

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

In the matter of an appeal in terms of Section 331(1) of the Code of Criminal Procedure Act No. 15 of 1979, read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA Case No: CA -HCC- 152/24

HC of Hambantota Case No: HC/19/2019

The Democratic Socialist Republic of Sri Lanka

Complainant

Vs.

Loku Kalutotage Dayananda

Accused

AND NOW BETWEEN

Loku Kalutotage Dayananda

Accused-Appellant

Vs.

The Attorney General

Attorney General's Department

Colombo 12

Complainant-Respondent

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

Amal Ranaraja, J

Counsel : K.V.D.V. Raja Wijegunaratne for the Accused- Appellant
Hiranjan Peiris, ASG, for the Respondent

Written

Submissions 12.06.2025 (by the Accused-Appellant)

On:

Argued On : 24.10.2025

Judgment On: 16.12.2025

JUDGEMENT

B. Sasi Mahendran, J.

The Accused-Appellant (hereinafter referred to as "the Appellant"), who is the father of the victim, was indicted before the High Court of Hambanthota on three counts of grave sexual abuse against a minor, Loku Kaluthotage Kavishani Kaushalya 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.

At the trial, the prosecution presented evidence through 6 witnesses and marking productions P1-P2 and thereafter closed its case. In defence, the Appellant has given a dock statement.

Upon conclusion of the trial, the Learned Judge of the High Court delivered judgment on 22.05.2024. The Appellant was found guilty on the 1st count of the indictment and sentenced to 12 years of rigorous imprisonment and fined Rs. 10,000, with a default sentence of 10 months rigorous imprisonment. A compensation of Rs. 100,000/- was ordered to be paid to the victim; in default, a term of 1 year of rigorous imprisonment. Furthermore, the appellants were acquitted with the 2nd and 3rd counts.

Being aggrieved by the conviction and the sentence of the Learned High Court Judge, the Appellant has preferred this appeal to this court. The grounds of appeal as pleaded by the Appellant are as follows;

- i. The Hon. High Court Judge misdirected himself and erred in failing to consider the uncertainty surrounding the first information of the alleged offence. The conflicting evidence as to how and when the complaint originated was not properly examined. This constitutes a vital misdirection affecting the fairness of the trial.
- ii. The Hon. High Court Judge failed to consider the legal presumption under Section 114(t) of the Evidence Ordinance arising from the suppression of material witnesses.
The omission to consider this presumption constitutes a serious misdirection in law.
- iii. By omitting to evaluate the absence of conclusive medical corroboration, the Hon. High Court Judge erred in law and misdirected himself on a material aspect of the case.
- iv. The Hon. High Court Judge erred by failing to consider the wider context of family conflict and prolonged institutional care, which could have influenced the testimony and credibility of PW1, leading to miscarriage of justice.
- v. The Hon. High Court Judge erred in failing to consider the need for corroboration of the child's testimony, especially given the inconsistencies and surrounding circumstances that warranted such caution.
- vi. The Hon. High Court Judge erred in rejecting the dock statement solely for lack of prior cross-examination, without assessing its independent probative value.
- vii. The non consideration of the "ghost factor" amounts to a misdirection and an error on the part of the Hon. High Court Judge, as it reflects a failure to engage with a plausible alternative explanation.

viii. Failure to consider the Accused-Appellant socio-economic condition as a mitigating factor in sentencing amounts to an error in law and a misdirection.

The facts and circumstances of this case are as follows.

PW 01, Kavishani Kaushalya, the victim in this case, testified that she was 10 years old at the time of the incident and was 15 years old when giving her testimony. She stated that in December 2014, she had been placed on probation due to abuse from the Appellant. The witness further confirmed that the incidents occurred during 2013 and 2014. She revealed the matter to one of the neighbouring aunts. According to her testimony, the incidents took place when her mother, PW 02, was on the night shift and no one else was at home. Further, the witness stated that such an incident had occurred in 2013, with the last incident taking place in 2014. She further testified that, thereafter, a neighbouring aunt advised her to disclose the matter at the seminar held at the school the following day, where police officers were present.

The witness stated that on the day of the last incident, her elder siblings were at school. She and her youngest sister returned home from school at around 1:45 p.m. The Appellant arrived shortly thereafter and made her younger sister leave. At that time, according to the witness, the Appellant sent her younger sister to the woman with whom he was allegedly having an extramarital affair, who had just moved to their neighbourhood. It is noted that this incident occurred prior to the matter being reported to the police.

The witness has described another incident that occurred 2 days prior to the last incident. According to her testimony, while she was asleep, the Appellant removed her clothing.

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ഒ : പൊലീസിയാട കിയൻ്റെ കലീൻ് ലേവില സിർദ്ദ ഗൈ മെ അഹൻ്റേൻ് പൊലീസിയാട കിയൻ്റെ കലീൻ് അവസാന വരുത്തേൻ് സിട്ട് ലേവില ലക ഗൈ അഹൻ്റേൻ് ലഭ കോഗോമട മേ സിർദ്ദിയ വീഞ്ഞേ?

ഒ : മെ നിധാനേന സിറിയേ.

When she attempted to shout, the Appellant threatened to kill her. She further stated that the Appellant engaged in sexual assault by rubbing his genital organ against her vagina. Thereafter, he instructed her to go and wash.

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පු : සරම ගලවලා මොනවද කලේ කොහාටද කරදර කලේ?

උ : ස්ත්‍රී ලිංග ප්‍රදේශයට (ස්ත්‍රී ලිංගය ප්‍රදේශය අතින් පෙන්වා සිටි.)

පු : ස්ත්‍රී ලිංගයට තමයි කරදර කලේ?

උ : ඔවා.

පු : විත්තිකාරයාගේ මොන කොටසෙන්ද කරදරය කලේ?

උ : පුරුෂ ලිංගයෙන්.

පු : ඒ වෙලාවේ දුවගේ ස්ත්‍රී ලිංගයට පුරුෂ ලිංගයෙන් කොහොමද කරදර කලේ?

උ : තාත්තාගේ එක මගේ එකෙන් තියලා ඇතුළු කරනවා.

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පු : ඔය විදියට කරදර කළාට පස්සේ දුවගේ ඇහෙළු මොනවා හරි ගැවීලා තිබුනාද?

උ : තැ .

පු : ඔය විදියට වික වෙලාවක් කරදර කළාට පස්සේ මේ විත්තිකරු මොනවද කරන්නේ?

උ : කියනවා ඇග හෝදන්න කියනවා නා ගන්න කියලා කියනවා.

The witness admitted that she did not disclose the incident to PW 02 because the Appellant had threatened her, stating that he would kill her mother as well. According to her testimony, she revealed that the Appellant had committed similar acts on several occasions prior to the incident in question. It is further noted that the prosecution referred to another incident that occurred during the night.

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පු : රාත්‍රී කාලයේ වෙවිව සිද්ධිය වූනු ද්‍රව්‍ය මොකද්ද ඇද ගෙන සිටියේ?

උ : එඟ ඇද ගෙන සිටියේ සායය හැවිටයයි.

According to her testimony, while she was sleeping, she suddenly awoke to find herself undressed. We note that she did not clearly disclose what had happened to her on that day.

It is further noted that the witness disclosed another incident which occurred while she was at her aunt's house. According to her testimony, the Appellant summoned her to their house and compelled her to undress. He then made her lie down, and as described by the witness, rubbed his genital organ against her vagina.

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ඕ : එදා දුවගේ ස්ත්‍රී ලිංගයට කරදර කලේ විත්තිකාරයාගේ ගරිරයේ මොන කොටසින්ද?

පි : පුරුෂ ලිංගයෙන්.

ඕ : ඒ කියන්නේ දුවගේ ස්ත්‍රී ලිංගයට ඇතුළතින්ද කරදර කලේ පිටතින්ද කරදර කලේ?

ස් : පිටතින්.

The witness described that three incidents had occurred to her, one at night and two during the daytime. She further disclosed that she made a statement to the police on 5th November 2014. She firmly stated that, on the day she was sleeping at night, she did not know what had happened to her.

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ඕ : දුව කිවිවා පොලිසියට යන්න ආයතන්න වශයෙන් සිද්ධ වෙවිව දේ තමයි අරදුවල් කාලේ වෙවිව සිද්ධිය කියලා?

ස් : ඔවුන්.

ඕ : ඊට කළින් සිදු උනා කිවිවා රත්නී කාලයේ සිදු උනා කිවිවා සිද්ධිය?

ස් : ඔවුන්.

During cross-examination, the defence suggested that the mother of the victim had engaged in an extramarital affair. The witness denied this allegation and stated instead that it was the Appellant who had maintained such an affair. She further stated that she had informed her neighbouring aunt, Senori, about the incident. Following this disclosure, the police came to the school and recorded her statement. It is observed that the defence questioned the witness regarding the dress she was wearing during the last incident, which had occurred five years earlier. The defence then highlighted a contradiction concerning the colour of the dress. With regard to one incident in which the father came and asked the witness to come to the house, it was marked as an omission, as she had failed to disclose this fact to the police in her initial statement. That is a second incident in which she described how the sexual assault took place. The Learned High Court judge has considered this omission in his Judgment.

We note that, without taking into account the fact that the victim was a child, the defence proposed numerous questions as follows.

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පු : කවිජානි තාත්ත්ගේ පුරුෂ ලිංගය දැකලා තියෙනවාද?

ච : ඔවුන්

පු : ඒ පුරුෂ ලිංගය මොන වගේද?

ච : කියන්නේ කොහොමද ඒක

පු : ඔබ තාත්ත්ගේ පුරුෂ ලිංගය දැකලා තියෙනවා කිවිවා, ඒ පුරුෂ ලිංගය ඔබ දකින අවස්ථාවේදී මොන විදිහටද තිබුනේ?

ච : මට කරදර කරලා නැගිටින වෙලාවේ දැකලා තියෙනවා

පු : එතකොට පුරුෂ ලිංගය තිබුනේ මොන ආකාරයටද? පහලට එල්ලිලද?

ච : පහලට එල්ලිලා

පු : පුරුෂ ලිංගය කෙලින් තියෙනවා දැකලා නැහැනේ, කෙලින් වෙලා තිනවා දැකලා තැහැ නේ

ච : එහෙමයි

Further, the defence proposed that the witness was falsely accusing the Appellant due to PW 02's alleged extramarital affair. The witness denied this suggestion. However, it remains a fact that all her children were placed under probation.

Upon the conclusion of the prosecution's evidence, the Appellant gave a dock statement. The Appellant denied all allegations and asserted that PW 02 had instructed the victim to falsely accuse him, allegedly due to her extramarital affair.

The Learned High Court Judge observed that, during the cross-examination of PW 02, the defence did not raise any questions regarding her alleged extramarital affair.

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“නමුත් පැ.සා. 01 ගේ මට පැ.සා. 02 වගයෙන් සාක්ෂියට කැදවා ඇති අතර ඇයගේ හරස් ප්‍රශ්න වලදී ඇයට තිබු අනියම් සම්බන්ධතාවයක් පිළිබඳව එකදු හරස් ප්‍රශ්නයක් හෝ විමසා නැත. පැ.සා. 01 ගේ සාක්ෂියි මට විසින් ඇයට උගන්වා මෙම පැමිණිල්ල සිදු කරන ලද බවට යෝජනාවක් සිදු කර නොමැති අතර පැ.සා. 02 වද එවැනි යෝජනාවක් හෝ හරස් ප්‍රශ්න වලදී සිදු කර නැත.”

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“කෙසේ වෙතත් කිසියම් හේතුවක් මත ප්‍රමාද ඉගැන්වීම මත හෝ පෙළඳවීමක් මත පැමිණිලි සිදු කිරීම හෝ සාක්ෂි ලබා දීම සිදුකර ඇති බවට සැකයක් මතු වේ නම් එම සාක්ෂිය මත ත්‍රියා කළ නොහැකිය. එහෙත් මෙම නඩුවේ එවැනි තත්ත්වයක් ඇතිවි ඇති බවට සැකයක් ඇති කර ගැනීමට ප්‍රමාණවත් හේතුවක් නැත.”

Considering the above evidence, the Learned High Court Judge concluded that the prosecution had failed to prove the case beyond a reasonable doubt with respect to the second and third counts.

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“කෙසේ වෙතත් මෙම තීන්දුවේදී මේ පෙර සඳහන් කරන ලද පරිදි පැමිණිලි කිරීමට දිනකට පෙර සිදු වූ සිදුවීම පමණක් ඇයගේ සාක්ෂියෙහි සලකා බැලිය යුතු සාක්ෂිය වශයෙන් නිගමනය කරන ලදී.”

When we analyse the testimony of PW 01, it is evident that she remained consistent with regard to the first count. We note that the contradiction that was marked by the defence is not sufficient for us to disbelieve the victim. We further observe that her testimony has been steady and coherent throughout the examination and cross-examination regarding the first count.

It is pertinent to refer to the following judgments.

In Premasiri V. The Queen 77 N.L.R 86 Court of Criminal Appeal, Alles, J 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 230it 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.”

In the case of Thambarasa Sabaratnam v. Attorney General, CA 127/2012, Decided on 03.08.2015, H.N. J. Perera,J. (as he was then)

“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 light of the judgments and the evidence she has presented, and with no substantial grounds to question her credibility, we find no reason to reject her account of events.

Upon careful consideration, we find that the prosecution has established, beyond a reasonable doubt, that regarding the first count.

In the light of the foregoing, the conviction and the sentence imposed by the Learned High Court Judge are hereby affirmed. I am not inclined to interfere with the disputed judgment, together with the sentencing order and dismiss the appeal.

The Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL