IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an application under in terms of section 83(2) of the Case of Criminal Procedure Act No. 15 of 1979.

Democratic Socialist Republic of Sri Lanka.

Complainant

Vs.

1. Mohammed Razak Mohammed Riyaz

Accused

Court of Appeal Case No:
CA/HCC/0095/24
High Court of Badulla Case No:
HC-236/18

And now between

Mohammed Razak Mohammed Riyaz

Accused-Appellant

Vs

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

Respondent

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

Counsel : Hafeel Farisz for the Accused-Appellant
Maheshika De Silva for the Respondent

Argued on : 06.11.2025

Decided on : 30.01.2026

Pradeep Hettiarachchi, J

Judgment

1. In this matter the Accused-Appellant (hereinafter referred to as the Appellant) was indicted before the High Court of Badulla for committing grave sexual abuse of a child of under 16 years of age, which is an offence punishable under section 365B (2) b of the Penal Code as amended by Act No 22 of 1995 and Act No 16 of 2006. At the trial, PW1, PW2, PW6 and PW8 testified for the prosecution. The appellant made a dock statement.

2. At the conclusion of the trial, the learned trial Judge found the appellant guilty of the charge and convicted him accordingly. The appellant was sentenced to 7 years rigorous imprisonment and fined a sum of Rs. 5,000.00, with a default sentence of twelve months' imprisonment. In addition, the appellant was ordered to pay compensation in the sum of Rs. 50,000.00 to the victim, with a default sentence of twelve months' imprisonment.

3. Being aggrieved by the said conviction and sentence, the Appellant has preferred the present appeal. The facts of this case can be briefly summarized as follows:

4. The appellant is a neighbor of the victim and his family, and they had maintained cordial relations for a considerable period. On the day of the incident, the victim's mother visited the appellant's residence to have a sewing machine repaired. The appellant's house is situated approximately 200 meters from the victim's house. She was accompanied by the victim and the victim's younger sister. Thereafter, leaving the victim and his younger sister at the appellant's residence, the victim's mother (PW 2) returned home, informing the appellant that she would come back shortly.

5. According to PW1's evidence, the alleged offence was said to have been committed after PW2 left the Appellant's house. According to PW1, when the machine was given for repair, the Appellant was putting covers for some books and he continued to do so without attending to the machine. During this time the victim's sister was playing with Appellant's children in a separate room. Shortly after PW2 left the Appellant's house, the Appellant complained he was having a neck pain and asked the victim to massage his neck by placing his face on the victim's lap. Thereafter, the Appellant had performed oral sex on the victim.

6. Soon after that, the victim ran to his mother and informed her of the incident. Thereafter, she returned to the Appellant's place and inquired about it from the Appellant and immediately rushed to the Police Station and lodged a complaint. Thereafter, the victim was produced before a doctor for an examination.

7. PW2 is the mother of the victim. According to her testimony, on the day of the incident, she went to the appellant's house with her two children to get a sewing machine repaired as the appellant had earlier informed her that he could do it. When she went there, the appellant was putting covers to some books while seated on a bed. She placed the sewing machine on the table. The bed PW2 referred to was not in a bedroom but in a living area.

8. PW2 had a conversation with the appellant's wife for 30 to 60 minutes and in the meantime PW2's elder daughter called her because a neighbor had visited to their house. Then, PW2 went back leaving the victim and the other daughter at the appellant's place. About 30 minutes after her leaving, the victim came crying to her and called her. When she inquired as to the reason, the victim narrated the incident.

Soon after PW2 had gone to the appellant's house and questioned the appellant but he angrily denied any such incident took place.

9. Thereafter PW2 informed about the incident to her husband who was in Kurunegala at that time. On the same day, PW2 made a complaint to the police. Subsequently, the victim was admitted to the Badulla Hospital, and was examined by a Judicial Medical Officer.

10. On behalf of the appellant, it was argued that the learned High Court Judge had failed to evaluate the evidence of the only child witness, in particular the improbability and inconsistencies apparent on his testimony.

11. The counsel for the Appellant further argued that given the attendant circumstances, and especially the arrangement of the rooms of the Appellant's house, it was highly improbable for the Appellant to commit the alleged offence on the victim without getting noticed by the others. In support of the argument, the Appellant placed much reliance on the plan of the Appellants house and arrangement of rooms and also the place where the allege offence was said to have been committed.

12. Furthermore, it was argued that considering the open area where the victim allegedly claimed that the act of grave sexual abuse was committed on him by the Appellant, it was difficult, if not, impossible to believe the victim's testimony. The appellant further argued that since the victim's sister and the Appellant's children were at home, it was difficult to believe that the Appellant could have committed this offence on the victim without getting noticed by the children who were playing in the same premises.

13. It could be observed that no material contradictions were marked during the cross-examination of PW1. Also, no any material omissions were brought to the notice of the Court.

14. Therefore, the main ground to be considered in this appeal is whether it was probable for the Appellant to commit the alleged offence in the given circumstances especially when there were others in the vicinity at the appellant's residence at the time of the alleged offence.

15. Supporting the conviction, the Learned DSG argued that since there were two rooms in the house the probability is there. She further submitted that there was no evidence of any animosity between the parties. This was further confirmed by the evidence of PW 1's mother, as she in her testimony very clearly stated that there was a cordial relationship between the Appellant and the victim's family and therefore upon that trust, PW 2 went home leaving the victim and his sister at the Appellant's residence. While referring to the sketch prepared by the investigating officer, the Learned DSG further argued that there was no possibility of the children who were playing in the other room witnessing what happened in the area where the alleged offence was committed.

16. The victim in his evidence has stated that the room where his sister was playing at the time of the incident was separated by a door and it was partly closed so it was difficult for anyone from there to see what was happening in the place where the alleged offence was committed.

17. The police officer PW8 who made observations at the scene testified while referring to the sketch marked as X01. According to his observation, the appellant's house was a partly built one and had two rooms. In that sketch, the place of the incident was depicted as 'A'. Another room was depicted as 'B'. According to his evidence, room 'A' cannot be seen by a person in room 'B' unless they come out from room 'B'. Thus, there is no such improbability of the prosecution evidence as alleged by the defence.

18. It could be observed that the complaint was made without any delay. Soon after the incident, the victim complained to PW 2 and thereafter PW 2 rushed to the police and made a complaint. Thus, it is highly unlikely that PW2 had any opportunity to concoct a story to implicate the appellant falsely. More importantly, the appellant himself admitted in his dock statement that the victim's family was very friendly with the appellant's family. Hence, this court cannot see any reason for the victim or his mother to level a false allegation against the appellant. It is also pertinent to observe the subsequent conduct of PW2 when she was informed of the alleged incident by the victim. The way PW2 had acted after coming to know of the incident does not leave

any room for creating any doubt about the probability of the incident as narrated by the victim.

19. Moreover, PW2 had acted promptly when she came to know of the incident and had gone to the appellant's house before proceeding to the police station. Hence, the test of spontaneity is satisfied. As stated earlier, since there were no material contradictions or omissions, there is hardly any reason for this court to disbelieve or reject the evidence of the victim or of PW2. More importantly, since there existed no animosity between the parties, and also it was evident that they were in good terms, there is hardly any reason for the victim to implicate the Appellant falsely.

20. It is also important to note that during the trial, no suggestion was put to the witnesses by the defense that there was any motive for the victim to implicate the Appellant falsely. In a case of this nature, corroborative evidence other than the medical evidence, cannot be normally expected as this type of offences are committed secretly in a discreet place. Therefore, it is unreasonable to expect corroborative evidence from the prosecution other than the medical evidence.

21. In the written submissions tendered on behalf of the appellant, several discrepancies in the evidence of PW1 were highlighted, and it was contended that the learned trial Judge failed to adequately address those discrepancies. The alleged incident occurred in 2015, whereas PW1 testified in 2021. In such circumstances, it would be unreasonable to expect a witness to recall and narrate every detail with precision after a lapse of six years. It must also be borne in mind that the victim was only 13 years old at the time he underwent this distressing experience, and with the passage of time, it is inevitable that certain details would have faded from his memory. Consequently, the existence of minor discrepancies in his testimony is unavoidable and does not, by itself, undermine the credibility of his evidence.

22. It is also significant to note that the presence of discrepancies in the prosecution evidence in a criminal trial itself would not taint the credibility of the prosecution case unless the said discrepancies are of some material importance, which go to the root of the matter. As held in ***D.Tikiribanda vs The Attorney General dated 06.10.2009,*** *"Most victims of sexual harassment prefer not to talk about the harrowing experience*

and would like to forget about the incident as soon as possible (without symptom). The offenders should not be allowed to capitalize or take mean advantage of these natural inherent weaknesses of small children."

23. The appellant's principal contention, that the presence of other children in the house rendered the alleged act impossible or improbable, is untenable, as the evidence clearly establishes that the place where the offence occurred was not visible from the area in which the other children were playing. Further, the conduct of the victim following the incident, the promptness with which PW2 lodged the complaint with the police, and the absence of material contradictions or omissions in the testimonies of PW1 and PW2, when considered in their totality, do not persuade this Court to disbelieve their evidence. Accordingly, the grounds advanced by the appellant are devoid of merit.

24. The learned trial Judge, in his judgment, has adequately addressed the absence of any motive on the part of the victim or his mother to falsely implicate the appellant. He has also carefully analyzed the dock statement of the appellant and clearly set out the reasons why it could not be accepted. The learned trial Judge further observed that the dock statement did not even cast a doubt on the prosecution case. In these circumstances, I find no reason to interfere with the findings of the learned High Court Judge.

25. 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.

26. 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.

27. Similar sentiments were expressed in ***Ariyadasa v Attorney-General, [2012] 1 Sri. L.R. 84***, by Sisira de Abrew J. and he held as follows:

> *"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 demeanor and the deportment of a witness. This is because the trial Judge has the priceless advantage to observe the demeanor and deportment of the witness which the Court of Appeal does not have."*

28. On the above analysis, I affirm the conviction of the appellant. Accordingly, the appeal stands dismissed. Nevertheless, the appellant's sentence shall operate with effect of the date of the conviction namely, 15.02.2024.

Judge of the Court of Appeal

P. Kumararatnam,J

I agree,

Judge of the Court of Appeal