

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an appeal in terms of section 331 (3) of the Code of Criminal Procedure Act.15 of 1979 read with Article 139 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Democratic Socialist Republic of Sri Lanka.

Complainant

Vs

Battaramulla Gamage Don Nandana Padmasiri

Court of Appeal Case No:

CA/HCC/0239/24

High Court of Colombo Case No:

HC 1081/2019

Accused

And now between

Battaramulla Gamage Don Nandana Padmasiri

Accused-Appellant

Vs

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

Complainant-Respondent

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

Pradeep Hettiarachchi, J.

Counsel : Punarji Karunasekara for the Accused - Appellant.
Disna Warnakula DSG for the Respondents.

Argued on : 11.06.2025

Decided on : 29.08.2025

Pradeep Hettiarachchi, J

JUDGMENT

1. The appellant was indicted by the Attorney General in the High Court of Colombo on two counts: (i) kidnapping an underage child from her lawful guardian, and (ii) committing grave sexual abuse on the said child. These offences are punishable under sections 354 and 365B(2)(b) of the Penal Code, as amended by Acts No. 22 of 1995, No. 29 of 1998, and No. 16 of 2006.
2. At the trial, 5 witnesses testified on behalf of the prosecution, whereas the appellant made a dock statement. At the conclusion of the trial, on 17.05.2024 the learned High Court Judge convicted the accused-appellant (hereinafter referred to as the appellant) for the second charge set out in the indictment and sentenced the appellant for 8 years rigorous imprisonment. The appellant was also imposed a fine of Rs 15000.00 carrying a default sentence of 6 months simple imprisonment.
3. Furthermore, the learned trial judge ordered the appellant to pay Rs 150000.00 as compensation to the victim with a default sentence of one-year simple imprisonment. Moreover, it was ordered to run the default sentences consecutively. Being aggrieved by the said conviction and the sentence, the appellant has preferred the instant appeal.
4. While many grounds were initially listed, the counsel for the appellant concentrated on two main points during the argument. The counsel argued that the trial Judge did not give enough weight to the contradictions in the evidence presented during the trial. It was further argued that the victim's statement to the police identified a nearby jungle as the crime scene, but the investigating officer inspected the appellant's house instead. Therefore, it is submitted that a potential flaw exists in the police investigation, which casts doubt on the prosecution's case.
5. Although several grounds of appeal were set out in the petition of appeal, during oral argument, counsel for the appellant primarily focused on the contradictions highlighted during the trial, contending that the learned trial judge had failed to give due consideration to them. It was further argued that, although the victim in his statement to the police stated that the offence occurred in a nearby jungle, the investigating officer had inspected only the appellant's house, thereby revealing a potential flaw in the police investigation which, in turn, cast doubt on the prosecution's case.

6. The case of the prosecution is mainly dependent on the testimony of N.M.Avishka Madhushan, the victim, who testified as PW1. According to his evidence, the appellant was known to him and was also a distant relative. On the day of the incident, the victim was playing with his friends at a nearby playground. Before the victim went to the playground, the appellant had met him and asked him to come to the appellant's house. After playing, the victim visited the appellant's house as requested.
7. According to the victim, the alleged offense was committed on him by the appellant on a makeshift bed at the latter's residence. The appellant asked the victim to remove his clothes, which he did. Thereafter, the appellant also undressed himself, placed his penis between the victim's thighs, and moved up and down until he ejaculated. After that, the appellant gave the victim Rs 200/-, and the victim returned home. At the time of the alleged offense, the victim was 12 years old.
8. Since the appellant has placed much reliance on the contradictions per se highlighted in the testimony of the victim, it is apt to consider whether the said contradictions have the effect of tarnishing the credibility of the evidence of PW1. To elaborate further, the cardinal issue that needs consideration of this court is whether a particular piece of evidence which the appellant claims to be contradictions, significant and quite material which go to the root of the prosecution case. In this regard, following authorities would be of much assistance.
9. In **Rev. Maharagama Suneetha vs. Attorney General (2006) 3 Sri L R 266** it was held inter alia:
 - (1) *Before proof can be given of a former inconsistent statement and if the statement is in writing although it need not be shown to the witness or be proved in the First instance, if it is intended to contradict him by it, his attention must be drawn to those parts of it to be used for contradicting him and he should also be afforded with an opportunity to explain such contradictions. This procedure has not been followed in this case. Therefore, Court cannot take into cognizance the so-called contradiction or omission at the stage of the appeal.*
10. In **Aadam Kasam Shaikh vs. The State of Maharashtra, 2006 Cr LJ 4585 (4589)**, the Court held that;
 - (1) *"the evidence of a witness cannot be discarded merely because he has made improvements over his police statements by stating some of the facts for the first*

time in his deposition before the court, if the facts stated for the first time before the court is in the nature of elaboration, do not amount to a contradiction, and the evidence of witness does not militate against his earlier version".

11. In the case of **Mohamed Niyas Naufer and others v. Attorney General (Sc. 01/2006 decided on 08/12/2006)**, the Court observed that; *"when faced with contradictions in a witness's testimonial, the Court must bear in mind the nature and significance of the contradictions, viewed in light of the whole of the evidence given by the witness."*
12. Justice Shirani Tilakawardane, J. in the case of **AG v. Mahadurage Dimson and 3 Others, CA 141/A-B-2000**, decided on 24.11.2003, Her Ladyship held that;
 - (1) *"The Courts must, while evaluating evidence, bear in mind that in a case of rape especially a girl of tender age would not come before a Court merely to make a humiliating statement against her honour. Therefore, contradictions which have no material effect on the veracity of the prosecutrix case should not be allowed to throw out an otherwise reliable prosecutrix case."*
13. Assessing the credibility of a victim's evidence in a sexual abuse case is a complex and sensitive process that requires a careful approach. The main goal is to determine the reliability and truthfulness of the victim's testimony while being mindful of their developmental stage and potential vulnerabilities.
14. A victim's testimony doesn't have to be perfect to be credible. It's important to look for consistency in the core details of their account, even if minor details change. Memory can be fallible for anyone, especially children, and inconsistencies on peripheral issues don't automatically mean the entire story is false. Factors like the passage of time, the number of times the victim has been asked to repeat the story, and his or her age can all affect the accuracy of recall. Courts should assess such testimony through careful scrutiny of the narrative, with due regard to child psychology and applicable judicial safeguards.
15. While minor inconsistencies are to be expected in truthful accounts, significant contradictions can undermine credibility. Younger children may accurately recall the core incident but be less precise about details such as timing or sequence. The testimony of a child victim in a sexual offence case does not require corroboration if it inspires the

confidence of the court; however, the judge must clearly record the reasons for accepting such testimony in the absence of corroborative evidence.

16. In the present appeal, the victim was 15 years old at the time of the alleged offense. Evidently, the victim, PW1, was accompanied to the police by PW3 to record the statement. It is important to note that the officers of the Mulleriyawa police commenced investigations upon a telephone call received by PW3. There is no evidence that the victim was influenced by any of his family members or any other person to make a complaint against the appellant. In fact, when the victim was taken to the police station to record a statement, no one other than the investigating officers accompanied him. Hence, it is very unlikely that the victim would have implicated the appellant in his statement to the police due to any external influence or undue prompting.
17. It is noteworthy that the alleged offence was said to have been committed by the appellant between April and May 2012. It took seven years to prepare the indictment, and the trial commenced only in 2022—ten years after the alleged offence. In these circumstances, it would be unrealistic to expect the victim to recount the incident with mathematical precision. Inevitably, the passage of time may have affected the victim's ability to narrate the events in exact conformity with the statement made to the police during the investigation. While some inconsistencies or omissions may arise, the crucial question is whether the victim's testimony, when considered in its entirety, is sufficiently reliable to sustain a safe conviction of the appellant.
18. Before assessing the impact of the contradictions on the prosecution's case, it is necessary first to determine whether those contradictions were marked in accordance with the proper procedure.
19. In the case of ***Gamini Sugathasena & the Others v. The State 1998 (1) SLR 405*** whilst discussing the procedure in marking contradictions, the court held that;

"when a witness is to be contradicted the proper procedure is set out in section 145 of the Evidence Ordinance. This section contemplates that when a witness is to be contradicted, his attention must be first drawn to the fact of having made a previous statement and thereafter, more specifically, to the parts of the statement which are to be used for the purpose of contradicting him. It is only after that the actual writing from which the witness was contradicted, can be proved"

20. From the proceedings of the High Court, it is clear that the defence failed to follow the proper procedure for marking contradictions. Notably, PW1 expressly denied making the portions of the statement suggested to him by the defence during cross-examination. Despite this, the defence did not summon the police officer who recorded the relevant statements to prove the alleged contradictions. Consequently, the failure to establish the contradictions meant that there was no necessity for the learned trial judge to consider them. In any event, for the reasons set out below, none of these contradictions, in my view, go to the root of the prosecution's case.
21. The first contradiction, marked as V1, concerned an incident that occurred on the road and does not affect the truthfulness of PW1's evidence. The second contradiction, marked as V2, related to the location of the offence. In his testimony, PW1 clearly stated that the offence was committed at the house where the appellant was staying. It was, in fact, the victim who pointed out this location to PW3. Significantly, the history given by the victim to the Judicial Medical Officer, as recorded in the Medico-Legal Report (P1), is consistent with his testimony. The third contradiction, marked as V3, likewise does not undermine PW1's credibility. The learned High Court Judge has addressed V3 in the judgment and provided cogent reasons for finding that it was not material and did not render the victim's testimony untrustworthy.
22. It can be observed that the learned High Court Judge has adequately analyzed and evaluated the evidence of PW1 in the correct perspective. He has considered the credibility of the PW1's testimony in the back ground of his age and education before he reached his findings. The learned Judge has ruled out the possibility of the witnesses having uttered any deliberate falsehood. Hence, it is evident that the contradictions were not of such materiality as to undermine the credibility of the witness.
23. Thus, the defense argument that the contradictions were not sufficiently considered by the learned trial Judge is far from satisfactory and must fail. Furthermore, the learned High Court Judge carefully considered the belatedness of the victim's complaint to the police and was satisfied with the reasons advanced by the victim for making the complaint belatedly.
24. In ***Sumanasena v Attorney General [1999], 3 SLR 137***, His Lordship Justice Jayasuriya held:
- (1) *"Just because the witness is a belated witness the Court ought not to reject his testimony on that score alone and that a 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 evidence of a belated witness.”

25. Justice Sisira De Abrew in the case of **Anandappan Vishawanadan v AG, SC Appeal 15/2018**, decided on 12.2.2021, held that:

(1) *“I hold that court should not reject the evidence of a witness who has made a belated statement to the Police if the delay has been explained. In the present case the delay in making the statement to the Police has been explained. Thus, the decision of the learned trial Judge to accept the evidence of witness Murugase Ravindran cannot be found fault with.”*

26. Therefore, in light of the above authorities, the belatedness of the victim’s complaint in the present case does not, in my opinion, significantly affect the credibility of PW1’s testimony.

27. It is also pertinent to emphasize that it is not the function of an appellate court to re-try a case already tried. In legal proceedings, the credibility of a witness is indeed primarily a matter for the trial judge to determine. The judge, having observed the witness’s demeanor and delivery firsthand, is in the best position to assess the truthfulness and reliability of their testimony. The appellate court will not overturn a finding of fact unless it’s manifestly wrong.

28. In this regard, it is relevant to refer to the dictum in **Fraad vs. Brown & Co. Ltd. 20 NLR 282**, where it was held that when the issue is mainly on the credibility of witnesses an appellate court should not interfere unless the findings of the judge are perverse.

29. As held in **Dharmasiri vs. Republic of Sri Lanka [2010] 2 SR1L.R 241**, credibility of a witness is mainly a matter for the trial Judge, Court of Appeal will not lightly disturb the findings of a trial Judge with regard to the credibility of a witness unless such findings of trial Judge are manifestly wrong.

30. In **Ariyadasa v Attorney-General, [2012] 1 Sri. L.R. 84**, Sisira de Abrew, has held as follows:

(1) *“Court of Appeal will not lightly disturb a finding of a trial Judge with regard to the acceptance or rejection of a testimony of a witness, unless it is manifestly wrong, when the trial judge has taken such a decision after observing the demeanour and the deportment of a witness. This is because the trial Judge has*

the priceless advantage to observe the demeanour and deportment of the witness which the Court of Appeal does not have.”

31. In the present case, the decision reached by the learned Trial Judge on the totality of the evidence does not contain any substantial misdirection or non-direction either on the facts or law.
32. As stated earlier, the credibility of PW1’s testimony remains intact despite some trivial contradictions, which do not weaken the prosecution’s case. The learned High Court Judge carefully analyzed and evaluated the evidence presented by the prosecution before finding the appellant guilty of the charge of grave sexual abuse.
33. Furthermore, he has adequately taken into account the contradictions highlighted by the defense and has provided sufficient and cogent reasons as to why those contradictions alone are not enough to render the victim an untrustworthy witness or to undermine the credibility of his evidence.
34. More importantly, the learned Judge discussed the relevant legal principles and applied them correctly in determining the appellant’s guilt. Therefore, there is no reasonable basis, upon which, his decision could be interfered with.
35. For the reasons stated above, I dismiss the appeal. Accordingly, I affirm the conviction of the appellant and the sentence imposed by the learned High Court Judge. The sentence shall run from the date of the judgment.

Judge of the Court of Appeal

Hon. P. Kumararatnam, J (CA)

I agree,

Judge of the Court of Appeal