

**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 Case No: CA -HCC- 146/2022**

HC of Gampaha Case No. HC 323/19

The Democratic Socialist Republic of Sri Lanka

**Complainant**

**Vs.**

Palawattage Nuwan Palawattage

**Accused**

**AND NOW BETWEEN**

Palawattage Nuwan Palawattage

**Accused-Appellant**

**Vs.**

The Attorney General

Attorney General's Department

Colombo 12

**Respondent**

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

**Amal Ranaraja, J**

**Counsel:** Kalinga Indatissa, PC, with Rashmini Indatissa, Udari Wickramasinghe, and Ovini Haththotuwa for the Accused-Appellant  
Azard Navavi, ASG for the Respondent

**Written**

**Submissions:** 23.08.2023 (by the Accused Appellant)

**On**

**Argued On :** 17.10.2025

**Judgment On:** 08.12.2025

## **JUDGEMENT**

**B. Sasi Mahendran, J.**

The Accused-Appellant (hereinafter referred to as ‘the Appellant’) was indicted before the High Court of Gampaha for having committed the offence of Grave Sexual Abuse on one minor namely Kahagalla Devage Jayantha Lakshan on or about 19.09.2015, punishable under Section 365 B (2) (b) of the Penal Code as amended by Act No.22 of 1995 and as further amended by No.29 of 1998 and No. 16 of 2006.

At the trial, the prosecution presented evidence through five witnesses and marked productions P1-P3 and thereafter closed its case. The Appellant, in his defence, gave evidence under oath and additionally called 4 witnesses.

At the conclusion of the trial, the Learned High Court Judge, by judgment dated 14.03.2022, found the Appellant guilty of the charge and imposed a sentence of 8 years of rigorous imprisonment and a fine of Rs. 150,000/- and 1 year of simple imprisonment in

default. Furthermore, compensation of Rs. 20,000/- was ordered to be paid to the victim; in default, a term of six months' simple imprisonment is imposed.

Being dissatisfied with both the conviction and the sentence imposed by the Learned High Court Judge, the Appellant has preferred an appeal before this Court, articulating the following grounds in support of their challenge.

1. That the learned Trial Judge failed to consider the inter se and per se inconsistencies in the evidence provided by PW 1, PW 2, and PW 7
2. That the Learned Trial judge failed to consider the credibility of PW 1,
3. That the learned Trial Judge failed to consider the credibility of PW2,
4. That the learned Trial Judge failed to properly evaluate the evidence of DW2,
5. That the learned Trial Judge failed to properly evaluate the evidence put forward by the Defence on behalf of the Appellant in accordance with legal principles,
6. That the learned Trial Judge had failed to analyse the probability of the Prosecution version in light of the Defence evidence,
7. That the learned Trial Judge has misapplied the judgment of Sana v Republic of Sri Lanka 2009 1 SLR 48,
8. The learned Trial Judge has failed to properly evaluate the evidence led at the trial,
9. The learned Trial Judge failed to apprehend that the Prosecution had failed to discharge its burden of proving its case beyond a reasonable doubt.

**The facts and circumstances of this case are as follows,**

According to PW 1, Kahagalla Devage Jayantha Lakshan, the victim was 11 years old at the time of the alleged incident and 17 years old when providing the testimony. According to the witness, he lived with his grandparents, and on weekends, his mother, identified as PW 2, would visit. The witness further explained that while he was in the 6th grade, he was terminated from school, and following the incident, he received medication to address anger-related issues. Further, he stated that he was acquainted with the Appellant, whom he referred to as "Nuwan Mama," as the Appellant resided nearby. On the day in question, while the witness was playing with a wheel, he had gone to the Kabarangawa junction, where the Appellant parked his three-wheeler. At that time, the

Appellant had called the witness and asked him to touch his male organ, and the witness was standing in the front seat of the three-wheeler when this occurred.

**Page 56 of the brief,**

පු : ඊට පස්සේ මිහු මොනවද තමුන්ට කිවිවේ ඒ වෙලාවේ?

උ : එයාගේ කළීසම ගලවලා එයාගේ වූ පැත්ත අල්ලන්න කිවිවා.

Further, the Appellant had asked the witness to take the male organ into his mouth, where the victim had proceeded to do so.

**Page 57 of the brief,**

පු : ඊට පස්සේ තමුන් මොනවද කළේ?

උ : ඊට පස්සේ මම කටට අරන් ඔහොම ඔහොම පාත් කර කර මේවා කළා.

When questioned by the prosecution as to whether the Appellant had shown anything to the victim, he confirmed and explained that he had shown him pornographic material. The witness also admitted that there were not many people present in the area at the time. Afterwards, PW 01 returned home, where his grandmother was present, and later that night, when his mother, PW 2, arrived, he informed her about the incident. Subsequently, PW 2 contacted the emergency call centre to report the matter. Following this, the police arrived, recorded his statement, and escorted him to the hospital. At the hospital, the witness admitted that he had narrated the events of that day to the doctor, PW 7, and further disclosed that he had been on medication before the incident.

During cross-examination, PW 1 stated that his removal from school was due to inappropriate behaviour, and after this incident, he started to take medications.

**Page 68 of the brief,**

පු : ඩය වසරට වනකන් පායලේ ඉගෙන ගන්තා පසුව ඇයි ඔබට පාසලන් එන්න එහා කියලා තියෙන්නේ?

උ : ඉස්කෝලේ කළ දහ වැඩ තිසා.

පු : මොනවද කළ දහ වැඩ?

උ : අමයින්ට ඉන්න දුන්නේ නැහැ.

පූ : මොනවද කලේ?

උ : ඉස්කොලේ යන කාලයේ අමයින්ගේ ගබුම උස්සනවා.

පූ : අමයින්ගේ ගබුම උස්සන එක විතරද කලේ?

උ : ඔවුන්.

පූ : අමයින්ට කෙල ගැහුවේ නැද්ද?

උ : කෙල ගැහුවා.

#### **Page 69 of the brief,**

පූ : ඔබට පරිවාසයට දාන්න දෙම්විජයන් කටයුතු කළාද?

උ : ඔවුන්.

පූ : පරිවාසයට දැමීමාද?

උ : නැහැ. ඊට පසුව තමයි ඉස්පිරිතාලෙට ගිහින් අර අබේහෙන් වික අරන් දුන්නේ තාත්තා.

PW 01 confirmed that the incident occurred on 19.09.2015 in the morning, though the defence pointed out a contradiction with his police statement, which recorded the time as evening. The witness acknowledged that he had known the Appellant since 2015 and admitted that he was disabled and used prosthetic legs. When asked by the defence whether, on the day in question, the Appellant placed his hand on the witness's right leg before taking the Appellant's male organ, PW 1 denied this version of events. Further, the defence suggested that when the witness attempted to take the Appellant's male organ, his right prosthetic leg became detached, and the witness denied this version too.

#### **Page 72 of the brief,**

පූ : සාක්ෂිකරු මම ඔබට යෝජනා කරනවා ඔබ ඒ අවස්ථාවේදී මෙම වින්තිකරුගේ පුරුෂ ලිංගයෙන් අදිදි ඔහුගේ දකුණු කකුල පවා ගැලවුනා කියලා? එය තමා පිළිගන්නවාද?

උ : නැහැ.

The witness admitted that he has another case pending before the Aththanagalla Magistrate's Court, bearing case number 114/21, relating to an incident of abuse that occurred in 2016.

**Page 73 of the brief,**

පු : මම යෝජනා කරනවා ඔබට ඔබ අත්තනගල්ල මහේස්ත්‍රාත් අධිකානයේ බ්ල.2961/2018 දරන නඩුවේ පැමිණිලිකරු බව? ඔබ අත්තනගල්ල උසාවියට තවත් මේ වගේ පැමිණිල්ලක් පොලීසියට කරලා ගොනු කරලා තිබෙනවාද?

ලු : ඔවුන් එම වයසක සියා කෙනෙක් කරදර කළා කියලා. මම කිවුවේ නැහැ. අපේ පැත්තේ කට්ටිය තමයි දැන ගෙන සිටියේ. ඊට පසුව එයාලා පොලීසියට කතා කරලා මාව ගෙනිවා.

The defence suggested that the witness had taken hold of the Appellant's male organ and attempted to trouble him. The witness denied this suggestion.

**Page 74 of the brief,**

පු : සාක්ෂිකරු මම යෝජනා කරනවා 2015.09.19 වන දින මේ විත්තිකරු ලෙට ඇවිල්ලා ඔබ විසින් මෙම විත්තිකරුගේ පුරුෂ ලිංගය ඇදාලා මෙම විත්තිකරුට හිරිහැර කළ බවට?

ලු : නැහැ.

The defence highlighted an omission in his police statement concerning the alleged showing of pornographic images.

**Page 74 of the brief,**

පු : සාක්ෂිකරු ඔබ දැන් ගරු අධිකරණයට ප්‍රකාශ කළා ඔබට මෙම විත්තිකරු ගෝන් එකකින් ගොටේ පෙන්නුවා කියලා

ලු : ඔවුන්

පු : ඔබ එක පොලීසියට ප්‍රකාශ කලාද?

ලු : ඔවුන්

Further, the witness stated that PW 2 had instructed him that, if anyone troubled him, he should inform her.

**Page 76 of the brief,**

පු : අම්මා කිවිවද කවිරු හරි කරදර කරලා නියෙනවා නම් කියන්න කියලා?

ච : ඔව්

පු : අම්මා දන්නේ කොහොමද කවුරු හරි කරදර කරාද කියලා?

ච : එයා දන්නේ නැහැ. එයා කිවිවේ මොකක් හරි කිවිව ගමන්ම මට කියන්න කියලා.

පු : ඔබගේ අම්මට ඔබ ගැන තොද අවබෝධයක් තිබෙනවද?

ච : ඔව්.

The witness has admitted the fact that after 4 days of the incident he has given a statement to the police.

**Page 76 of the brief,**

පු : ඔබ ද්‍රව්‍ය හතරකට පස්සේ තමයි පොලිසියට කට උත්තරය ලබා දීලා නියෙන්නේ?

ච : ඔව්.

Furthermore, the PW 1 denied the defence's suggestion that he had falsely accused the Appellant of blaming him for engaging in inappropriate sexual conduct.

PW 7, Judicial Medical Officer Dr Chaminda Sampath Jayawardena, testified that he examined the victim on 24.09.2015 following his admission to the Gampaha Hospital. During the examination, the victim provided a medical history to the witness as follows,

**Page 107 of the brief,**

පු : මොකද්ද මේ දරුවා විසින් වෙබුතුමා හට විමසීමේදී රෝග ඉතිහාසය නැවියට ලබා දුන්නේ?

ච : අවස්ථා කිහිපයකදී රුවන් මාමා යන පුද්ගලයා සහ මෙම පිරිමි ප්‍රමාණය එකිනෙකාගේ පුරුෂ ලිංගයන් මූබයට ගැනීමෙන් ලිංගික ක්‍රියාවක් සිදු කර තිබෙන බවත්. එය අවස්ථා කිහිපයකදී සිදු කර තිබුනත් අවසන්වරට එය සිදු කර ඇත්තේ 2015 සැප්තැම්බර 19 වන දින බවත් ඔහු ප්‍රකාශ කර සිටියා.

PW 7 testified that he did not observe or examine any wounds during his medical examination. Further, he noted that his professional opinion was based on the history provided by the victim at the time of examination.

**Page 109 of the brief,**

පු : ඒ මතය පැහැදිලි කිරීමක් කරන්න?

උ : මෙම පිරිමි ලමයා කියන ආකරයේ ලිංගික ක්‍රියාවක් කිරීමේදී සාමාන්‍යයෙන් අඩු තුවාල. ලිංගික ප්‍රදේශයේ හෝ වෙනත් ප්‍රදේශයක තුවාල නිරීක්ෂණය කරන්නේ නැහැ. එම නිසා මෙම සිද්ධියේ දී තුවාල නොතිබුණා කියන එක එම සිද්ධිය සිදු වුනේ නැහැ කියා පැහැදිලි කිරීමට හෝ සිද්ධිය සිදු වුව ලෙස තහවුරු කිරීමට සාක්ෂියක් නෙවෙයි.

Further, the witness stated that there may not necessarily be injuries in the mouth of the victim when the appellant inserted his male organ, explaining that the presence of injuries would depend on the degree of force used and the victim's reaction at the time.

During cross-examination, PW 7 admitted that he did not examine the anal sphincter, explaining that such an examination was unnecessary given the history provided by the victim. When questioned by the defence about whether he had taken oral samples for a sperm test, the witness stated that he had not, reasoning that it would have been ineffective since the alleged incident had occurred five days before the medical examination. PW 7 further denied the defence's suggestion that he had failed to conduct the medical examination properly.

When we analyse this evidence along with PW 1, we note there are several discrepancies between the witness and PW 1. According to the history given to the PW 7 by the victim, he has indicated that several times they have engaged in sexual activities by taking the male organ into his mouth. However, the testimony of PW 1 does not reveal that the victim ever disclosed multiple incidents of this nature. In light of this discrepancy, our attention now turns to the evidence of PW 2.

PW 2, Inoka Priyadarshani, the mother of the victim, admitted the fact that the victim had anger issues, and due to his inappropriate behaviour, he was recommended to an evening class.

**Page 84 of the brief,**

පු : ඇයි එයාව වෙනත් පාසලකට දැමීමේ?

උ : එයා දහයි නිසා හවස පන්තියකට යොමු කළා. මෙයා කළබලයි දහයි, අමයි එක්ක නිතරම එහෙම ප්‍රශ්න නිසා කේත්ති යනවා. හවස පන්තියකට යොමු කරලා තියෙනවා.

The witness testified that, as part of her customary practice after returning from work, she would ask the victim about events that had occurred during the week. On 19 September 2015, at approximately 7:30 p.m., the victim revealed the incident to her. According to the witness, the victim stated that the Appellant, known as “Nuwan Mama,” had called the PW 01 over to the three-wheeler at Kamarangawa Junction while the victim was playing with a wheel. The court then instructed the witness to recount the victim’s statement regarding the events of that day, and she proceeded to narrate as follows.

**Page 85 of the brief,**

උ : ඊට පස්සේ මොනවද කිවිවේ?

පු : ඒ යනකෝට ත්‍රීවිල් එක් නුවන් මාමා කතා කලා කිවිවා. කතා කරලා වාඩි වෙන්න කිවුව කිවුව ඉස්සරහින් මෙයා වාඩි වූණා කිවුවා. නොයෙක් දේවල් එයාට කියලා තියෙනවා.

පු : පුතා කිවිව විදියටම ඒ දේවල් කියන්න ලියා ගන්න?

උ : එයා කිවිවා වූ කරන එක කටට ගන්න කිවිවාලු, ඊට පස්සේ එයා කිවිවා ගලක් කපමුද ඇහුව කිවිවා. පස්ස පැන්තට දාමුද කියලා ඇහුවා කිවිවා. එහෙම තමා.

පු : තව මොනවද පුතා කිවිවේ?

උ : ඒවා තමයි එයා කියවා ගෙන කියවාගෙන ගියේ ඔය දේවල් එහෙම කලා කිවිවා. කටට ගන්නා කිවිවා. එතන හන්දියේදී ඒවා කිවිවා කියලා තමයි ස්වාමිනි.

Furthermore, the witness acknowledged that the Appellant had been known to her for a considerable time. Following this disclosure, PW 2 reported the matter on 19 September 2015. The police visited on 21 September 2015, and she subsequently provided a formal statement on 23 September 2015. We note that there is a delay in reporting the incident, and she has not provided an explanation for the delay. Also, we note that the father of the victim was also working in the police.

During cross-examination, the witness stated that she is separated from her husband and that, as a customary practice, when she returns home on weekends, she inquires from the victim about the events of the day. When questioned by the defence regarding the alleged termination from the earlier school, the witness clarified that there had been no termination, but rather that the school had recommended admission to another state

school. In addition, PW 2 testified that the Kamarangawa Junction was, for the most part, a deserted area. When questioned by the defence about why she did not immediately go to the police to report the incident, she explained that upon calling 1929, she was instructed to remain, and the relevant police would come. Further, the PW 2 denied the defence's suggestion that she reported the matter merely to protect the victim from allegations of inappropriate behaviour.

Considering the evidence, 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. Upon evaluating evidence of PW 7, we note that the Learned High Court Judge has failed to assess the discrepancy between the evidence. It is relevant to reproduce that portion of the said judgment.

**Page 278 of the brief,**

“මෙහිදී වෛද්‍ය සාක්ෂිය වැදගත් වෙන්නේ මෙම නඩුවේ වින්දින දරුවා විසින් ලබා දුන් සක්ෂිය සහ වෛද්‍යවරයාට ලබා දී ඇති කෙටි ඉතිහාසය අතර ඇති එකාකරීභාවය පෙන්වා හිමව පමණක් වන අතර මෙම නඩුවට අදාළව විශේෂයෙන් වෛද්‍යවරයා පවසන පරිදි මූබ ලිංගික ක්‍රියාවකදී තුවාල සිදු නොවී එකී ලිංගික ක්‍රියාව සිදු විමට හැකි බවට පැහැදිලිවම පවසා ඇති අතර ඒ අනුව මෙවැනි ආකාරයේ මූබ ලිංගික සංසරයට අදාළ බරපතල ලිංගික අපයෝගන තැමැති ක්‍රියාවක් ඔප්පු කිරීම සඳහා වෛද්‍ය සාක්ෂියක් කිහිපෙන් අත්‍යවශ්‍ය වන්නේ නැත.”

We hold that the Learned High Court Judge failed to adequately consider the discrepancies between the testimonies of PW1 and PW7. According to PW 1, during the trial, he did not disclose how many times similar incidents had occurred. Furthermore, the defence highlighted as an omission the allegation that the Appellant had shown pornographic material to the victim, which the victim had also failed to disclose to his mother, PW 2. It is therefore evident that there are material discrepancies between the evidence of PW 1, PW 2, and PW 7.

Our courts have consistently held that where such discrepancies go to the root of the matter and undermine the basic version of the victim, the court must attach due weight to those discrepancies.

What is a discrepancy was described in *The Law of Evidence* by Sir John Woodroffe and Syed Amir Ali (18th edition, Volume I, page 411),

#### **“(5) DISCREPANCIES**

*The constant theme on the appreciation of evidence in our courts is the discrepancies in the testimony of various witnesses. In regard to these discrepancies, two extremes have to be steered clear from, namely:*

*(a) summarily brushing aside discrepancies characterising them, as representing the untutored veracity of the witnesses and that they suggest that the witnesses have not learnt the same story by heart;*

*or*

*(b) lay too much stress on discrepancies without any attempt to appraise their real value and effect, thereby leading to serious failure of justice.*

*The proper course is, it is not enough merely to speak about the discrepancies in the evidence, but there should be a fitting comment on the quality of the evidence coming from the witnesses. Discrepancies in the statements of witnesses on material points should not be lightly passed over, as they seriously affect the value of the testimony. When there is inconsistency in evidence, the same cannot be accepted.*

.....

*Trifling discrepancies should be ignored, because several persons, giving their versions of the transactions witnessed by them, are naturally liable to disagree on material points, their powers of observation, exhibition of memory being not the same and honest differences being possible. There can be discrepancies of truth as well as discrepancies of falsehood. It is common experience that discrepancies do occur, even in the statements of perfectly honest witnesses; they are really due to differences in individual faculties with regard to observation, recollection and recital of details; and unless there is any good ground to think that they are due to a deliberate attempt to suppress or depart from the truth, it is unfair to discard the direct testimony of witnesses, merely on account of such discrepancies, when there is a general agreement as to material circumstances. It is the broad facts of a case, and not the minor details, that have to be considered in weighing evidence.*

.....

*While appreciating the evidence, the variances and discrepancies in details, contradictions in narrations and embellishments in essential parts, should not*

*affect the core of the testimony of witnesses. Discrepancies in matter of detail always occur even in the evidence of truthful witnesses because of natural differences in faculties of individuals. The credibility of the prosecution witnesses should be subjected to judicial evaluation of totality and not only isolated scrutiny. Sometimes, even truthful witnesses are tempted to opt for exaggeration and over enthusiasm, but it should not be taken as an embellishment in their testimony.”*

In the present case, the victim has provided divergent versions to PW 2, his mother and PW 7. According to PW 7, the victim stated that, before the incident under consideration, he and the Appellant had engaged in sexual activities on several occasions. During the trial, the victim further testified that the Appellant had shown him pornographic images. By contrast, PW 2 testified that the victim disclosed to her that they had engaged in oral sex, without any reference to pornographic material.

The central issue, therefore, is whether this Court can rely upon the testimony of the victim, notwithstanding these discrepancies, as a sufficient basis to convict the Appellant.

**Thambarasa Sabaratnam v. Attorney General**, CA 127/2012, Decided on 03.08.2015, H.N. J. Perera, J (as he was then) held that,

*“Thus the court could have acted on the evidence of the victim provided the trial Judge was convinced that she was giving cogent, inspiring and truthful testimony in court.”*

In **Gurcharan Singh V. State of Haryana** AIR 1972 S.C 2661, the Indian Supreme Court held:-

*“As a rule of prudence, however, court normally looks for some corroboration on her testimony so as to satisfy its conscience that she is telling the truth and that the person accused of rape on her has not been falsely implicated.”*

In **Premasiri V. The Queen** 77 N.L.R 86 Court of Criminal Appeal held:-

*“In a charge of rape it is proper for a Jury to convict on the uncorroborated evidence of the complainant only when such evidence is of such character as to convince the Jury that she is speaking the truth.”*

In **Sunil and another V. The Attorney General** 1986 1 SLR 230 it was held that:-

*"It is very dangerous to act on the uncorroborated testimony of a woman victim of a sex offence but if her evidence is convincing such evidence could be acted on even in the absence of corroboration."*

Therefore, it is very clear that an accused person facing a charge of sexual offence can be convicted on the uncorroborated evidence of the victim when his evidence is of such character as to convince the court that he is speaking the truth. In the instant case, it is clear that PW 1's evidence is inconsistent. The reason is that he has failed to mention that on several occasions earlier to the incident on 19.09.2015, the Appellant and the victim had engaged in oral sex. And also, there is a delay in making the complaint to the police and recording a statement from the victim.

From the above matters, a reasonable doubt is created on the question of whether the incident which was described in the indictment was performed on that day.

Considering all the above matters, we hold that the prosecution has failed to establish the case beyond a reasonable doubt.

In the light of the foregoing, the conviction and the sentence imposed by the Learned High Court Judge are hereby set aside. The Appellant 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**