IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an Appeal filed 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

Yapana Durage Indika Pushpakumara

Accused

Court of Appeal Case No:
CA/HCC/0169/2025

High Court of Hambanthota
Case No: **HC 45/2008**

AND NOW BETWEEN

Yapana Durage Indika Pushpakumara

Accused – Appellant

Vs

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

Complainant - Respondent

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

Pradeep Hettiarachchi, J.

Counsel : Sandeepani Wijesooriya with Aruna Ihalawithana for the Accused – Appellant.

: Hiranjan Peiris, ASG for the Respondent.

Argued on : 27.03.2026

Decided on : 14.05.2026

Pradeep Hettiarachchi, J

Judgment

1. The Accused-Appellant (hereinafter referred to as "the ""Appellant") in the present appeal was indicted before the High Court of Hambanthota on two counts; namely, the kidnapping of a girl with the intention to seduce her to illicit intercourse, and the commission of rape on the said girl. These offences are punishable under Sections 357 and 364(1) of the Penal Code, as amended by Act No. 22 of 1995.

2. At the conclusion of the trial, the Learned Trial Judge found the Appellant guilty on both counts and was accordingly convicted and sentenced as follows;

    i. For the first count to 2 years' rigorous imprisonment and a fine of Rs. 5,000/, with a default sentence of six months simple imprisonment;

    ii. For the second count to 10 years' rigorous imprisonment and a fine of Rs. 10,000/-, with a default sentence of one year's simple imprisonment.

iii. The Appellant was further ordered to pay Rs. 50,000/- as compensation to the prosecutrix, in default of which he iswas to undergo one year's rigorous imprisonment. The sentences of rigorous imprisonment imposed on the first and second counts were ordered to run consecutively.

3. Being aggrieved by the said conviction and sentence, the Appellant has preferred the present appeal. The Appellant relies on the following grounds of appeal: namely,

   a. The Learned Trial Judge has failed to consider that the testimony of PW1 does not satisfy the test of probability.
   b. The Learned High Court Judge has failed to evaluate the medical evidence in the impugned judgment properly.
   c. The Learned Trial Judge has failed to comply with the provisions of Section 283 of the Code of Criminal Procedure Act.

4. I shall first consider whether the testimony of PW1 satisfies the test of probability and thereby the possibility of relying upon that testimony in sustaining the conviction against the Appellant.

5. At the trial before the High Court, the prosecution primarily relied on the evidence of PW1, the prosecutrix. Her evidence may be briefly summarized as follows;

6. PW1 had been living with her grandmother consequent to her mother's second marriage. On the day of the incident, she had gone to her mother’s house owing to the illness of her grandmother. She testified that, on the morning in question, both her mother and father had left for a nearby paddy field. While she was engaged in cooking, the Appellant allegedly entered the kitchen, forcibly covered her mouth with his hands, and dragged her to a nearby jungle. It is her evidence that the Appellant compelled her to lay on the ground and had sexual intercourse with the prosecutrix without her consent.

7. According to the prosecutrix, the Appellant engaged in sexual intercourse with her for approximately 45 minutes. During this period, the prosecutrix attempted to escape; however, her efforts proved unsuccessful.

8. She further testified that upon hearing the voices of her parents calling out, the Appellant released her and fled from the scene. Thereafter, she was found by her mother, to whom she immediately disclosed the incident. Subsequently, her parents proceeded to lodge a complaint with the Hambanthota Police Station. The prosecutrix was thereafter referred to the Hambanthota Hospital for medical examination.

9. Evidently, the testimony of PW1 is fraught with a substantial number of infirmities, which significantly undermine the credibility and reliability of PW1.

10. PW1 tendered her evidence at the trial approximately 17 years after the alleged act of rape. She testified that she was 15 years of age at the time of the alleged offence; however, the prosecution failed to produce her birth certificate to establish her age. This omission assumes particular significance in the matter of circumstances, as it bears directly upon the credibility of the witness.

11. Further, PW1 testified in her evidence that she was unable to scream for assistance since her mouth had been covered with the hands of the Appellant. On the contrary, the Learned Counsel for the Appellant drew attention to her prior testimony before the Hambanthota Magistrate's Court, wherein she stated that she had, in fact, screamed for help, but no assistance was forthcoming, and that the Appellant simultaneously dragged her to the nearby jungle. This inconsistency constitutes a material contradiction that adversely affects the credibility of her evidence.

> *"……..*
> *ප්‍ර: කට වහලා තිබ්බ හින්දා සක්ෂිකරියට කගහන්නත් එහෙම ලැබුනේ නැහැ.*
> *උ: ලැබුනේ නැහැ.*
> ……

ප්‍ර: මීට ප්‍රථමව සාක්ෂිකාරිය මහේස්ත්‍රාත් අධිකරණයේ සාක්ෂි ලබා දීමක් සිදු කර නේද?

උ: ඔව්. පහල උසාවියේ.

……

ප්‍ර: සාක්ෂිකාරිය ඒ අධිකරණයේ සාක්ෂි ලබා දුන්නා. එහිදී නීතිඥයතුමා හරස් ප්‍රශ්නත් අහල තියෙනවා. ඒ වෙලාවේ සාක්ෂිකාරිය මෙහෙම කිව්වද? ඔව්. කවුරුත් ආවේ නෑ. පුළුවන් හියියෙන් කෑගැහුවා. ඒ කෑගහද්දී අරගෙන ගියා?" (vide pages 184 -185 of the Appeal Brief)

12. Moreover, three material contradictions have been marked in the testimony of PW1, further undermining the consistency and reliability of her evidence.

13. Firstly, PW1 testified in her evidence that both her mother and father had gone to the nearby paddy field on the morning of the alleged incident. However, in her statement to the Hambanthota Police Station, she stated that her father had gone to a nearby shop. *"මගේ දැනට සිටින තාත්තා කඩේ ලඟට ගියා." (vide 1D1, marked in evidence at page 182 of the Appeal Brief).*

14. It is also noteworthy that PW1's evidence regarding the circumstances preceding the alleged incident is inconsistent with her statement to the police. PW1 testified at the trial that she was engaged in cooking when the Appellant entered the kitchen and dragged her to the nearby jungle. However, in her statement to the Police, she had stated that she was seated in the living room listening to a cassette at the material time. This discrepancy constitutes a further material contradiction in her evidence. *"ඒ වෙලාවේ මම සාලේ කැසට් එකක් දාගෙන පුටුවේ වාඩිවෙලා හිටියේ" (vide 1D2, marked in evidence at page 184 of the Appeal Brief)*

15. PW1 testified at the trial that she disclosed the alleged act of rape to her mother immediately at the time of the incident. However, in her statement to the Police, she had stated that she disclosed the alleged incident to her mother only after returning to the house. *"මා නිවසට ඇවිත් මේ සිද්ධිය මගේ අම්මට කිව්වා" (vide 1D3, marked in evidence at page 190 of the Appeal Brief)*

16. Significantly, the aforesaid infirmities cumulatively highlight the lack of clarity and reliability of the evidence adduced by the prosecutrix.

17. Moreover, PW1 testified in her evidence that the Appellant dragged her by the hand from her mother's house to the said jungle, a distance of approximately 112 feet. This, in itself, suggests that the prosecutrix had a sufficient opportunity to escape. It is noteworthy that, when assessed against ordinary human conduct and common sense, the probability of such an occurrence becomes highly questionable. If the prosecutrix had indeed attempted to escape, as alleged, she would have had ample opportunity to do so over that distance, particularly in light of her own evidence that the area was residential, with two or three houses situated in close proximity.

> *"ප්‍ර: කොච්චර විතර දුරක් ඇදගෙන ගියද?*
> *උ: දුරක් කියන්නේ ගෙදර ඉදලා එහා පැත්තේ තමයි වත්තට. වත්ත ගොඩක් දුරට තියෙනවා.*
> *ප්‍ර: ඔතන ඉදලා පෙන්වන්න කොච්චර විතර දුරක් සක්ෂිකාරියව ඇදගෙන ගියද කියල?*
> *උ: මෙතන ඉදලා පාරෙන් එහා පැත්තට විතර ඇදගෙන ගියා. (අඩි 112 පමණ දුරක් පෙන්වා සිටී.)*
> *ප්‍ර: දැන් සාක්ෂිකාරිය ඔය කියන ස්ථානයට යනකම්ම සාක්ෂිකාරියව ඇදගෙන ගියා?*
> *උ: ඔව්.*
> *ප්‍ර: අතින් ඇදගෙන ගියා?*
> *උ: ඔව්." (vide page 185 of the Appeal Brief)*

18. Further, according to the police observations, PW5, a Retired Police Sergeant, testified to the fact that the distance between the said house and the alleged jungle where the purported act of rape had taken place was approximately 300 meters. Accordingly, the assertion that the Appellant was able to drag the prosecutrix by the hand over such a considerable distance, without any successful escape attempt, appears inherently impossible when assessed against the ordinary human conduct. This improbability materially undermines the credibility of the version of the

prosecutrix and suggests that her account is more consistent with a constructed narrative rather than a true reflection of the alleged events.

"…….
ප්‍ර: නිවැරදිව සටහන් පරිශීලනය කර පිළිතුරු දෙන්න. චින්දික දැරියගේ නිවසේ සිට කොච්චර දුරින්ද ඔය කැලෑබද ප්‍රදේශය තිබෙන්නේ?
උ: සමාවෙන්න ස්වාමිනි මීටර් 300 ක් පමණ දුරින්." ***(vide page 197 of the Appeal Brief)***

19. PW1 further testified that the Appellant dragged her through the thorny scrublands to the said jungle. In such circumstances, it is reasonably expected that the prosecutrix would have sustained multiple external injuries, including abrasions and scratches. However, the evidence of the Judicial Medical Officer (JMO) reveals that no such external injuries or abrasions were observed on her body, notwithstanding that the JMO examined the prosecutrix on two dates after the date of the incident itself. Significantly, the JMO made no note of any such injuries in the Medico-Legal Report. This absence of expected physical findings materially contradicts the version advanced by PW1 and further undermines the credibility and probability of her account.

"ප්‍ර: එතොකොට කැලෑවක් මැදින් තමයි සාක්ෂිකරියව ඇදගෙන ගියේ?
උ: ඔව්.
ප්‍ර: සාක්ෂිකාරිය එතොකොට ඒ කැලෑවේ මොනවද තිබුනේ. කටු ගස් ඒවා හොඳටම කැලෑව වැවිච්ච ප්‍රදේශයකට ඇදගෙන ගියා?
උ: ඔව් අන්දර ගස් තමයි වැඩිපුර තිබුනේ." ***(vide page 186 of the Appeal Brief)***

"……..
ප්‍ර: ඒ හැර වෙනත් තුවාල ගැන සටහන් කිරීමක් කලේ නැහැ?
උ: නැහැ." ***(vide page 137 of the Appeal Brief)***

20. In these circumstances, the conduct attributed to the prosecutrix at the time of the alleged incident appears inconsistent with the natural and probable behavior expected of an ordinary person in such a situation. This improbability, when

considered cumulatively with the other inconsistencies and contradictions in her testimony, together with the notable absence of any expected physical injuries or abrasions as confirmed by the medical evidence, casts serious doubt on the credibility and reliability of her version of events. Thereby, it is unsafe to sustain the conviction against the Appellant on the basis of her testimony, as it did not appear to reflect a truthful or reliable account of the alleged events.

21. Then, I shall now proceed to address the second ground of appeal, namely, the Learned High Court Judge failed to properly evaluate the medical evidence adduced by the JMO in the impugned judgment.

22. It is evident from the testimony of the JMO that the existence of two separate Medico-Legal Reports regarding the prosecutrix, one of which was marked as P1, Medico-Legal Report filed in the Magistrate's Court in case of BR 182/2006, while the other was marked as P2, Medico-Legal Report tendered at Non-Summary Inquiry under NS 73217.

23. It is pertinent to note that the short histories recorded in the said Medico-Legal Reports are materially inconsistent with each other. In particular, the Medico-Legal Report marked as P1 records the fact that the alleged act of rape was committed by a person known to the prosecutrix; whereas the report marked as P2 states that the alleged act was committed by an unknown person.

> *"……*
>
> *ප්‍ර: වෛද්‍යතුමාගේ වෛද්‍ය වාර්තා දෙක කෙරෙහි අවධානය යොමු කරවනවා උතුමාණනි. මෙහි නොදන්නා තැනැත්තෙකු විසින් සහ දන්නා තැනැත්තෙකු විසින් කලා කියා එකිනෙකට වෙනස් කරනු තිබෙන්නේ?*
>
> *උ: එකකින් එකකට ගන්න කොට වෙනස් වෙන්න ඇති.*
>
> *ප්‍ර: වෛද්‍යතුමාට කියන්න පුලුවන්ද හරියටම දන්නා පුද්ගලයෙක් විසින් කල ක්‍රියාවක්ද, නොදන්නා තැනැත්තෙකු විසින් කල ක්‍රියාවක්ද කියා මතකයක් තිබෙනවද?*
>
> *උ: මට මතකයි දන්නා තැනැත්තෙකු විසින් කරන ලද්දක් බවට කිව්වා කියා." (vide pages 135-136 of the Appeal Brief)*

24. Significantly, both reports have been issued by the same JMO, yet they contain differing observations in respect of the same incident. This discrepancy materially undermines the consistency, accuracy, and reliability of the medical evidence. In these circumstances, the existence of two conflicting Medico-Legal Reports renders the medical evidence weak and unreliable, thereby diminishing its probative value in corroborating the prosecution's case.

25. Further, in the impugned judgment, the Learned High Court Judge has failed to advert to the existence of the two separate Medico-Legal Reports, including differing short histories contained therein and their contradictory nature. The Learned High Court Judge has thereby erred in relying upon such inconsistent medical evidence as independent corroboration of the version of PW1.

26. It is also evident that the impugned judgment lacks a proper summary and critical analysis of the evidence adduced by the JMO, which has resulted in a failure to duly appreciate the weaknesses and inconsistencies inherent in the medical evidence.

27. Finally, I shall now consider the third ground of appeal, wherein the Appellant contended that the Learned Trial Judge failed to comply with the provisions of Section 283 of the Code of Criminal Procedure Act.

28. Section 283 of the Code of Criminal Procedure Act prescribes the guidelines to be followed by judges in writing to the judgements. The aforesaid Section reads as follows;

> *Section 283 of the Code of Criminal Procedure Act:*
>
> *The following provisions shall apply to the judgments of courts other than the Supreme Court or Court of Appeal;*
>
> *(1) The judgment shall be written by the judge who heard the case and shall be dated and signed by him in open court at the time of pronouncing it, and*

in case where appeal lies shall contain the point or points for determination, the decision thereon, and the reasons for the decision.

(2) It shall specify the offence if any of which and the section of the law under which the accused is convicted and the punishment to which he is sentenced.

(3) If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted.

(4) When a judgment has been so signed it cannot be altered or reviewed by the court which gives such judgment.

Provided that a clerical error may be rectified at any time and that any other error may be rectified at any time before the court rises for the day.

(5) The judgment shall be explained to the accused affected thereby and a copy thereof shall be given to him without delay if he applies for it.

(6) The original shall be filed with the record of proceedings.

29. In the impugned judgment, the Learned High Court Judge has failed to advert to, or provide, a proper summary of the evidence adduced by the JMO and the observations made by the Police Officers who conducted the investigation.

30. In furtherance of that, the Learned High Court Judge has failed to critically analyze the medical evidence and the evidence adduced by the Police officer, both of which constitute material and significant evidence requiring careful evaluation in a case involving an offence of a sexual nature.

31. In the impugned judgment, the Learned Trial Judge proceeded to sustain a conviction against the Appellant on the basis that the prosecution had proved the charges beyond a reasonable doubt. However, as required under Section 283 of the

Code of Criminal Procedure Act, a judgment must clearly set out the points for determination, the decision thereon, and the reasons for such a decision.

32. In the present case, the Learned Trial Judge has failed to identify and formulate the material points for determination, and has not demonstrated on what evidentiary basis the conclusion of guilt was reached. In particular, there is a conspicuous absence of a proper summary and critical analysis of the evidence adduced by the JMO and the Police Officers. This omission constitutes a failure to comply with the mandatory statutory requirements of Section 283, thereby rendering the impugned judgment legally deficient and unsustainable.

33. Upon a careful consideration of the totality of the evidence and the material infirmities discussed above, it is my view that the conviction of the Accused-Appellant is unsafe and unsustainable in law. Accordingly, the conviction and sentence imposed on the Accused-Appellant are set aside, and the Accused-Appellant is acquitted of the charges.

34. The Appeal is therefore allowed.

Judge of the Court of Appeal

P. Kumararatnam, J

I agree,

Judge of the Court of Appeal