful, but after some time, the accused had run away and the victim had run off to tell her mother about the incident.

The victim had been lengthily cross examined and V1-V6 had been marked as contradictions in her evidence. Some of the contradictions appear to be not very important but V6 and two of the omissions in her evidence points out the fact that although in evidence she says that she first told her mother but apparently to the police, it is the aunt who had been told first. In evidence she had said that the accused had threatened her, but she had not said so to the police. Therefore, there are variations in her evidence at certain points.

Her evidence had been corroborated by the aunt, but in her evidence too, there is a contradiction marked as V7 and V8, which again creates a doubt that it was not her mother but the aunt who had been told first, of the incident.

Police had received the first complaint on the day of the incident and the accused had also been arrested on the same day. The doctor had been led, according to whom, the victim being exposed to sexual contact had not been ruled out.

According to the evidence of the appellant, he had said that on the day of the incident, between 2pm and 4.30pm, he had been playing in a match with his friend Mahesh, who had been called as a defence witness. The accused further says, after 4.30pm, he went to work on the paddy fields. The accused had been lengthily cross examined by the state counsel but he had been very consistent in his position. This version of the accused had been corroborated by the defence witness. His evidence too had stood the test of cross examination very well. Therefore, I observe that the version of the accused is corroborated by the defence's witness.

The main ground of appeal by the learned counsel for the appellant is that the learned trial judge has not given reasons for his conclusions. This I observe to be correct. On perusal of the judgement, I observe that evidence of PW-01 has been reproduced but the omissions and contradictions has not been analysed.

Thereafter the trial judge has analysed the evidence of PW-02 but has failed to refer to the two contradictions in her evidence and the impact of the same. Thereafter the trial judge had merely said that PW-03, PW-04, PW-07 had been led by the prosecution and it corroborates the evidence of the victim.

This analysis of the prosecution evidence we find to be totally deficient and unsatisfactory. In fact, there is no analysis of the prosecution's evidence.

The worst part comes in fact thereafter, when the trial judge has totally and absolutely failed to analyse the evidence of the accused and the defence witness. The evidence of the defence witness has not in fact been referred to by the trial judge. This court observes that, the accused has given evidence on oath and in length and has explained in clarity of his whereabouts at the time of the alleged offence (at pg 108), which had been totally ignored by the trial judge.

In the case of **Veerasamy Sivathasan v Honourable Attorney General, SC Appeal 208/2012**, Justice Yasantha Kodagoda has stated the following,

*"In a criminal trial conducted before a judge sitting without a jury, testimony and evidence related functions to be performed by the presiding judge, which I wish to refer to as the primary functions of the trial judge to be performed after the recording of evidence, are the following:*

- 1. Assessment and determination of 'credibility' of witnesses.*
- 2. Determination of 'testimonial trustworthiness' of the testimonies given by witnesses.*
- 3. Analysis of the evidence.*
- 4. Determination of the 'probative value' (weight) to be attached to evidence and the 'sufficiency' of evidence to prove the charges.*
- 5. Determination of whether the prosecution has 'proven the ingredients of the offence(s)' the accused stands charged.*
- 6. If the defence has relied on a 'general or special exception to criminal liability', whether the defence has proven such exception.*
- 7. Determination of whether the prosecution has proven its case 'beyond reasonable doubt', and contra wise, whether the defence has raised a 'reasonable doubt' regarding the case for the prosecution.*

*It is to be noted that the performance of these evidence related functions would require application of certain legal principles and therefore a correct appreciation and application of such legal principles would be necessary for the lawful performance of these functions. A methodical and rational approach to discharging each of these functions is necessary. However, it must be appreciated that performing each of these functions individually, separately from each other (as if in watertight compartments), and incrementally adopting a segmented or phased-out approach, (in the manner scientific experiments are conducted), may not be practically feasible. That is mainly due to the inter-relationship and interdependency of these functions and in view of the nature of the material to be taken into consideration. The adjudication of every criminal trial, must necessarily be founded upon inter-alia the performance of these*

*critical functions. If a verdict of 'guilt' of an accused is arrived at without performing these functions in a lawful manner, indeed, as rightly pointed out by the learned President's Counsel for the Appellant, the accused can rightfully claim that he was deprived of a fair trial. A judgment of a criminal trial Court which does not reflect that these functions have been carried out by the learned trial judge in a lawful and sufficient manner, cannot be relied upon to satisfy an appellate Court that the accused had received a fair trial, and that he had been found 'guilty' in a lawful manner. However, a determination of whether or not the accused has been deprived of the constitutional right (in terms of Article 13(3) of the Constitution) to a fair trial should be founded upon not only whether or not the trial judge has correctly performed the above-mentioned functions, but also on a careful consideration of the totality of testimonies given by witnesses and the evidence of the case. However, it is important to note that a verdict arrived at without the proper performance of the afore-stated testimony and evidence related functions would be unlawful and hence should be vacated in appeal, only if such failure on the part of the trial judge had prejudiced the substantial rights of the accused or occasioned a failure of justice.”*

In addition to the above, the counsel for the appellant cited the case of **Moses v State 1993 (3) S.L.R pg 401**, where Justice Hector Yapa has stated that, “A duty is cast on the Judges to give reasons for their decision as their decisions are subject to review by the Superior Courts.”

When a criminal case is filed, it is the duty of the prosecution to prove its case beyond a reasonable doubt and the criminal law in our country has laid down that the presumption of innocence, with regards to the accused person, remains so until it is proven otherwise. Hence, when the defence gives an explanation on oath with corroborating evidence, it is the fundamental duty of the trial judge to evaluate the same with an unbiased mind and see whether defence evidence raises a reasonable doubt in the prosecution’s case. In the instant matter, this court observes that the trial judge has failed to do so.

The learned Additional Solicitor General requested this court to consider a re-trial in this matter but since 16 years have lapsed from the date of the incident, it is the opinion of this court, that it is not fair to both parties to send this matter for a re-trial, as too much water has flowed under the bridge.

Therefore, it is the opinion of this court that the trial judge has absolutely failed to give a fair trial, which is enshrined in our constitution, to the appellant. Therefore, it is the considered opinion of this court that the conviction of the trial judge is illegal and bias and should be set aside. At this point we also note that the Additional Solicitor General appearing for the prosecution was gracious enough to state that the instant judgement of the

trial judge was deficient, therefore we set aside the conviction and judgement given by trial judge and we allow the instant appeal.

Therefore the appellant is acquitted of the charge in the indictment.

**Judge of the Court of Appeal**

**Hon. Justice Wickum A. Kaluarachchi**

**I agree.**

**Judge of the Court of Appeal**