

**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.**

Democratic Socialist Republic of Sri
Lanka

Complainant

Court of Appeal
Case No. **CA/HCC/258/2024**

Vs.

High Court of Hambantota
Case No. **HC 63/2015**

Hatharin Kandambige Sagara Sampath

Accused

AND NOW BETWEEN

Hatharin Kandambige Sagara Sampath

Accused-Appellant

Vs.

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

Complainant-Respondent

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

Counsel: Chrishan de Alwis, AAL for the Accused-Appellant.

 Maheshika Silva, D.S.G. for the Respondent.

Argued on: 20.01.2026

Judgment on: 09.02.2026

JUDGMENT

AMAL RANARAJA, J.

1. The Accused-Appellant (hereinafter referred to as the “appellant”) has been indicted in the *High Court of Hambantota* in High Court case number HC 63/2015

2. The charge in the indictment is as follows;

That on or about, April 21, 2014, at *Thissapura*, within the jurisdiction of this Court, the appellant did commit the offence of rape on a woman, an offence punishable under section 364(1) of the Penal Code (as amended by Act, No.22 of 1995).

3. At the conclusion of the trial the learned High Court Judge has convicted the appellant of the charge and sentenced him as follows;

Has imposed a fine of Rs. 10,000.00 with a term of ten months rigorous imprisonment in default.

Additionally, also imposed a term of nine years rigorous imprisonment.

The appellant has also been directed to pay a sum of Rs. 100,000 as compensation to PW01 with a term of two years rigorous imprisonment in default.

4. Aggrieved by the conviction, the disputed judgment together with the sentencing order, the appellant has preferred the instant appeal to this Court.

Case of the prosecution

5. At the time of the incident, PW01 has been a married woman living with her husband who worked as a laborer.
6. On the particular day, her husband has been scheduled for a night shift rendering him absent from his house. PW01 thus has been alone in the house. Her solitude has been abruptly interrupted that night when she distinctly heard the ring of a mobile phone coming from just outside her house immediately adjacent to a wall. PW01 has remained inside.

A while later, an individual who subsequently identified himself as the appellant, has stated his intention was to meet PW01's husband. PW01 still within the perceived safety within her home has promptly informed the appellant that her husband was not present and suggested he instead approach a neighbour to discuss the matter he has intended to raise with her husband.

The encounter has left PW01 deeply unsettled. The barking of dogs in the vicinity has unsettled her further. Feeling vulnerable and uncomfortable, being alone in the house for the remainder of the night, PW01 has decided that it would be prudent to seek refuge.

Accordingly, she has intended to spend the night at the home of her neighbour for greater safety. In anticipation of reaching her neighbour's house, PW01 has proceeded to step out of her own and begun walking the temporary gate erected in her garden. At this juncture, the appellant has suddenly accosted and forcefully seized her.

To prevent her from raising alarm or screaming for help, the appellant has forcefully manipulated the cheong cheong cloth PW01 was wearing, effectively muffling her. The appellant has then dragged PW01 into a secluded and isolated area in the immediate vicinity. At that isolated location, the appellant has allegedly proceeded to engage in sexual intercourse with PW01 entirely without her consent or acquiescence.

7. Consequently, when the appellant moved away to retrieve his slippers, PW01 has seized the opportunity and escaped to PW06's house. PW01 has related the incident to PW06. Accompanied by PW06, PW01 has then gone to her husband's workplace, thereafter travelled together and filed a police complaint.
8. An investigation has commenced during which, PW01 has been examined by PW07, Dr. R. A. S. Senevirathna, *consultant judicial medical Officer, District Hospital of Hambantota*, the medico-legal report based on PW01's examination has been subsequently presented as evidence and marked 37-1.

Case of the appellant

9. The appellant has contended that the act of sexual intercourse with PW01 on the occasion in question was with her consent, just as he had on previous occasions.

Grounds of appeal

10. When the matter was taken up for argument, the learned Counsel for the appellant urged the following grounds of appeal:
 - i. Failure to address material contradictions in the prosecution's case.

- ii. Failure to address material omissions in the prosecution's case.
- iii. Improper admission of hearsay evidence prejudicing the defence.
- iv. Failure to address the improbability of the complainant's account.
- v. Erroneous rejection of the accused's dock statement.
- vi. Erroneous reliance on injuries as corroboration.
- vii. Failure to produce medico-legal report of the accused.

Evaluation

11. Prior to being examined by PW07, the *consultant judicial medical officer* PW01 (the patient) has provided a brief account of the incident to the doctor. In her description she has stated as follows;

“She was sexually abused by Sagara around 9.30 pm in the night on 22.04.2014. He threatened her to do sexual intercourse with him. He closed her mouth forcefully and squeezed her neck. Though he said that two more persons in an around, she did not see any others. He did vaginal intercourse in a jungle area”.

[*vide* the medico-legal report by *Dr. A.S.Senevirathne*,
page 417 of the appeal brief]

12. *Dr. Senevirathne* testifying as PW07 has stated that he conducted the medico-legal examination of PW01. During his assessment, he has observed distinct external injuries consisting of aberrations and a contusion. In his professional opinion regarding the mechanism of injury, PW07 has concluded that those bodily injuries were more suggestive of restraint and resistance during the sexual act.

In light of the issues previously discussed, it is clear that PW01 has maintained a consistent narrative throughout. This consistence is further supported by expert evidence which lends credence to PW01's claim. The alignment between PW01's narrative and the findings presented by the expert witness underscores the reliability of her account.

13. Consistency in testimony is crucial in establishing credibility. PW01's unwavering commitment to her narrative re-enforces the strength of her position. Furthermore, the corroborative expert evidence provides an objective framework that not only validates her experience but also enhances the overall integrity of her claims.

14. PW01 has provided testimony three years after the incident in question, given this considerable time gap it is important to recognize that memory lapse can occur, potentially affecting the recollection of her account. Additionally, PW01 comes from a rural background which may have made her feel overwhelmed by the court room atmosphere. This

unfamiliar environment could further impact her ability to recall events with clarity and confidence.

15. In her testimony, PW01 could have attempted to articulate her experience in a more detailed manner than she did when she initially reported the incident to the police, however this effort to elaborate may have led to inconsistencies in her narrative. Under such circumstances, it is not uncommon for witnesses to inadvertently contradict themselves or omit certain details, especially in the face of intense questioning by the opposing party, who may highlight these discrepancies to cast a doubt on her credibility.

16. Further, micro-analyzing each discrepancy without giving consideration to the mental state of PW01, her thought process and the totality of her evidence is also not reasonable. It is essential, for the Court to consider these factors when evaluating PW01's testimony.

The contradictions highlighted in V01 to V03, as well as the omissions noted by the High Court, do not undermine the essence of PW01's narrative. Consequently, these discrepancies can be considered immaterial to the core of the testimony of PW01.

17. While it is essential to scrutinize the details of any witnesses account, the fundamental aspects of PW01's story remain intact despite the noted discrepancies. The essence of the testimony, conveys a coherent

and a plausible series of events which provides a necessary understanding of the case at hand. The presence of minor contradictions or omissions may raise questions about the precision of PW01's memory but do not detract from the overall credibility of the narrative.

18. It is important to distinguish between minor details that may be imperfectly recalled and the overarching truth that the witness seeks to convey.

19. Accordingly, the contention that the discrepancies in the witness's testimony arose because PW01 had attempted to cover up the circumstances surrounding the appellant's visit to her home that night must fail.

20. Hearsay evidence is an out of court statement offered in court to prove the truth of the matter asserted, generally deemed inadmissible because the original speaker is not under oath and available for cross examination, making it unreliable.

However, it can become admissible under specific exceptions like dying declarations or when offered for purposes other than proving the truth of the statement.

21. Parts of the narrative provided by PW01 which includes references to her parents, some villagers and who were not called as witnesses by the

prosecution has however not been deemed substantive evidence by the learned high court judge in his disputed judgment. Therefore, it cannot be argued that he has improperly considered hearsay evidence in reaching his conclusion as reflected in the disputed judgment.

22. The '*test of probability*' is a foundational method used by courts to evaluate the credibility of witness's narration by assessing whether his story aligns with common sense, human experience and objective independent evidence. It helps judges determine which version of events is more likely than not or inherently probable.

23. The learned counsel for the appellant has contended that the dragging of PW01 by the appellant could not have occurred as described by her. However, in pages 107 to 109, and page 118, PW01 has clearly explained how the appellant manipulated the chez cloth she was wearing to muffle her and subsequently drag her to the nearby isolated area. Such explanation is plausible and aligns with common sense.

24. Further, PW01 had been found to be a truthful witness despite being unable to recall the specific details of the chez cloth from the incident. Her inability to recall specific details of the chez cloth does not negate her narrative that a chez cloth was used to muffle her.

25. Another point contended on behalf of the appellant is the alleged logical inconsistency of the appellant taking phone calls in the isolated area. This action should be considered in light of the fact that the appellant

had told PW01 that two other individuals were going to join him and would also engage in sexual intercourse with her.

26. Additionally, the appellant has stated to PW01 that he was armed with a pistol. This disclosure would have undoubtedly instilled fear in PW01 and profoundly subdued her. This fear has been demonstrably evidenced in her subsequent action. Upon escaping PW06's house, PW01 has immediately warned its occupants that the appellant might shoot them.

27. During the cross examination of PW01, the appellant's defence posited among other suggestions that PW01 had engaged in consensual intercourse with the appellant, that her husband returned unexpectedly that night and any subsequent assault on PW01 was perpetrated by her husband.

28. These suggestions have been however unequivocally denied by PW01. Instead, PW01 has maintained a consistent narrative that she accompanied by PW06, first proceeded to her husband's workplace. After confiding in him about the incident, they then travelled together to lodge a formal police complaint.

29. A crucial point of fact is when PW01 testified in court, her husband had unfortunately passed away due to an elephant attack, rendering him unavailable as a corroborating witness. The prosecution's case has been significantly bolstered by several pieces of evidence. It has been established that PW01 had exhibited clear signs of distress upon her

arrival at the *Police Station* to make a complaint. Furthermore, the *consultant judicial medical officer* (PW07) who examined PW01 has provided an expert opinion stating that the bodily injuries observed on her were highly suggestive of restraint and resistance having occurred during the sexual act.

30. The learned High Court Judge has meticulously considered these corroborative pieces of evidence from the prosecution alongside other material evidence and the appellant's dock statement undertaking a comprehensive and holistic assessment.

31. Consequently, the learned High Court Judge has determined that the appellant's narrative, as presented in the dock statement, lacked credibility when weighed against the compelling prosecution evidence and has therefore decided not to rely upon it.

32. Detailed and cogent reasons have been specifically provided for this determination. Given these compelling circumstances and the robust assessment undertaken by the learned High Court Judge, there is no merit in the contention that the appellant's dock statement was erroneously rejected due to any misapplication of legal principles or factual misrepresentations.

33. It has also been submitted by the learned Deputy Solicitor General that any infirmity in the investigation by not producing the appellant for a medical examination does not raise a doubt in the credibility of PW01.

34. In those circumstances, I am not inclined to interfere with the conviction, disputed judgment together with the sentencing order.

I proceed to affirm the same and dismiss the appeal.

I make no order regarding costs.

Appeal is dismissed.

35. The Registrar of this Court is directed to send this judgment to the *High Court* in *Hambantota* for compliance.

Judge of the Court of Appeal

B. Sasi Mahendran, J.

I agree,

Judge of the Court of Appeal