

**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 228/2020

HC of Trincomalee Case NO : HCT 999/2019

The Democratic Socialist Republic of Sri
Lanka.

COMPLAINANT

Vs

Mohamed Haniffa Riyas

ACCUSED

And Now in Between

Mohamed Haniffa Riyas

Presently at'

Remand Prison

ACCUSED -APPELLANT

Vs

The Attorney General

Attorney General's Department

Colombo 12.

COMPLAINAT- RESPONDENT

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

Counsel : Anil Silva PC, for the Accused- Appellant
Azard Navavi ASG, for the Respondent

Written 17.01.2023 (by the Accused-Appellant)

Submissions: 14.02.2023 (by the Respondent)

On

Argued On : 10.12.2025

Judgment On: 11.02.2026

JUDGEMENT

B. Sasi Mahendran, J.

The Accused-Appellant (hereinafter referred to as 'the Appellant') was indicted before the High Court of Trincomalee on the following charge,

“That on or about 28.05.2017 within the Jurisdiction of this Court in Muthur, you in order to fulfill your carnal lust, had placed your hand on the female organ of Umakandan Dilakshani , that is you having groped the sexual organ with your hands of the above named Umakandan Dilakshani ,and that you have thereby committed an offence of a grave sexual abuse punishable under Section 365 (b) (2) (b) of the Ceylon Penal Code as amended by Act No 22 of 1995, Act No 29 of 1998 and Act No 16 of 2006.”

On 14.07.2020, State Counsel led the evidence of PW1, Umakandan Dilakshani. In her testimony, she described how the appellant molested her and further stated that on the same day, the appellant also molested two other minors, Karshika and Nikshida. After her evidence concluded, the trial was adjourned to 03.09.2020. In the meantime, on 24.08.2020, the learned High Court Judge heard case No. 1015/20 against the same appellant, during which Karshika again gave evidence and narrated the same story elicited by the PW 01 in this case.

Thereafter, both cases were taken simultaneously; evidence was recorded on the same date, and both judgments were delivered on the same day. Our courts have consistently held that consolidating trials against a single accused for similar offences is impermissible, and such a conviction is considered illegal. I am mindful of the following judgements in this regard.

The King v. Mendis, 16 NLR 252 at page 253, Lascelles C.J held that:

“There is no objection, as regards joinder of counts, to any one of these indictments, but by some blunder, which has not been explained, the accused was tried simultaneously on all indictments and was convicted on all the charges in each of the indictments.

.....

Further, it is impossible to hold that the accused was not prejudiced by the course taken. His position is obviously worse than it would have been had he been tried on any one of the indictments. That this is so is apparent by comparing the position in which the accused would have been if he had been tried on one indictment only with that in which he was placed at the trial. If, for example, only for giving false evidence at the inquest, he would obviously have been in a better position than he was when two other indictments were before the Court charging him with having made false statements about the same matter on four different occasions.

In my opinion, the simultaneous trial of these three indictments is a fatal irregularity, and I set aside the conviction and acquit and discharge the accused.”

The King v. Podi Appuhamy, 29 NLR 102, at page 105, Schneidex, J held that:

“There is another reason for which their convictions might be set aside, and that is that both the accused were tried together although upon separate indictments. The charges were different.. But that procedure, it might be argued, has not prejudiced them. Even so I think that the irregularity was of such a grave nature that the convictions should be set aside on that ground too. If they had been set aside on that ground, the proper order would have been for a fresh trial. I prefer therefore to rest my decision on the other reasons given by me.”

In the instant case, the appellant was tried before the same judge on similar offences. During the proceedings, the judge heard witness testimony regarding the incidents, and before reaching his conclusion, appears to have reasoned that since the appellant was charged with similar offences, he must therefore be guilty. Before evidence been concluded he opined that the Appellant is guilty of the offence.

In criminal trials, the prosecution is generally restricted from presenting evidence of the accused's bad character. This principle is embodied in Section 54 of the Evidence Ordinance, which limits the admissibility of such evidence to prevent undue prejudice against the accused.

54. In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation 1. - This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2. - A previous conviction is relevant as evidence of bad character in such case.

I am mindful to refer to the **The Law of Evidence, Volume I, E.R.S.R. Coomaraswamy**, at page 684,

“13C.3. Generally Bad Character is Irrelevant in Criminal Cases – Section 54

(i) Section 54 - Bad character is generally irrelevant

Section 54 lays down the general rule that in criminal proceedings, the fact that the accused has a bad character is irrelevant, except in the exceptional cases mentioned therein.

65 Evidence may not be given of the accused's previous convictions or misconduct on other occasions for the purpose of supporting an argument that he is the kind of person who would commit the crime charged. As Wigmore puts it, "the rule, then, firmly and universally established in policy and tradition is that the prosecution may not initially attack the defendant's character"

(i) Principle underlying the section

The desire for fair play and even indulgence has led to this rule. The principle underlying the rule is that hardship is possible, as evidence of bad character may lead the mind of the judge or jury away from the point to be decided, namely, the guilt or innocence of the accused person in regard to the particular offence with which he is charged. The main ground is prejudice.

It is pertinent to refer to the passage in “*the proof of guilt*”, **Third Edition, Glanville Williams, page 212**

THE EXCLUSION OF CHARACTER AND CONVICTIONS

The feature of the English system that most puzzles and intrigues foreign lawyers is that the prosecution are generally not allowed to give evidence of the accused's bad character or previous convictions in order to help establish that he committed the crime in question. Such evidence can in general be given only after conviction in order to determine punishment. In many other countries, on the other hand, this evidence is the very first to be adduced at the trial. On the face of it the English system might seem to be over-lenient to the accused, because we do in everyday life attach importance to the question whether the person whose worth we are assessing has a criminal record or not. One reason for the English rule is that evidence of general evil propensity is thought to widen the issues of the trial so immensely as to be unfair to the accused. Even the notorious Judge Jeffreys may be found to say, in Hampden's case, that "to rake into the whole course of a man's life is very hard"; and Mr. Justice Withins said on the same occasion: "We would not suffer any raking into men's course of life, to pick up evidence that they cannot be prepared to answer to." This reason would not in itself explain why we exclude evidence of previous offences which are admitted by the defendant, or of previous convictions, which can be precisely proved. However, there is a second and stronger justification for the rule, which explains why we exclude even evidence of previous convictions, as a general principle.

This is the exaggerated importance that a jury, consisting of persons without legal experience may attach to this kind of evidence; for they may argue: "This man is

charged with crime, and the police think he did it, and he is clearly of criminal habits; therefore he must be guilty." Mr. Justice Willes put the point in the following words:

" [Evidence of character] is strictly relevant to the issue; but it is not admissible upon the part of the prosecution, because as my Brother Martin says, if the prosecution were allowed to go into such evidence, we should have the whole life of the prisoner ripped up, and, as has been witnessed else-where, upon the trial for murder you might begin by showing that when a boy at school the prisoner had robbed an orchard, and so on through the whole of his life; and the result would be that the man on his trial might be overwhelmed by prejudice, instead of being convicted by that affirmative evidence which the law of this country requires. The evidence is relevant to the issue, but is excluded for reasons of policy and humanity; because although by admitting it you might arrive at justice in one case out of a hundred, you would probably do injustice in the other ninety-nine."

In my considered opinion, hearing both cases together particularly in matters involving child abuse created a risk of prejudice. Before the evidence was fully concluded, the testimony led by the prosecution in one case could have influenced the judge's perception of the appellant's character in the other. As a result, the convictions cannot be regarded as having been based solely on the evidence led before him rather it was prejudicing similar offences where the appellant has committed.

On this basis, we are not satisfied with the conviction recorded on 02.12.2020. Therefore, we quash the conviction and the sentence imposed and order a retrial against the Accused-Appellant.

JUDGE OF THE COURT OF APPEAL

**Amal Ranaraja J,
I AGREE**

JUDGE OF THE COURT OF APPEAL