

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

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

**Court of Appeal Case No.
CA/HCC/ 0119/2023
High Court of Monaragala
Case No. HC/227/2019**

Wanigasekara Mudiyanseelage Chamila
Suranga

APPELLANT

vs.

The Hon. Attorney General
Attorney General's Department
Colombo-12

RESPONDENT

BEFORE : **P. Kumararatnam, J.
K. M. G. H. Kulatunga, J.**

COUNSEL : **Niroshan Mihindukulasuriya for
the Appellant.
Jayalakshi De Silva, SSC for the
Respondent.**

ARGUED ON : **10/03/2025**

DECIDED ON : **04/04/2025**

JUDGMENT

P. Kumararatnam, J.

The above-named Appellant was indicted by the Attorney General under Section 365B (2) (b) of the Penal Code for committing one count of grave sexual abuse on Wanugasuriya Mudiyanseelage Thakshila Maduwanthi on 25.01.2018. The Appellant is the biological father of the victim.

The trial commenced on 12.11.2021. After leading all necessary witnesses, the prosecution closed the case. The learned High Court Judge had called for the defence and the Appellant had given evidence from the witness box and closed his case.

The learned High Court Judge after considering the evidence presented by both parties before him and his predecessor, convicted the Appellant as charged and sentenced the Appellant to 12 years of rigorous imprisonment and imposed a fine of Rs.15,000/- subject to a default sentence of 03 months rigorous imprisonment.

In addition, a compensation of Rs.300,000/- was ordered with a default sentence of 06 months rigorous imprisonment.

The learned Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence. During the argument he was connected via Zoom platform from prison.

The Facts of this case albeit briefly are as follows.

PW1 - the victim of this case, had been about 12 years old when she faced this grave violation. When she gave evidence, she was 15 years old and was still schooling. The victim has one sibling and she had been in grade 08 at the time of this incident.

The alleged incident had happened during the night when the victim was fast asleep. She had suddenly woken up in the middle of the night and to her utter bewilderment, had found her father lying on her body naked. She had then seen that her under garment had been lowered down to her knees and had felt some sticky substance on her thighs. The Appellant had told her not to divulge this incident to anybody or else he would be sent to the jail. At that time the victim's mother was receiving in house treatment at Badulla General Hospital for her mental condition. The victim's narration of events in Court concurred with the history given to the doctor. Due to fear and the respect placed on the Appellant she had not divulged this incident to anybody initially. The Appellant had also told her not to tell anybody.

She had first told her grandmother when she went to Bibile with her mother who was discharged from the hospital. As somebody had given a call to the Police Emergency about the incident, the police had come to her school and commenced investigations.

The JMO who had examined the victim had not excluded the possibility of sexual abuse.

After the closure of the prosecution's case, the defence was called, and the Appellant denied the charges while he gave evidence from the witness box.

The following Grounds of Appeal were raised on behalf of the Appellant:

1. Did the learned High Court Judge misdirect himself in arriving at the conclusion that all the ingredients of the charge were proven beyond reasonable doubt.

In a case of this nature, the testimonial trustworthiness and credibility of PW1, mainly the probability of the occurrence of events as recounted by her should be assessed with utmost care and caution by the Trial Judge. The learned Trial Judge must satisfy and accept the evidence of a child witness after assessing her competence and credibility as a witness.

In **Ranjeet Kumar Ram v. State of Bihar [2015] SCC Online SC 500** the court held that:

“Evidence of the child witness and its credibility would depend upon the circumstances of each case. Only precaution which the court has to bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one”.

The learned Counsel strenuously argued that the prosecution has failed to provide any evidence that the Appellant did any act by using his penis or any other part of his body or any instrument on any orifice or part of the body of the victim for his sexual gratification.

The learned High Court Judge in his judgment had very correctly analysed the evidence of the prosecutrix and given reasons as to why he accepted the same.

In **The Attorney General v. Sandanam Pitchai Mary Theresa** [2011] 2 SLR 292 the court held that:

“Whilst internal contradictions or discrepancies would ordinarily affect the trustworthiness of the witness statement, it is well established that the Court must exercise its judgment on the nature of the inconsistency or contradiction and whether they are true material to the facts in issue.”

In this case, the creditworthiness of the evidence given by the victim did not suffer at any stage of the trial. I too agree that the contradictions and the omission highlighted in the evidence of the victim is not forceful enough to shake the credibility of the victim or the core issues of the case against the Appellant.

The learned High Court Judge had considered the evidence given by PW1 with caution and care and had correctly held that her evidence is convincing and cogent and sufficient on its own to prove the case against the Appellant.

In criminal law, the presumption of innocence is a fundamental principle that requires the prosecution to prove the guilt of the accused beyond reasonable doubt.

Considering the evidence led in this case and guided by the judgements mentioned above, I conclude that this is not an appropriate case in which the judgement delivered by the learned High Court Judge on 28/04/2023 against the Appellant can be interfered upon. I therefore, dismiss the appeal.

Having considering the circumstances of this case, I order the sentence to be operative from the date of sentence namely on 28.04.2023.

The Registrar of this Court is directed to send this judgement to the High Court of Monaragala along with the original case record.

JUDGE OF THE COURT OF APPEAL

K. M. G. H. KULATUNGA, J.

I agree.

JUDGE OF THE COURT OF APPEAL