

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

In the matter of an appeal against an order of
the High Court in terms of Section 331 (1) of
the Code of Criminal Procedure Act No. 15 of
1979.

Democratic Socialist Republic of Sri Lanka

Complainant

Court of Appeal No: HCC/187/23

Vs.

Kandy HC No: HC/141/18

Kelaniya Sheeladassi Himi alias Haduwala

Dewage Hashan Hemaratne

Accused

AND NOW

Kelaniya Sheeladassi Himi alias Haduwala

Dewage Hashan Hemaratne

Accused- Appellant

Vs.

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Complainant – Respondent

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

Counsels: Darshana Kuruppu with Sahan Sankalpa Weerasinghe for the Accused-
Appellant
Dileepa Pieris, SDSG for the Respondent

Argued On: 27.03.2025

Judgment On: 21.05.2025

JUDGMENT

B. Sasi Mahendran, J.

The Accused- Appellant (hereinafter referred to as 'the Accused') was indicted before the High Court of Kandy on two counts of grave sexual abuse committed on one minor namely, As Addumme Gedara Iduranga Sanjaya punishable under Section 365B (2)(b) of the Penal Code as amended by Acts Nos. 22 of 1995, 28 of 1998 and 16 of 2006.

The Prosecution led the evidence of 10 witnesses and marked 2 productions. The Accused gave a dock statement in defence. At the conclusion of the trial, the Learned High Court Judge by judgment dated 18.05.2023 convicted the Accused and

sentenced him to 7 years of rigorous imprisonment and a fine of Rs. 10,000/- in default 6 months simple imprisonment for the 1st count. For the 2nd count, 10 years of rigorous imprisonment and a fine of Rs. 15,000/- in default 6 months simple imprisonment, 20% for Victim Protection Fund with a 3 months imprisonment in default was sentenced and a compensation of Rs. 250,000 was imposed to be paid to the victim carried with 10 months of simple imprisonment in default.

Being aggrieved by the said conviction and the sentences, the Accused preferred an appeal in this Court.

The grounds of appeal as pleaded by the Accused as follows;

1. The Learned Trial Judge has failed to consider the inherent improbabilities and the inconsistencies in the Prosecution version.
2. The Learned Trial Judge has failed to consider that the defense story is more probable and well supported by the some of the prosecution witnesses too, and there is a reasonable doubt created in the prosecution case.
3. The Learned Trial Judge has failed to consider that an adverse inference would safely be drawn from the failure of the prosecution to call its material witness PW -03 Isuru.

During the argument stage, the Counsel for the Prosecution brought to the notice of the Court that the Victim, PW1 had taken different versions during the trial. According to him, after the evidence led before the Learned High Court Judge, the Prosecution has amended the indictment on the evidence led. Thereafter, the Learned

High Court Judge who succeeded the earlier Judge summoned the main Prosecution witness where he told a different version. It shows that PW1 was not consistent in his testimony.

During the examination in chief on 24.01.2019, PW1 testified that he attended Sunday School (Daham Pasal) at the temple and used to go to the temple occasionally to clean the premises when the Accused asked them to. At the time he went to the temple, usually, there were no one. According to PW1, the incident happened at the *Awasa geya* in the temple where the monks usually stay. He went inside the *Awasa geya* as the Accused asked him to buy a phone card when PW1 and one of his friends namely Isuru went to the temple. During that time, Isuru and the Accused were repairing a water pipe. When PW1 went inside the *Awasa geya* to get money to buy the said phone card, the Accused closed the door. Then the Accused had removed PW1's clothes and pressed his penis on his backside.

On page 69 of the brief;

“ප්‍ර: එතැන කුඩුවේ සිටින පුද්ගලයා ඉදුරුගමේ මොන පැත්තෙන්ද හිටියේ?”

උ: පිටුපසින්

ප්‍ර: ඒ අවස්ථාවේ පිටුපසට තියලා තද කලා කිව්වා නේද?

උ: ඔව්

ප්‍ර: පිටුපස කිව්වාම ශරීරයෙහි සිට දෙපතුල දක්වා පිටුපස නේද?

උ: ඔව්

ප්‍ර: පිටුපස මොන ප්‍රදේශයද?

උ: මළපහ කරන තැන”

After around 5 minutes, the Accused had wiped out something and PW1 had worn his clothes back and left saying he had to attend classes. He met his friend Isuru and told him that he was going home. PW1 states that he did not tell about the incident to his parents as he was scared.

According to PW1, he made a statement to the Police after 5 months from the incident.

As stated by PW1, he had told his mother that he could not go to Sunday School anymore as there were no other boys. However, according to him, the real reason was the incident that happened.

During the examination in chief on 30.08.2022, the PW1 testified that he knew the Accused from the time he used to go to the Sunday School at the temple and he was his teacher. According to him, the incident happened at the *Awasa geya* in the temple. On the day in question, PW1 went to the temple for a *shramadana* where the Accused and a friend called Isuru were there. Then, all three of them had gone to repair a broken tap and the Accused had called PW1 to the *Awasa geya* saying he needed to buy a phone card. According to him, the incident happened there. The Accused had then touched his full body and removed PW1's trousers. Then, Accused had pressed his penis between PW1's legs.

On page 239 of the brief;

“ප්‍ර: මොකද්ද ඊට පස්සේ කලේ?”

උ: ඊට පස්සේ කකුල් දෙක අතරේ තියල තද කළා

ප්‍ර: මොකද්ද තද කලේ?

උ: මෙයාගේ වූ පැත්ත

ප්‍ර: එයා මොනවා කරන එකද?

උ: පුරුෂ ලිංගය

ප්‍ර: පුරුෂ ලිංගය තද කළා කිව්වා?

උ: ඔව්

ප්‍ර: කොහෙටද තද කලේ?

උ: පිටිපස්සට

ප්‍ර: පිටිපස්සට කිව්වේ?

උ: කකුල් දෙක අතරින්”

Then he continued to do this for 5 -10 minutes and stopped it after a white substance was released.

According to PW1, the Accused was naked at that time. Thereafter, the Accused wiped the white substance from the victim's back and asked him to wear his clothes. According to PW1, the Accused asked PW1 not to tell anyone about the incident and PW1 had agreed.

When we consider both the testimonies, he has stated about two different versions of sexual acts done by the Accused.

We are mindful that our Courts have held that if the evidence of the victim is convincing in sexual abuse cases, the Court does not need corroboration. The conviction for the sexual offences can be based on the sole testimony of the victim if it is reliable and there is no infirmity. That evidence inspires confidence and must be relied upon without seeking corroboration of a statement in a material particular.

But in the instant case, the victim has stated two versions with regard to the sexual act. The question is whether this Court can rely on his evidence. The evidence of PW1 was not convincing and not consistent.

The Learned High Court Judge failed to consider the inconsistency of the victim.

We hold that the evidence of the victim is not sufficient to come to a conclusion with regard to the guilt of the Accused. The Prosecution has failed to prove beyond reasonable doubt the act of sexual act performed on the victim with the evidence of PW1.

I therefore, set aside the conviction and the sentences and acquit the Accused on the charge with which he was convicted.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL