

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

In the matter of an Appeal under and in terms of Article 138(1) of the constitution together read with the section 11(1) of the High Court of the Provinces (special provisions) Act no 19 of 1990 with the section 331 of the Code of Criminal Procedure Act No.15 of 1979 as amended.

The Democratic Socialist Republic of Sri Lanka

**Complainant**

Court of Appeal Case No:

**CA/HCC/0199/2023**

**Vs**

Thommaya Hakuru Jayalath

**Respondent**

Balapitiya High Court Case No:

**CRI /2734/ 2021**

**AND NOW BETWEEN**

Thommaya Hakuru Jayalath

**Accused – Appellant**

**Vs**

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

**Complainant – Respondent**

Before : **P. Kumararatnam, J.**  
**Pradeep Hettiarachchi, J.**

Counsel : Randunu Heellage for the Accused-Appellant  
Disna Warnakula, DSG for the Respondents.

Argued on : 03.07.2025

Decided on : 19.09.2025

**Pradeep Hettiarachchi. J.**

**Judgment**

1. This is an appeal against the judgment and sentence of the learned High Court Judge of Balapitiya, by which the accused-appellant (hereinafter referred to as the “Appellant”) was convicted and sentenced for offences punishable under Sections 354 and 364(2)(e) read with Section 364(2) of the Penal Code.
2. In the petition of appeal there were ten grounds of appeal but during the argument, the appellant urged only five grounds namely:
  - a. *The prosecution has not proved the charges of rape and kidnapping from lawful guardianship beyond reasonable doubt;*
  - b. *The prosecution has failed to explain the delay in making the complaint and the vagueness of the period in the indictment;*
  - c. *The main prosecution witnesses’ testimonies consist of inter se and per se contradictions and therefore they have failed the test of credibility’*
  - d. *The learned High Court Judge has not considered the accused’s dock statement; and,*
  - e. *The learned trial Judge has rejected the defense evidence on unreasonable grounds and not given the benefit of the doubt to the accused.*

**Background to the appeal:**

3. The appellant is married to the prosecutrix’s sister. According to the prosecutrix’s testimony, the appellant allegedly raped her on three separate occasions. The first incident is said to have occurred in a cinnamon field near the house where the prosecutrix resided. The second incident allegedly took place at the house of the prosecutrix’s sister. The third incident is reported to have occurred when the prosecutrix was living with another person named Chamith, with whom she had eloped.
4. In view of the arguments advanced by the appellant, one of the primary questions to be determined in the present appeal is whether the delay in making a complaint affects

the credibility of the prosecution's case. Admittedly, the prosecutrix first lodged a complaint in 2011, almost five years after the alleged first incident of rape. According to the indictment, all three acts of rape were alleged to have occurred between January 2006 and December 2006. Nevertheless, the learned High Court Judge convicted the appellant on only the first two counts, holding that the remaining charges in the indictment fell outside the period specified therein.

5. It is trite law that a delayed police complaint does not automatically render the evidence unreliable, but it is a crucial factor for courts to consider, as the credibility of the evidence is assessed by examining the reasons for the delay. If the delay is reasonably explained by factors like fear, embarrassment, or a lack of understanding, the court may still accept the testimony. Conversely, unexplained delays can weaken the complainant's credibility and raise doubts about the accuracy of their account.
6. In this connection I would like to consider the judgment in the case of ***Sumanasena vs. Attorney General [1999] 3 Sri LR. 137***, wherein His Lordship Justice Jayasuriya stated thus:

*Just because the witness is a belated witness Court ought not to reject his testimony on that score alone, Court must inquire into the reason for the delay and if the reason for the delay is plausible and justifiable the court could act on the belated witness."*

7. On a consideration of the principles laid down in the above judicial decision, I hold that the evidence of the witness should not be rejected on the ground of delay itself if the delay has been reasonably explained. Thus, in the present case, I must consider whether the delay has been reasonably explained.
8. The delay in making a complaint in cases involving offences against a child must be considered differently. In the present case, the victim remained silent for almost five years, without informing anyone about the rape or sexual harassment allegedly committed by her sister's husband.
9. A child's reason for silence has been explained in ***The Crown Court Compendium Part I (published in May 2016 - page 10-22)***, as follows:

*“Experience has shown that children may not speak out about something that has happened to them for a number of reasons. A child may*

- *be confused about what has happened or about whether or not to speak out;*
- *blame him/herself for what has happened or be afraid that he/she will be blamed for it and punished;*
- *be afraid of the consequences of speaking about it, either for him/herself and/or for another member of the family;*
- *may feel that s/he may not be believed;*
- *may have been told to say nothing and threatened with the consequences of doing so;*
- *may be embarrassed because s/he did not appreciate at the time that what was happening was wrong, or because s/he enjoyed some of the aspects of the attention they were getting;*
- *simply blank what happened out and get on with their lives until the point comes when they feel ready or the need to speak out {e.g. for the sake of a younger child who s/he feels may be at risk};*
- *may feel conflicted: loving the abuser but hating the abuse.”*

10. Additionally, in The Crown Court Bench Book (published in March 2010 - at page 367) it is stated as follows:

*“Children do not have the same life experience as adults. They do not have the same standards of logic and consistency, and their understanding may be severely limited for a number of reasons, such as their age and immaturity. Life viewed through the eyes and mind of a child may seem very different from life viewed by an adult. Children may not fully understand what it is that they are describing, and they may not have the words to describe it. They may, however, have come to realise that what they are describing is, by adult standards, bad or, in their perception, naughty.”*

11. In ***Daradagamage Chandraratne Jayawardane alias Shantha v. The Attorney General - Court of Appeal case No. CA/85/2013***, decided on 25.05.2018, it was observed as follows:

*“Time and again courts have discussed the acceptance of evidence of children of tender ages. Our judges are not there to test the memory of the witness; they are expected to find actual fact and the truth. Witnesses are human beings; they are not memory machines nor robots to repeat the incident as it was. Further, the natural behaviour of human beings is to forget incidents, especially sad memories. No one wants to re-visit painful moments and keep detailed memories with them. We are also mindful most of our courts with due respect, are not child friendly.*

12. The correct approach to appreciating and evaluating the evidence of a witness was succinctly stated by the Supreme Court of India in ***State of Uttar Pradesh v. M.K. Anthony, AIR 1985 SC 48***, wherein it observed:

*While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the : root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals.*

13. In the present case, the evidence indicates that the victim was about eight years old at the time of the alleged offence. The alleged perpetrator was her sister’s husband. It further appears from the testimony that the victim’s mother is not an educated person

and may even be illiterate. Moreover, there is no evidence to suggest that either the mother or the sister of the victim was employed. The appellant, on the other hand, appears to have been the sole breadwinner of the family and has two children. The evidence of the victim's mother suggests that she wished for the appellant to be discharged in order to secure the welfare of her daughter's family, as her daughter was married to the appellant. Ostensibly, the victim's mother did not treat these incidents with the seriousness they warranted, either due to ignorance or poverty.

14. Furthermore, the first alleged incident is said to have taken place in 2006. The victim's statement was recorded in 2011, i.e., five years after the alleged incident, when she was only 13 years old. She later testified in June 2022, eleven years after her statement was recorded. In these circumstances, it would be unrealistic to expect her testimony to be entirely free from contradictions or omissions when compared with the statement given to the police. Therefore, the Court must be mindful of these facts and circumstances when evaluating the credibility of her testimony. To elaborate, the victim's evidence should be analyzed and assessed within this particular context.
15. In evaluating a belated complaint and the evidence of a child rape victim, the Court should be conscious of and take into account the following considerations:
16. When a child of tender years is subjected to sexual abuse by a close family member, a different scenario arises in which the victim may be reluctant to immediately complain or inform others due to the family connection. In contrast, if the abuser is a complete outsider, the child is more likely to promptly disclose the incident. This difference arises because, when the perpetrator is a close family elder, inhibitions, arising from stress, fear, or self-blame, may prevail, even in the absence of a direct threat.
17. This is particularly true in the context of the social and cultural conditions prevailing in rural communities within Asian societies. Children in such environments may not fully appreciate that they are being abused and may even tend to believe that they are at fault. These circumstances often inhibit and prevent child victims from making immediate disclosures.

18. However, with the passage of time, as the child matures and gains a clearer understanding that a wrong has been committed, the victim may eventually disclose the abuse to a third party, albeit after a considerable lapse of time.
19. In the present case, the accused was the husband of the victim's elder sister and was significantly older in age. As narrated by the victim, she initially refrained from disclosing the incident, as she feared that such disclosure might cause harm to her sister.
20. Several years later, however, she revealed the incident to a probation officer. In light of these circumstances, the delay in disclosure and the eventual reporting are reasonably explainable.
21. In evaluating her evidence, it is also relevant to note that the suggestion made by the defence is that the victim fabricated the allegation because the appellant had objected to her relationship with another boy. Against this backdrop, it is necessary to consider whether such a suggestion casts any doubt on the veracity of her testimony.
22. First of all, given the tender age of the victim, it is unrealistic to expect that a fabricated story would extend over several years and involve multiple allegations. Ordinarily, if a story were fabricated, one would expect the allegation to be direct and uncomplicated.
23. Correspondingly, it is improbable to assume that a child of such tender age could have fabricated a complex story involving several events, and yet, years later, narrate the same incident in detail when giving evidence, without any significant contradictions or omissions. This circumstance, therefore, adds to the credibility of her testimony.
24. As is evident from the line of cross-examination by the defense, an attempt was made to show that the victim falsely implicated the appellant in the charge of rape due to the appellant's objection to her affair with Chamith. It is noteworthy that, by the time the victim disclosed the incident to a probation officer, she had already been assaulted by Chamith, and it was her mother who handed her over to the probation authorities. Therefore, at that point, the victim had already separated from Chamith, making it difficult, if not impossible, to infer that her complaint against the appellant was motivated by his opposition to her relationship with Chamith.

25. Furthermore, the conduct of the victim does not suggest that she intended to lodge a complaint with the police against the appellant or have him arrested. Rather, she casually narrated her ordeal to a probation officer, and it was that officer who informed the police, which in turn led to the investigation of the crimes.
26. The defence has neither raised nor established any significant contradiction or omission. Considering the totality of the evidence and the circumstances discussed above, I am of the view that it is safe to accept and act upon the testimony of the prosecutrix, as rightly done by the learned Trial Judge.
27. In *Dharmasiri v. Republic of Sri Lanka (CA 019/2008)*: The Court emphasized that the belatedness of a witness's statement does not alone discredit their testimony. The court must inquire into the reason for the delay and, if the reason is plausible and justifiable, the evidence can be acted upon.
28. *Ajith Samarakoon v. The Republic (Kobaigane Murder Case)*: The Court held that the belatedness of a witness's statement does not entitle the court to reject the testimony solely on that ground. The court must consider the reasons for the delay, and if they are justifiable, the evidence can be accepted.
29. The second witness who testified for the prosecution was T. Somalatha, the mother of the prosecutrix. According to her evidence, she was unaware of any of the alleged offences committed against PW1 until a probation officer informed her. She further stated that, as the prosecutrix had been assaulted by Chamith, she handed her over to the probation authorities. Somalatha's evidence clearly indicates that she is illiterate and had not reported the matter to the police, even when the prosecutrix had eloped with Chamith. She approached the Probation Office only after learning that the prosecutrix had been ill-treated by Chamith.
30. A careful examination of the testimony of PW2 reveals that she too did not treat the ordeal suffered by PW1 with due seriousness, as she wished to ensure that the appellant's family, particularly his two children, would not become destitute by disclosing these incidents to the police.



31. The learned Trial Judge has convicted the appellant only on two counts, namely, count 1 and count 2. During the cross-examination of the prosecutrix, several contradictions were marked by the counsel for the appellant.
32. The Court's attention was also drawn to certain omissions in the statement made by the prosecutrix to the police. As stated elsewhere in this judgment, the credibility of the victim's testimony must be assessed in the context of her age at the time of the alleged offence, her age when the police statement was recorded, and the lapse of time between the incident and the trial. It would therefore be unrealistic to expect her to recount the ordeal with photographic precision, and any discrepancies in her testimony must be evaluated against these circumstances.
33. It is also important to note that the prosecutrix never admitted to the existence of any of the contradictions marked by the defence, nor did she admit to any of the omissions highlighted during cross-examination. Moreover, the defence did not call any police officer to prove the said contradictions. Consequently, those contradictions remain unproved.
34. The other point to be emphasized is that the said contradictions, even if established, cannot be considered material so as to affect the core of the prosecution case or cast doubt on the victim's testimony. The contradiction marked D1 related to the manner in which the victim was taken to the nearby cinnamon field, whether she was dragged, as stated in the police statement, or simply accompanied by the appellant. The next contradiction concerned the attire of the appellant at the time of the offence, whether he was wearing a sarong or trousers. These contradictions, however, are immaterial and do not undermine the credibility of the victim's testimony, particularly in view of the lapse of time between the date of the offence, the recording of the statement, and the giving of evidence.
35. Similarly, the omissions, namely, the victim's failure to mention the 2<sup>nd</sup> and 3<sup>rd</sup> incidents of rape in her police statement, do not, in my view, adversely affect the credibility of her testimony, particularly as the learned High Court Judge has not convicted the appellant on the charges relating to those incidents. Another omission brought to the attention of the Court was that the victim had not stated in her police statement that she first disclosed the alleged offence to her mother. For the reasons

already discussed, I do not regard this omission as significant in assessing the credibility of the victim's testimony.

36. Accordingly, the said contradictions and omissions, taken either individually or collectively, do not cast any doubt on the reliability of the victim's evidence.

37. As held in ***Sumith Kumara Vs. Attorney General [2012] 2 Sri.LR 311*** *Overdue importance cannot be given to minor discrepancies. Discrepancies which do not go to the root of the matter and shake the basic version of the witness, therefore cannot be attached with undue importance.*

38. In ***Miller vs Minister of Pensions (1947) 2 All.E R 372***, Lord Denning summarized the requirements of standard of proof to convict the accused in a criminal case as follows:

*It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it permits fanciful possibilities to deflect the course of justice.*

39. The learned High Court Judge has, in his judgment, duly considered the issues of delay in lodging the complaint, as well as the contradictions and omissions, while giving due weight to the age of the victim at the time of the offence. Thus, in light of the established legal principles and the strength of the evidence, I see no ground to disturb the findings of the learned High Court Judge.

40. In his dock statement, the appellant alleged that Chamith Madhushanka had broken open the door of his house, assaulted his wife with a knife, and that a complaint was made to the Uragaha Police in that regard. He further stated that he had been falsely implicated in another case by the victim. It is, however, significant that in his dock statement the appellant did not deny any of the charges levelled against him.

41. Moreover, during the trial, none of these incidents were even suggested to the prosecution witnesses, nor was any evidence led by the defence to corroborate the appellant's version. The dock statement, therefore, does not create any doubt as to the prosecution case. Accordingly, even if the learned High Court Judge has failed to

evaluate the dock statement, I am of the view that no prejudice or injustice has been caused to the appellant.

42. Upon consideration of the above, I find no ground to interfere with the findings of the learned High Court Judge. The judgment dated 10.08.2023 of the High Court of Balapitiya is accordingly affirmed, and the appeal is dismissed.

**Judge of the Court of Appeal**

**P. Kumararatnam, J**

I agree,

**Judge of the Court of Appeal**