

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

In the matter of an appeal under Section 331
of the Code of Criminal Procedure Act No. 15
of 1979.

CA-HCC-26/25

HC of Matale Case No:

HC 156/2017

The Democratic Socialist Republic of Sri Lanka

Complainant

Vs.

Daraniyagalage Chularathne

Accused

And Now

Daraniyagalage Chularathne

Accused-Appellant

Vs.

1. Officer-in-Charge
Police Station
Matale

2. The Hon. Attorney General

Attorney General's department

Colombo 12.

Complainant-Respondent

Before : B. Sasi Mahendran, J.

Amal Ranaraja, J

Counsel: Mohan Weerakoon. PC with Sandamali Peiris Kodithuwakku for the Accused-
Appellant
Akila Dalpatadu, SC for the Respondents

Argued On: 23.07.2025

Written

Submissions: Not filed by both parties

On

Judgment On: 29.08.2025

JUDGEMENT

B. Sasi Mahendran, J.

The Accused-Appellant (hereinafter referred to as "the Accused") was charged before the High Court of Mathale with committing the offence of Grave Sexual Abuse against a minor, Don Amith Dilshan Wanigasekara, on or around April 1, 2011. This offence is punishable under Section 365B(2)(b) of the Penal Code, as amended by Act No. 22 of 1995, Act No. 29 of 1998, and Act No. 16 of 2006.

During the trial, the prosecution presented evidence through four witnesses and submitted productions marked P1 to P2, following which the prosecution closed its case. Upon the conclusion of the prosecution's case, the Accused opted to make a dock statement in his defence.

Following the conclusion of the trial, the Learned High Court Judge, by judgment dated April 4, 2023, found the Accused guilty of the charge. Consequently, the Accused was sentenced to seven years of rigorous imprisonment and fined Rs. 5,000/-, with a default sentence of two months' simple imprisonment. Additionally, the Accused was ordered to pay compensation in the sum of Rs. 150,000/-, failing which he would serve a further term of twelve months' simple imprisonment.

Aggrieved by the aforementioned conviction and sentence, the Accused has preferred this appeal before this Court. The grounds of appeal advanced by the Accused are as follows:

1. The Learned High Court Judge has failed to consider the ambiguous nature of PW 1's testimony, the internal inconsistencies within his evidence, the impact of these inconsistencies on the core of the prosecution's case, and the contradictions between the testimonies of the prosecution witnesses.
2. The Learned High Court Judge has failed to consider the uncertainty and contradictions within the testimony of PW 1, particularly given the absence of eyewitnesses in this case. Furthermore, the reliability of PW 1's testimony remains uncorroborated by the accounts of other prosecution witnesses.
3. The Learned High Court Judge has failed to consider the Accused's reasons for making such allegations against him during the cross-examination.

The facts and the circumstances are briefly summarised as follows:

According to the testimony of Prosecution Witness No. 01 (PW 01), Don Amith Dilshan Wanigasekara, who was 7 years and 10 months old at the time he was residing with his grandmother, Prosecution Witness No. 04 (PW 04), Chandra Kumari Wanigasekara, near the doctors' quarters. On April 1, 2011, while collecting tamarind near the quarters, the Accused approached him and directed him toward another tree across the way, encouraging him to gather tamarind from there. However, on the opposite side, there was no tamarind tree, only a toilet and another house. As PW 01 attempted to return, the Accused allegedly grabbed him forcefully. PW 01 further testified that the Accused then removed both his own clothing and that of the witness, and, while standing, placed his male organ between the child's thighs.

During cross-examination, counsel for the Accused questioned PW 01 regarding his statement to the police, which indicated that the incident had taken place after he returned from school. In response, PW 01 categorically denied attending school on the morning of the incident. He clarified that he had been playing cricket and first came into contact with the Accused later that morning.

The Learned Counsel for the Accused also highlighted a discrepancy between PW 01's testimony and the statement recorded by Prosecution Witness No. 03 (PW 03), the Judicial Medical Officer (JMO), concerning the nature of the incident. According to the JMO's record, PW 01 had described the incident as having occurred while he was in a sleeping position. However, during his testimony, PW 01 disputed this account and consistently maintained that the offence took place while he was standing, with the Accused placing his male organ between the victim's thighs.

Dr. Ajith Samantha Jayasena, the Judicial Medical Officer (JMO), appeared as Prosecution Witness No. 03 (PW 03) and testified regarding his medical examination of PW 01. He stated that there were no observable external injuries, no indications of sexually transmitted infections, and no evidence of anal

penetration. Based on the history provided by PW 01, the Accused had allegedly positioned himself in a sleeping posture, then spat and rubbed his male organ between the child's thighs.

In his dock statement, the Accused asserted that PW 01 had a known history of stealing from the doctors' quarters, and that one of the doctors had instructed him to apprehend the child if such conduct continued. Acting on this instruction, the Accused claimed he attempted to confine PW 01 in the toilet. During the course of this incident, according to the Accused, PW 01 directed offensive language toward him.

The Learned High Court Judge noted that, while certain inconsistencies were present in the evidence, they were not of such a nature as to raise a reasonable doubt concerning the prosecution's case. The Judge further observed that there was no credible basis to conclude that PW 01 had fabricated the allegations against the Accused. Despite the identified contradictions, the Learned Judge accepted the testimonies of the prosecution witnesses as having established the charge beyond a reasonable doubt.

At this juncture, it is pertinent to reproduce the observations made by D. A. Desai J. with regard to how the court approaches the discrepancies and infirmities pointed out in the evidence in the case of State of Uttar Pradesh v. M.K. Anthony, reported in Supreme Court Journal 1984 (2) page 498,

“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 scrutinize 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.”

Having With regard to the foregoing legal principles, a careful examination of the prosecution's evidence—particularly the testimony of PW 01—reveals that the defence has raised substantial doubts concerning the alleged act of Grave Sexual Abuse committed by the Accused. It appears that the Learned High Court Judge did not adequately or correctly evaluate the evidence provided by PW 01, thereby failing to address the inconsistencies and contradictions that bear upon the credibility of the prosecution’s case

When we pursue the evidence of PW 01, we can see major contradictions in his evidence, as he is not consistent throughout.

It is well established in our jurisprudence that, in cases involving sexual abuse, a conviction may be sustained solely on the testimony of the victim, provided that such testimony is found to be credible and compelling. However, in the present case, the contradictions and inconsistencies in the evidence of PW 01 underscore the necessity for corroboration. The absence of supporting evidence raises concerns about the reliability of the prosecution’s case. It is apparent that the Learned High Court Judge failed to conduct a balanced and comprehensive evaluation of all the available facts and circumstances.

In the present case, the victim, PW 01, presented two conflicting accounts regarding his physical position during the alleged incident, and further discrepancies arose concerning his school attendance on the day in question. These

inconsistencies cast doubt on the reliability of his testimony and raise legitimate concerns as to whether the Court can safely rely upon it. The Learned High Court Judge failed to adequately address and assess these contradictions in the victim's evidence. I am of the view that this contradiction strikes at the very root of the case and materially affects the credibility of the prosecution's evidence.

Accordingly, we find that the testimony of PW 01 does not provide a sufficient basis to establish the guilt of the Accused. The Prosecution has failed to prove, beyond a reasonable doubt, that a sexual act was committed against the victim solely on the strength of PW 01's evidence.

In light of the foregoing, the conviction and sentence imposed by the Learned High Court Judge are hereby set aside. The Accused is acquitted of the charge on which he was convicted.

Appeal Allowed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J

I AGREE

JUDGE OF THE COURT OF APPEAL