

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

In the matter of an Appeal under and in terms
of Section 331 of the Code of Criminal
Procedure Act No.15 of 1979.

CA Case No: CA-HCC 006/25

HC of Puttalam Case No: HC-38/2022

The Democratic Socialist Republic of Sri
Lanka.

Complainant

Vs

Sehu Dawood Sana alias Sana Appa alias
SeguDawudu Segu Neina Marikkar

Accused

And Now in Between

Sehu Dawood Sana alias Sana Appa alias
SeguDawudu Segu Neina Marikkar

Accused -Appellant

Vs

The Attorney General
Attorney General's Department
Colombo 12.

Complainant- Respondent

Before: B. Sasi Mahendran, J.
Amal Ranaraja, J

Counsel : Azard Mustaffa for the Accused- Appellant
Yuhan Abeywickrama, DSG , for the Respondent

Written

Submissions: 16.09.2025 (by the Accused-Appellant)

On 29.09.2025 (by the Respondent)

Argued On: 20.01.2026

Judgment On: 05.03.2026

JUDGEMENT

B. Sasi Mahendran, J.

The Accused-Appellant (hereinafter referred to as 'the Appellant') was indicted before the High Court of Puttalam for having committed the offence of Grave Sexual Abuse on one minor namely Mohommad Rifai Fathima Risana on or about between 01.01.2020 and 12.10.2020, 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 6 witnesses and marking productions P1-P2 and thereafter closed its case. The Appellant, in his defence, made a dock statement.

Upon conclusion of the trial, the Learned High Court Judge delivered the judgment on 11th December 2024. The appellant was found guilty on all three counts of the indictment. For each count, the appellant was sentenced to ten years of rigorous imprisonment and fined Rs. 10,000, with a default sentence of three months' simple imprisonment for non-payment of the fine. The Learned High Court Judge ordered that all sentences run concurrently.

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

1. The judgement and punishment imposed on the accused by the learned High Court Judge of Puttalam bad in law (sic)
2. The judgement is against the witness (sic) in the case
3. There is no definite date for the incident and the first complaint to the police was delayed.
4. The PW1 is not a trustworthy witness, and there is no corroborative evidence and the judgement of the learned High court judge greatly based on the evidence of PW1.
5. PW1 in her evidence mentioned more than one incident of sexual abuse, but in her police statement she has detailed only one incident. This was marked as omission in the trial which was not considered by the learned high court judge.
6. No consideration was given to the Dock statement made by the accused. And also, that prosecution did not prove lack of consent beyond reasonable doubt, and that medical evidence did not corroborate sexual abuse, and that there was delay in making the complaint.

The facts and circumstances of this case are as follows,

PW 01, Mohommad Rifai Fathima Risana, the victim in this case, was 11 years old when giving evidence and admitted that the incident occurred while she was in Grade 9. The witness stated that the appellant is a relative on her father's side, residing near her house, and at the time of the incident lived with his wife and son. The victim confirmed that she had given a statement to the police regarding the incident on 12th October 2020. She testified that the last incident had taken place approximately three weeks before the said statement was recorded.

PW 1 narrated the final incident in the following manner. On the day in question, she had returned home from school and later in the evening went to the Appellant's house as usual, where he was alone. (This fact was not denied by the Appellant when he was giving the dock statement) She had swept the house and sat in the front, while the Appellant had gone into the room after cooking. She went to the room in the Appellant's house to get pins; the Appellant was already inside. The Appellant had laid her on the floor and removed her leggings, and the under short was not removed. The Appellant, who was wearing a sarong, lay on her and had committed the act by keeping his penis between her thighs, continued for 5 or 10 minutes. She has stated that at that time she felt scared and did not tell anyone about the incident for fear of causing problems at home.

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According to PW 01, the appellant committed sexual acts against her on three separate occasions. She described the second incident as having occurred one week prior to the incident previously mentioned. On that occasion, while she was in the Appellant's house, he removed her leggings and, while she was standing in the same room where she had gone to put clothes, she felt his penis between her thighs where no one was at home.

The third incident, she stated, had taken place one week before the second. On that morning, she had gone to the appellant's house wearing a gown and underwear. After watching television, she went into another room to collect rice. The appellant followed her, asked her to sit on the floor, lifted her gown, removed her underwear, and lay on top of her, placing his penis in her thigh area for approximately five minutes.

The witness further testified that she came to know that a person named “Maisaar,” a neighbor from the area, had informed the police about these incidents. Following this, she went to the police station with her mother and gave a statement. She was subsequently examined by a doctor, to whom she recounted the details of the incidents. Further, she stated that following the incidents, there were rumors circulating in the village, which caused her education to be interrupted.

During cross-examination, when the defence asked whether there had been an argument between the appellant and her mother, the witness stated that it occurred after her questioning and not beforehand. She further testified that in her police statement, she had referred only to the first incident, and that it was for the first time in court that she gave evidence about two additional incidents. After perusing the Information Books, the court has rejected the defence application, indicating that there are no such omissions in her statement.

The victim has clearly described how she remembers each of the three incidents. She recalled one incident that occurred when she entered the room to take pins, the other when she went to collect clothes, and another when she went to the room to get rice.

Her testimony demonstrates consistency in recollecting the circumstances of each event. The prosecution has established that the Appellant engaged in abusive conduct toward the victim on three distinct occasions. I note that the victim’s testimony is consistent, and she clearly described how the incidents occurred. She stated that the Appellant had told her not to tell anyone about these incidents and that she had not told anyone, fearing it would cause problems between the families. It should be noted that this happened when she was 14 years old. The fact remains that it was only after someone informed the police that this incident came to light.

The principal argument advanced by the defence was that this evidence ought to be rejected on the ground that the victim had made her statement belatedly. In considering this contention, it is necessary to examine whether the testimony of a witness who comes forward belatedly can be accepted.

In cases of sexual abuse, delays in reporting are not uncommon, often arising from fear, trauma, or lack of awareness. In the present matter, it must be borne in mind that the victim is a child studying in Grade 9 and belongs to a minority community as a Muslim child. Her vulnerability and circumstances provide important context. She has also

furnished specific reasons for the delay in making her statement to the police, explaining that she was frightened and hesitant to disclose the incident out of concern for potential repercussions at home.

At this stage, reference must be made to judicial decisions that have addressed the admissibility and reliability of delayed statements.

In *Sumanasena Vs Attorney General* [1999] 3 SLR 137 at page 140, His Lordship Justice Jayasuriya held as follows.

"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."

In *Ajith Samarakoon Vs the Republic* [2004] 2 SLR 209 at page 220, His Lordship Justice Jayasuriya held as follows.

"Just because the statement of a witness is belated the Court is not entitled to reject such testimony. In applying the Test of Spontaneity the Test of Contemporaneity and the Test of Promptness the Court ought to scrupulously proceed to examine the reasons for the delay. If the reasons for the delay adduced by the witness are justifiable and probable the trial Judge is entitled to act on the evidence of a witness who had made a belated statement."

In the case of *Dhannasiri vs. The Republic of Sri Lanka* 2012 (1) SLR 268 Tilakawardane, J held *inter alia*:

"Two critical tests before considering belated evidence as reliable " evidence are: firstly reasons for delay and secondly, whether those reasons are justifiable."

In the same case in the Court of Appeal (2010 (2) SLR 241), Sisira de Abrew, J held *inter alia*:

"Because the witness is a belated witness, Court ought not to reject his testimony on that score alone. 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 the belated witness."

Considering the above legal principles, I hold that there is no basis to reject the evidence of the victim who made a belated statement to the police, as she has provided a satisfactory explanation for the delay. In light of these reasons, I am satisfied that the Learned High Court Judge correctly concluded that her testimony is both truthful and credible. I'm mindful that the victim's evidence was not corroborated by any other witnesses. But it is well-settled law that a conviction for the sexual offences can be based on the sole testimony of the prosecution if it is reliable and unimpeachable. I hold that the victim's evidence inspires confidence as she described the offence. Therefore, the testimony of the victim could be believed without corroboration.

The main allegation raised by the defence is that due to the anonymity between the Victim's mother and the brother, he was falsely implicated. But the Learned High Court Judge rejected this defence, holding that it failed to create any doubt over the prosecution's version of events. It should be noted that in his dock statement, he admitted the fact that the victim visited his house on several occasions.

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Our courts have given the following guidelines with regard to the evaluation of the evidence of an accused person.

1. If the evidence of the accused is believed, it must be acted upon.
2. If the evidence of the accused creates a reasonable doubt in the prosecution case, the accused must be acquitted.

I hold that the accused version has failed to create any doubt in the prosecution's case, as I have already indicated, the credibility of the victim has not been impeached by the defence. The Learned High Court Judge has correctly applied the principles discussed above, and in my view, rightly rejected the defence's version.

Therefore, I am of the considered view that none of the grounds of appeal advanced by the Appellant's counsel warrant interference with the findings of the Learned High Court Judge. For the above mentioned reasons, I am not inclined to interfere with the decision of the Learned High Court Judge.

The judgment dated 11th December 2024 is upheld, and the conviction, along with the sentence, remains in effect.

The appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL