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

In the matter of an Appeal made under 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.

**Court of Appeal Case No.**
**CA/HCC/ 0131/2024**

**High Court of Tangalle**
**Case No. HC/20/2019**

Gamage Premadasa

**ACCUSED-APPELLANT**

**Vs.**

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

**COMPLAINANT-RESPONDENT**

**BEFORE** : **P. Kumararatnam, J.**
**R. P. Hettiarachchi, J.**

**COUNSEL** : **Shabdika Wellappili with Sharmal Herath and Charuka Hiran for the Appellant instructed by Wellappili Associates.**
**Hiranjan Peiris, PC, ASG for the Respondent.**

**ARGUED ON** : **07/11/2025**

**DECIDED ON** : **18/12/2025**

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**JUDGMENT**

**P. Kumararatnam, J.**

The above-named Appellant, was indicted by the Attorney General under Section 365 B (2)(b) of the Penal Code for committing two counts of grave sexual Abuse on Vidana Gamage Kavisha Sithumini. The first count was dated between 01.01.2011 and 20.09.2011 and the second count was dated 21.09.2011.

The trial commenced on 13/02/2020. After leading all necessary witnesses and marking Productions P1 to P3, the prosecution had closed the case on 03/04/2023. The Learned High Court Judge had called for the defence on the same day and the learned Counsel for the Appellant had moved for a day to start the defence case. On 10.10.2023 the Appellant had made a dock statement and closed the case for the defence.

The Learned High Court Judge, after considering the evidence presented by both parties, convicted the Appellant as charged and sentenced him as follows:

- For the first and second counts, he was sentenced to 08 years rigorous imprisonment each and was imposed a fine of Rs.5,000/- each subject to a default sentence of 03 months rigorous imprisonment.

Additionally, the Appellant was directed to pay a compensation of Rs.300,000/- with a default sentence of 06 months simple imprisonment. The Learned High Court Judge ordered the sentences imposed on counts one and two to run concurrently with each other.

Being aggrieved by the aforesaid conviction and sentence, the Appellant preferred this appeal to this court.

The Learned Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence. During the argument he was connected via the Zoom platform from prison.

The Learned Counsel contends that based on the evidence offered, it is impossible to conclude that the prosecution has proven its case against the Appellant beyond a reasonable doubt.

The following appeal grounds were raised on behalf of the Appellant:

1. The prosecution has failed to prove the specific date /time of the second count beyond reasonable doubt and has further failed to frame a valid charge with regard to the first count.
2. The probability of the incident is doubtful.
3. The learned High Court Judge has failed to analyse the evidence beyond reasonable doubt.

According to PW1, the victim in this case, the incident pertaining to this case had occurred between 5 to 5.30 pm. The victim was unable to give the exact date of the incident. She was 9 years old and was studying in grade 04 when she encountered this incident. When she gave evidence, she was 17 years old.

According to the victim, on the day of the incident when she was doing her school homework, the Appellant who was a neighbour had come to her house, and had taken her to the nearby small room adjacent to the kitchen and committed intercrural sex and ejaculated on the victim placing her on a

bed. PW2, Dayawathi, the mother of the victim had seen the Appellant on top of the victim when she entered the room suddenly. PW2 immediately took the victim to the kitchen and inspected the private part of the victim and lodged the complaint on that day itself to the police after the return of her husband.

The victim in her evidence further said that the Appellant on a previous occasion had touched her private part and warned the victim not to divulge that incident to anybody. As she was a small girl, she could not comprehend the gravity of the same.

When she was cross examined regarding the 1st incident by the defence Counsel, the learned High Court Judge had prevented the defence from cross examining the said point.

PW4, JMO Ambepitiya had examined the victim and stated that no external injuries were noted on her body. The victim in her history to the doctor stated that the incident pertaining to 2nd count had happened on 20.09.2011 and on the same day she was taken to the Walasmulla Police Station. Although no injuries noted on her vagina as per the history, the JMO has not excluded vulva or intercrural penetration on the victim.

Considering the evidence given by the victim in respect of the 1st count, and the prevention by the learned High Court Judge of cross examination on that point by the defence, the learned Additional Solicitor General in keeping with the highest traditions of the Attorney General's Department, informed this court that he is not contesting the conviction and sentence imposed on count number one. Hence, the Appellant is acquitted from Count number one.

In the first ground of appeal, the Appellant contended that the prosecution has failed to prove the specific date /time of the second count beyond reasonable doubt and has further failed to frame a valid charge in respect of the first count.

The victim was unable to mention the date of offence in respect of the second count in her evidence. But in her short history to the JMO, she had mentioned that the incident pertaining to the second count had taken place on 20.09.2011. The JMO has examined the victim on 26.09.2011 at 11.00am at the Hambantota Hospital. She has given evidence about 11 years after the incident.

According to PW2, the mother of the victim, the incident had happened on 22.05.2014. She had given evidence 11 years after the incident.

In the indictment, the date of offence has been mentioned as 21.09. 2011. Both PW1 and PW2 confirmed that the complaint was lodged on the date of incident at the police.

In the case of **The Attorney General v. Sandanam Pitchi Mary Theresa** (2011) 2 Sri L.R. 292 held that,

> *"Whilst internal contradictions or discrepancies would ordinarily affect the trustworthiness of the witness statement, it is well established that the Court must exercise its judgement on the nature of the inconsistency or contradiction and whether they are material to the facts in issue. Discrepancies which do not go to the root of the matter and assail the basic version of the witness cannot be given too much importance. Witnesses should not be disbelieved on account of trifling discrepancies and omissions. When contradictions are marked, the Judge should direct his attention to whether they are material or not and the witness should be given an opportunity of explaining the matter."*

Justice Thakkar in **Bhoginbhai Hirigibhai v State of Gujarat** 1983 AIR SC 753 stated:

> *"Discrepancies which do not go to the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when the all-important probabilities-factor echoes in favour of the version narrated by the witnesses."*

PW7, WPC 137 Padmini had recorded the statement of the victim PW1 and her mother, PW2 on 21.09.2011 at 18.50 hours at the Walasmulla Police Station. This was admitted under Section 420 of the Code of Criminal Procedure Act No.15 of 1979 by the defence.

Considering this admission, it is quite clear that the date of incident was 21.09.2011 which was correctly reflected in the second count of the indictment. As such, no prejudice has been caused to the Appellant. Hence, this ground has no merit.

In the second ground, the learned Counsel for the Appellant contended that the probability of the incident is doubtful.

PW1 in her evidence had vividly narrated the incident without any contradictions or omissions. Further, PW2 had given evidence on what she had seen and come to know from the victim at that time. Her reaction and promptness in lodging the complaint with the police clearly demonstrates the happening of the incident as narrated by the victim.

A witness's credibility would include their believability and trustworthiness. This involves elements such as honesty and accuracy of the witness, which would make such testimony reliable. The main purpose of doing so, would be to determine how much importance a judge or jury must give to statements by a witness when deciding a case. In any legal proceeding, assessing credibility and reliability is of utmost importance, and doing so includes the evaluation and consideration of a number of factors in order to ascertain if the witness's account is most likely to be true.

In sexual offence cases, corroboration is not a *sine qua non* to secure a conviction. As long as the victim's evidence does not suffer from ambiguity or infirmity in a manner which affects the root of the case, there is no bar for the court to act and rely on the said evidence to decide the case.

In the case of **Sunil and Another v. The Attorney-General,** (1986) 1 SLR 230 it was held:

> *"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."*

Hence, this ground of appeal also devoid any merit.

In the final ground the Appellant contended that the learned High Court Judge has failed to analyse the evidence beyond reasonable doubt. As this ground is connected to ground number two, I reiterate that the learned High Court Judge had very correctly analysed the evidence presented by the prosecution and the defence, and had correctly arrived at the correct finding that the Appellant is guilty of count number two. Hence, this ground also has no merit.

In this case the Appellant was sentenced to 8 years rigorous imprisonment for the second count. In the mitigating submission, it was revealed that the Appellant was 72 years of age when passing the sentence. Learned Counsel submitted that the Appellant is 74 years now. Considering the older age of the Appellant as a special circumstance, the Learned Counsel urges the indulgence of this court to consider applying the principles laid down in the Supreme Court determination No. 03 of 2008 decided on 15.10.2008.

The Learned Additional Solicitor General having considered the submissions made by the counsel for the Appellant, informed the court that given the facts and the circumstances that led to the conviction and other incidental matters, if the court decides to apply the relevant principle due to the uniqueness of this case and only in relation to the age of the Appellant, he would not be standing in the way as sentencing is a matter which entirely vests in the Court.

In this case there is no doubt that the Appellant had committed a very serious offence punishable under the law.

Considering the facts of the case and the submissions made by both counsels, I conclude that this is an appropriate case to re-consider the quantum of the custodial sentence against the Appellant.

I, therefore, with the guidance of the judgment given in SC Reference No.3 of 2008, set aside the sentence of 08 years rigorous imprisonment imposed on the Appellant in respect of count number two by the Learned High Court Judge of Tangalle and substitute a sentence of four years rigorous imprisonment. The sentence is to take effect from the date of Judgment, i.e., from 28.03.2024. Further, I order the fine and the compensation to remain the same.

Subject to the above variations, the appeal is dismissed.

The Registrar of this Court is directed to send this judgment along with the original case record to the High Court of Tangalle.

**JUDGE OF THE COURT OF APPEAL**

**R. P. Hettiarachchi, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**