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.

Democratic Socialist Republic of Sri Lanka

Complainant

Vs

Weerasinghe Pathiranage Somasiri

Accused

CA Appeal No:

CA/HCC/0229/2023

HC Panadura Case No:

HC-3903/2019

AND NOW BETWEEN

Weerasinghe Pathiranage Somasiri

Accused – Appellant

Vs

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

Complainant – Respondent

Before : **P. Kumararatnam, J.**

Pradeep Hettiarachchi, J.

Counsel : Haffel Fariez for the Accused – Appellant.
Anupa De Silva, DSG for the State.

Argued on : 08.10.2025

Decided on : 12.02.2025

Pradeep Hettiarachchi, J

Judgment

1. The accused-appellant (hereinafter referred to as the appellant) was indicted by the Attorney General in the High Court of Panadura on three counts of grave sexual abuse committed on a child of under 16 years of age. These offences are punishable under sections 365B(2)(b) of the Penal Code, as amended by Acts No. 22 of 1995, No. 29 of 1998, and No. 16 of 2006.

2. At the trial, 6 witnesses testified on behalf of the prosecution. When the defense was called the appellant remined silent.

3. At the conclusion of the trial, on 07.08.2023, the learned High Court Judge convicted the appellant for the third charge set out in the indictment and sentenced the appellant for 7 years rigorous imprisonment. The appellant was also imposed a fine of Rs 2500.00 carrying a default sentence of one-month simple imprisonment.

4. Being aggrieved by the said conviction and the sentence, the appellant has preferred the instant appeal. Although several grounds of appeal were urged in the petition of appeal and in the written submissions, during oral arguments, counsel for the appellant primarily relied on three grounds of appeal, namely.

a. *The learned High Court Judge has failed to analyze the contradictions present in the prosecution evidence;*
b. *The learned High Court Judge has failed to appreciate the lack of credibility of PW3's evidence; and*
c. *In the absence of corroborative evidence, it is unsafe to convict on the evidence of PW1.*

5. Since the appellant has placed much reliance on the contradictions highlighted in the testimonies of the witnesses, it is apposite to consider whether the said contradictions have the effect of tarnishing the credibility of the evidence of PW1.

6. To elaborate further, the cardinal issue that needs consideration of this court is whether a particular piece of evidence which the appellant claims to be contradictions, significant and quite material which go to the root of the prosecution case. In this regard, following authorities would be of much assistance.

7. In ***Aadam Kasam Shaikh vs. The State of Maharashtra, 2006 Cr LJ 4585 (4589),*** the

   Court held that;

   (1) *"the evidence of a witness cannot be discarded merely because he has made improvements over his police statements by stating some of the facts for the first time in his deposition before the court, if the facts stated for the first time before the court is in the nature of elaboration, do not amount to a contradiction, and the evidence of witness does not militate against his earlier version".*

8. In the case of ***Mohamed Niyas Naufer and others v. Attorney General (Sc. 01/2006 decided on 08/12/2006),*** the Court observed that;

   "when faced with contradictions in a witness's testimonial, the Court must bear in mind the nature and significance of the contradictions, viewed in light of the whole of the evidence given by the witness."

9. Justice Shirani Tilakawardane, J. in the case of ***AG v. Mahadurage Dimson and 3 Others, CA 141/A-B-2000,*** decided on 24.11.2003, Her Ladyship held that;

> (1) *"The Courts must, while evaluating evidence, bear in mind that in a case of rape especially a girl of tender age would not come before a Court merely to make a humiliating statement against her honour. Therefore, contradictions which have no material effect on the veracity of the prosecutrix case should not be allowed to throw out an otherwise reliable prosecutrix case."*

10. As can be seen from the evidence, the defence marked three contradictions, D1 to D3, when cross-examining PW1, the victim. It must be noted that D1 is not a contradiction but merely an omission, which does not affect the credibility of the victim. This omission concerns whether the victim had stated to the police that PW3 had assaulted the appellant with a pipe.

11. Similarly, the contradictions marked as D2 and D3 are not related to any critical issue of the case that could cast doubt on the credibility of PW1. The contradictions marked as D4 and D5 through PW3 are also not connected to any matter that goes to the root of the case. Therefore, in my view, these contradictions, whether appreciated by the learned trial Judge or not, would have no impact on the judgment.

12. In a case of this nature, given the age of the victim and the considerable time gap between the date of the incident and the date of the trial, the court cannot expect the evidence to be entirely free of contradictions or omissions. A victim's testimony does not need to be perfect to be credible. What is essential is the consistency of the core aspects of the narrative, even if minor details vary. Human memory, particularly that of children is inherently fallible, and discrepancies on peripheral matters do not automatically render the entire account untrustworthy. Factors such as the lapse of time, the frequency with which the victim has been required to recount the incident, and the victim's age can all affect the accuracy of recall. Accordingly, courts must evaluate such testimony with careful scrutiny of the overall narrative, giving due regard to child psychology and the judicial safeguards applicable to the assessment of evidence given by child witnesses.

13. To elaborate further, it is unrealistic and illogical to expect any witness to recount an incident with photographic precision. What is important for the court to examine is whether the contradictions or omissions identified are of such nature and gravity as to undermine the credibility of the prosecution evidence or create a reasonable doubt in the prosecution's version of events. Only discrepancies that go to the root of the case, and not those confined to peripheral or incidental matters, should influence the court's assessment.

14. Thus, in the present case, the contradictions marked by the defence are not of such significance as to impeach the credibility of the prosecution witnesses. Accordingly, the first ground of appeal advanced by the defence is devoid of merit and cannot be accepted.

15. The second ground of appeal urged by the appellant is that the learned trial Judge failed to properly appreciate that the evidence of PW3 lacks credibility. D4 and D5 are the contradictions marked through the evidence of PW3. D4 relates to the location from which PW3 observed the appellant accompanying the victim to the room. D5 concerns the position of the appellant, whether he was on the bed or on the floor, when PW3 saw him.

16. As stated earlier, none of the contradictions marked through the testimony of PW3 go to the root of the prosecution case. The incident occurred in 2014, and the trial commenced in November 202i, seven years later. Therefore, it is unreasonable to expect the witnesses to narrate what they saw with mathematical precision at the trial. Some inconsistencies, omissions, and contradictions are inevitable in such circumstances. Nevertheless, as long as these discrepancies do not affect the core issues of the case, the court can safely base a conviction on such evidence.

17. The learned High Court Judge has analyzed the aforementioned contradictions in their proper perspective and explained why they do not go to the root of the matter in dispute. Accordingly, I find no error on the part of the learned trial Judge in assessing the creditworthiness of PW3's testimony, as the said contradictions are trivial in nature. Therefore, the second ground of appeal is also devoid of merit

18. In this regard, it is relevant to refer to the dictum in ***Fraad vs. Brown & Co. Ltd. 20 NLR 282,*** where it was held that when the issue is mainly on the credibility of witnesses an appellate court should not interfere unless the findings of the judge are perverse.

19. As held in ***Dharmasiri vs. Republic of Sri Lanka [2010] 2 SR1L.R 241***, credibility of a witness is mainly a matter for the trial Judge, Court of Appeal will not lightly disturb the findings of a trial Judge with regard to the credibility of a witness unless such findings of trial Judge are manifestly wrong.

20. Similar sentiments were expressed in ***Ariyadasa v Attorney-General, [2012] 1 Sri. L.R. 84***, by Sisira de Abrew J. and he held as follows:

    (1) *"Court of Appeal will not lightly disturb a finding of a trial Judge with regard to the acceptance or rejection of a testimony of a witness, unless it is manifestly wrong, when the trial judge has taken such a decision after observing the demeanour and the deportment of a witness. This is because the trial Judge has the priceless advantage to observe the demeanour and deportment of the witness which the Court of Appeal does not have."*

21. The third ground of appeal advanced by the appellant is that it is unsafe to rely on PW1's evidence and convict the appellant in the absence of corroborative evidence. It is, however, well established that in offences of this nature, it is often difficult to expect eyewitnesses other than the victim, as the offender usually selects a secluded location to commit the crime. In the present case, PW3 also witnessed the incident. According to PW3, when he when to the room where the Appellant and PW1 were, he saw the Appellant touching the genitals of PW1 with one hand while touching his own genitals with the other. The charge leveled against the appellant involves grave sexual abuse, and PW3's evidence corroborates PW1's testimony to a significant extent. No material contradictions appear between their accounts.

22. In the case of ***Sunil and another V. The Attorney General – (1986) 1 Sri L.R. 230,*** it was held:

    "It is very dangerous to act on the uncorroborated testimony of a woman victim of a sex offence", but it was held further that "but if her evidence is convincing, such evidence could be acted on even in the absence of corroboration".

23. The following judicial authorities clearly held that a conviction for sexual offences could be arrived on the uncorroborative evidence of the victim. It was held in the cases of ***The King V. Themis Singho – 45 NLR 378, and Premasiri and another V. The Queen – 77 NLR 85*** that

> *"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 a character as to convince the Jury that she is speaking the truth".*

24. In ***Regina V. W.G. Dharamasena – 58 NLR 15,*** it was held that

> *"In a charge of rape, it is not in law necessary that the evidence of the prosecutrix should be corroborated". Accordingly, the law permits either to act on corroborated or uncorroborated evidence in determining sexual offences. What expects from a trial Judge is to carefully analyze whether corroboration is needed or not.*

25. In the instant case, the appellant's identity was not in dispute, and the complaint regarding the offence was made promptly. The only matter to be established is the act of sexual abuse committed by the appellant. As noted earlier, there is no independent evidence to corroborate the act itself, as it was not witnessed by anyone else; it must be proved solely on PW1's evidence. Other incidental matters require no corroboration for the reasons discussed above. Accordingly, I hold that there is no issue regarding corroboration in this case.

26. During cross-examination, it was only suggested to PW1 that the appellant had not sexually abused her and that the evidence regarding sexual abuse was false. However, the victim's account of how the appellant asked her to come to the room and how she went with him has never been challenged during cross-examination. Consequently, this unchallenged prosecution evidence must be accepted, as, in the absence of any suggestion put to PW1 to the contrary, it amounts to an admission of the prosecution's version, in accordance with the judicial authorities cited below

27. An observation of the Indian judgment of ***Sarvan Singh v. State of Punjab - (2002 AIR SC (iii) 3652) at pages 3655 and 3656***, has been cited in the case of ***Ratnayake***

Mudiyanselage Premachandra v. The Hon. Attorney General - C.A. Case No. 79/2011, decided on 04.04.2017 as follows:

> *"It is a rule of essential justice that whenever the opponent has declined to avail himself of the opportunity to put his case in cross-examination, it must follow that the evidence tendered on that issue ought to be accepted."*

28. In the case of ***Himachal Pradesh v. Thakur Dass - (1983) 2 Cri. L. J. 1694 at 1701*** V. D. Misra CJ held that

> *"whenever a statement of fact made by a witness is not challenged in cross-examination, it has to be concluded that the fact in question is not disputed".*

29. Similarly, in ***Motilal v. State of Madhya Pradesh - (1990) Criminal Law Journal NOC 125 MP***, it was held that *"absence of cross-examination of prosecution witness of certain facts, leads to inference of admission of that fact".*

30. It was also argued that the Medico Legal Report does not support the version of PW1. In an offence of this nature, there could be no medical evidence to corroborate the victim's evidence. In her testimony, the Judicial Medical Officer stated that no injuries could be found in this kind of sexual abuse.

31. In her evidence, PW1 stated that the appellant had inserted his penis into her genitals and that she felt some whitish substance on her body. According to the evidence of the JMO, he observed no damage to the hymen of the victim and did not notice any redness on her genitals. The victim was examined two days after the alleged incident. The JMO adequately explained the reasons for the absence of any redness or injuries at the time of his examination. Consequently, I find no merit in any of the grounds of appeal advanced by the appellant

32. In light of the above authorities and the analysis of evidence, I see no reason to disbelieve the evidence of PW1 and PW3.

33. However, I cannot overlook the manner in which the prosecution led the evidence of PW1, which constitutes a clear violation of the established principles of the law of evidence. On perusal of the High Court proceedings, it is evident that on two occasions

the State Counsel put leading questions to PW1 by referring to her police statement after making applications under Section 154 of the Evidence Ordinance.

34. Examination of a witness under Section 154 arises only when a witness departs from or contradicts his or her statement, which could affect the prosecution case. In the instant case, it is noteworthy that the State Counsel relied on the police statement under Section 154 to question PW1 even though no such necessity arose during examination-in-chief, thereby amounting to a flawed procedure.

35. However, the answers elicited through such questioning did not cause any prejudice to the appellant, nor were they relied upon by the learned trial Judge in finding the appellant guilty. Therefore, no substantial injustice was caused to the appellant by such questioning.

Proviso to Section 334 (1) of the Code of Criminal Procedure Act reads:

> *Provided that the court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.*

36. Therefore, although questioning PW1 on two occasions under Section 154 of the Evidence Ordinance was not in accordance with the accepted rules of evidence, it did not result in any substantial miscarriage of justice in the trial.

37. The learned High Court Judge has correctly analyzed the evidence of the two main witnesses in its proper perspective. He considered their credibility in light of their age and the time lapse between the date of the offence and the trial before reaching his findings. The learned Judge ruled out the possibility of the witnesses having given any deliberate falsehood. The decision reached by the learned Trial Judge, based on the totality of the evidence, contains no substantial misdirection or non-direction on either the facts or the law. There is no reasonable basis on which his decision could be interfered with.

38. For the aforesaid reasons, I find that this appeal has no merit and is hereby dismissed.

Judge of the Court of Appeal

P. Kumararatnam,J

I agree,

Judge of the Court of Appeal