

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

**In the matter of an Appeal in terms of
section 331 of the Code of Criminal
Procedure Act No.15 of 1979 as amended
read with Article 138 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.**

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

Complainant

Court of Appeal Case No.:
CA HCC 0012/24

Vs.

High Court of Kandy
Case No.
HC 374/19

Deniye Gedara Sunil Amarawansha,
No. 190, Kandewatte, Gunagaha,
Galagedara.

Accused

AND NOW BETWEEN

Deniye Gedara Sunil Amarawansha,
No.190, Kandewatte, Gunagaha,
Galagedara.

Accused-Appellant

Vs.

The Hon. Attorney General,
Attorney General's Department,

Colombo 12.

Complainant-Respondent

Before: **B. Sasi Mahendran, J.**
 Amal Ranaraja, J.

Counsel: Akila Amunugama for the Accused-Appellant.

Janaka Bandara, D.S.G. for the Respondent.

Argued on: 04.07.2025

Decided on: 31.07.2025

JUDGMENT

AMAL RANARAJA, J.

1. The Accused-Appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Kandy* in High Court case number HC 374/2019.
2. The charges in the indictment are as follows;

Charge 01

That on or about May 04, 2016, at *Galagedara*, within the jurisdiction of this Court, the appellant committed the offence of grave sexual abuse by causing the victim, a minor under the age of 16 years, to touch the penis of the appellant for the purpose of sexual gratification, an offence punishable under section 365B (2)(b) of the Penal Code as amended by Act No.22 of 1995.

Charge 02

That at the same time, place and in the course of the same transaction as mentioned above, within the jurisdiction of this Court, the appellant committed the offence of grave sexual abuse by touching the vagina of the said minor, who is under the age of 16 years for the purpose of

sexual gratification, an offence punishable under section 365B(2)(b) of the Penal Code as amended by Act No.22 of 1995.

3. At the conclusion of the trial, the Learned High Court Judge has convicted the appellant of the charges and sentenced him as follows;

Charge 01	A term of 10 years rigorous imprisonment and also has imposed a fine of Rs.10,000 with a term of 6 months simple imprisonment in default of payment of the fine.
Charge 02	A term of 10 years rigorous imprisonment and also imposed a fine of Rs.10,000 with a term of 6 months simple imprisonment in default of payment of the fine.
Further, the Learned High Court Judge has ordered the appellant to pay a sum of Rs.4000 to the Victims and Witness Protection Fund with a term of 3 months' simple imprisonment in default of the payment.	
The appellant has also been directed to pay a sum of Rs.200,000 as compensation to PW01 with a term of 12 months simple imprisonment in default of the payment of compensation.	
Further, that the terms of rigorous imprisonment and terms in default to run consecutively.	

4. Aggrieved by the decision together with the sentencing order, the appellant has preferred this instant appeal to this Court.

Case of the prosecution

5. At the time of the alleged incident outlined in the charges, PW01 had been an 11-year-old girl living with her grandmother. Her mother had abandoned her and her father, had separated from the family. The appellant, a neighbour, has resided with his family in a house adjacent to PW01's home. Both households have obtained water from a nearby stream by installing a pipe that connected them to the water source. Occasionally, the pipe would become blocked, and repairs carried out, by the members of both PW01's and appellant's households.
6. On the date of the alleged incident, PW01 and the appellant along with his son have travelled to the water source to address a blockage in the pipe. The

appellant has successfully repaired the blockage and thereafter instructed his son to return home to check on the flow of water. The son has complied with his father's request.

7. When the son proceeded towards his home, the appellant has made PW01 sit on his lap. The appellant has thereafter, caressed the vagina of PW01 and also made PW01 caress his penis. PW01 confused has called out to the son of the appellant. when the son of the appellant returned, the appellant has let go of PW01.
8. Consequently, a complaint has been filed with the police, investigations have commenced, and PW01 examined by a *Consultant Forensic Medical Officer, Dr. S. Kodikara*. The medico-legal report has been marked as B-1.

Case of the appellant

9. The appellant has maintained that he did not engage in any wrong doing as outlined in the charges of the indictment. He admits having gone to the water source with his son and PW01 to address the blockage in the pipe. After fixing the blockage, the appellant has returned home with the others, while PW01 has stayed for a while longer at the appellant's home to play with his son.

Grounds of appeal

10. When the matter was taken up for argument, the Learned Counsel for the appellant urged the following grounds of appeal;
 - i. The Learned High Court Judge has failed to ensure that the mandatory provisions of the Code of Criminal Procedure Act have been followed when the indictment was amended.
 - ii. The Learned High Court Judge erred in law and has been prejudice towards the appellant from the very outset of the trial and thereby denied the appellant of his right to a fair trial.
 - iii. The conviction of the appellant was contrary to law and against the weight of the evidence presented at the trial.
 - iv. The Learned High Court Judge has failed to consider that the prosecution has excluded material witnesses.
 - v. The sentence imposed on the appellant was unfair and unreasonable.

11. The Learned Counsel for the appellant has argued that the appellant has been denied a fair trial as the Learned High Court Judge was prejudice towards the appellant and due to the Learned High Court Judge's remand order, which was issued following the presentation of evidence by PW01 during the trial.
12. The relevant order of the Learned High Court Judge dated January 31, 2020 is as follows;

“අධිකරණයෙන්,

පැසා. දෙක කැඳවීම සඳහා ඉදිරි දිනයක් ලබා දෙමි.

අපරාධ නඩු විධාන සංග්‍රහ පනතේ 263 (2) පැහැදිලි කිරීම යටතේ අධිකරණය ක්‍රියා කරමි. ඒ අනුව චුදිත විසින් වරදක් කර ඇති බවට සාධාරණ සාක්ෂි ඇති කර ගැනීමට තරම් ප්‍රමාණවත් සාක්ෂි ඉදිරිපත් වන අවස්ථාවක චුදිත රිමාන්ඩ් බාරයේ තබා නඩු විභාගය පවත්වාගෙන යාමට ඇති විධි විධානය අනුගමනය කොට චුදිත මෙම අවස්ථාවේ සිට රිමාන්ඩ් බාරයේ තැබීමට කටයුතු කරමි. ඉදිරි විභාගය සඳහා දිනයක් ලබා දෙමි.

පැ. සා. දෙකට ඉදිරි දිනට අවවාද.

පැ.සා. තුනට සිතාසි නිකුත් කරන්න.

පැ. සා. එක මුදාහරිමි

වැඩිදුර විභාගය 2020-03-02.”

13. For a better understanding of this order, I find it appropriate to reproduce the relevant section in the Code of Criminal Procedure Act No. 15 of 1979.

Accordingly, section 263 in its entirety is as follows;

- (1) *If from the absence of a witness or any other reasonable cause it becomes necessary or advisable to postpone the commencement of or adjourn any inquiry or trial, the Court may from time to time order a postponement or adjournment on such terms as it thinks fit for such time as it considers reasonable and may remand the accused if in custody or may commit him to custody or take bail in his own recognizance or with sureties for his appearance;*

Provided however that every trial in the High Court, with a jury or without a jury, shall as far as practicable, be held day to day.

- (2) *Where the accused has attended the Court on summons he shall be enlarged on his own recognizance or on his simple undertaking to appear, unless for reasons to be recorded Court orders otherwise.*

Explanation:

If sufficient evidence has been obtained to raise a reasonable suspicion that the accused may have committed an offence and it is likely that further evidence will be obtained by a remand, this is a reasonable cause for a remand.

14. The explanation in section 263 of the Code of Criminal Procedure Act No.15 of 1979 addresses scenarios in which sufficient evidence has been obtained to raise a reasonable suspicion that an accused may have committed an offence. In such cases, a remand may be justified particularly when further evidence is required for a comprehensive understanding of the circumstances surrounding the alleged crime. However, it is the view of this Court that it is imperative for a presiding judge to briefly refer to the evidence obtained thus far and articulate how the remanding of the accused would facilitate the collection of additional evidence.
15. In the present case, it is the view of this Court that the Learned High Court Judge has failed to adequately consider these essential factors when deciding to revoke the appellant's bail and order his remand. This omission raises significant concerns about the rationale behind the Judge's decision and its implications for the appellant.
16. On January 31, 2020, the Learned High Court Judge has concluded the hearing of evidence from the first witness, i.e. PW01. Despite the fact that the second witness, i.e. PW02 had been present in court and available to provide her testimony, on the same day, the Learned High Court Judge has chosen not to proceed with her evidence for reasons known only to the Learned High Court Judge. Consequently, the proceedings had been adjourned to March 2, 2020 and the appellant remanded in custody until the next trial date.
17. When the trial resumed, PW02's testimony has been recorded in its entirety, after which the appellant has been enlarged on bail. The Learned High Court Judge's decision to delay the recording of PW02's testimony and to keep the appellant in custody without any clear explanation raises concerns regarding the nature of his actions.
18. In instances where judicial decisions lack justification, they can appear punitive in nature, leading to questions about the fairness and the transparency of proceedings.
19. Furthermore, the abrupt action taken by the Learned High Court Judge has severely undermined the appellant's confidence in his legal representation. As a result of the decision, the appellant has sought new Counsel believing that a fresh approach might better address his issue. However, the transition to

new legal representation has been fraught with complications, particularly due to the constraints imposed by the Covid-19 pandemic.

20. Consequently, the appellant's new Counsel has faced challenges in obtaining necessary instructions to mount a robust defence. This has unfortunately, resulted in a shift in the appellant's defence strategy, leading to inconsistencies in his response to the prosecution's case.
21. In light of these circumstances, it is evident that the appellant has been deprived of his right to a fair trial; a fundamental principle of justice.
22. It is vital for the integrity of the judicial process that Judges provide clear justifications for remand orders and consider broader implications. Such decisions may have an effect on an accused's right to a fair trial. Without such diligence, a judicial system risks compromising the very principles it is designed to protect.

In the case of CA/CPA/132/2023 decided on January 31, 2024, his lordship, Sampath Abayakoon, J, has decided that,

"I find that the Learned High Court Judge has failed to give a reason as to why the further trial cannot be held day to day in his order of remand.

Under the circumstances, the only assumption that can be made is that the remanding of the accused for a period of 3 months had been done as a punitive measure."

23. I firmly believe that the additional grounds of appeal urged do not require consideration, as the ground of appeal discussed suffice for a favourable outcome.
24. Due to the matters discussed above, I am inclined to interfere with the conviction and the disputed judgement together with the sentencing order. I set aside the conviction and the disputed judgement together with the sentencing order.

25. However, when I reflect on the seriousness of the charges and consider the surrounding circumstances, I find myself also inclined to order a retrial. It is essential to recognise that justice must not only be served but must also be perceived as just by all parties involved. The seriousness of the offences, combined with specific factors that may have influenced the original trial, suggests that proceeding with a retrial is not only warranted but necessary.

Retrial ordered.

26. The Registrar of this Court is directed to communicate this judgment to the *High Court of Kandy* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree

Judge of the Court of Appeal