

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

**In the matter of an Appeal in terms of
the Article 138(1) of the Constitution
together read with the Section 11(1) of
the High Court of the Provinces
(Special Provisions) Act. No. 19 of
1990 with the Section 331 of the Code
of Criminal Procedure Act No. 15 of
1979.**

The Democratic Socialist Republic of Sri
Lanka

Complainant

CA HCC 136/2025

High Court of Avissawella

Case No. HC 03/19

MC Avissawella Case No. 96976

Vs.

Seethawaka Soratha Thero

Accused

AND NOW BETWEEN

Seethawaka Soratha Thero

Accused-Appellant

Vs,

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

Respondent

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

Counsel: Seevali Amitirigala, PC with Pathum Wijepala for the
 Accused-Appellant.

Hiranjan Peiris, A.S.G. for the State.

Argued on: 20.03.2026

Judgment on: **22.05.2026**

Judgment

Amal Ranaraja. J,

1. The Accused-Appellant (hereinafter referred to as the 'appellant') has been indicted in the High Court of *Avissawella* in Case No. HC 03/19.

2. The charge in the indictment is as follows;

01. That on or around the 01st of March, 2016, within the jurisdiction of this Court, in *Namaldeniya*, you in order to gain some sexual gratification have used a certain part of your body, on the certain body part of one *Warnakula Ariyaratne*

Mudiyanselage Yumesh Dhanushka Bandara, a person under 16 years of age, by getting him to touch your male genital; thereby you have committed an offence of “Grave Sexual Abuse” punishable under Section 365B (2)(b) of the Penal Code of Sri Lanka as amended by Penal Code (Amendment) Act No.22 of 1995, Penal Code (Amendment) Act No.29 of 1998 and Penal Code (Amendment) Act No.16 of 2006.

3. At the conclusion of the trial the learned High Court Judge has convicted the appellant of the charge and sentenced him as follows;
 - i. Imposed a fine of Rs. 25,000.00 with a term of 12 months simple imprisonment, in default of the payment of the same. Furthermore, the appellant has also been sentenced to 10 years rigorous imprisonment.

The appellant has been further directed to pay a sum of Rs.50,000.00 to PW01 as compensation with a term of 6 months simple imprisonment in default of payment of the same.

4. The appellant aggrieved by the conviction, disputed judgement together with the sentencing order has preferred the instant appeal to this Court.

Case of the Prosecution

5. During the relevant period, PW01 being aged thirteen, has been living with his parents. The appellant, a monk, has resided in a nearby temple.
6. It is alleged that on the day of the incident as PW01 was walking past the temple, the appellant has invited PW01 into his ‘*kutiya*’ (a monk’s living quarters). Once, inside, the appellant has initially requested

PW01 to apply some oil on his legs. Following this a further request has been made to apply oil to the appellant's penis, which PW01 has complied with.

7. Afterwards, PW01 has left the temple and recounted the incident to a friend named *Nuwan*. *Nuwan* has then allegedly informed PW01's mother about the incident. The mother has subsequently approached PW01, who has then revealed the full details of the incident to her.
8. PW01's mother has filed a complaint with the *Ehiliyagoda* police. The police have recorded PW01's statement and arranged for a medical examination. *Dr. R.S. Deduwela*, a Judicial Medical Officer has examined PW01 and the medico-legal report prepared by him has been produced as evidence marked *ඒ02*.

Case of the Appellant

9. The appellant has maintained that his adversaries have falsely implicated him.

Ground of Appeal

10. When the appeal was taken up for argument, the learned President's Counsel appearing on behalf of the appellant urged the following ground of appeal
 - i. Has PW01's evidence been consistent with regard to the incident, described in the charged.
11. In PW01's statement provided to *Dr. Deduwala*, it has been stated that on the day of the incident, the appellant has requested PW01 to caress his legs and penis. Notably, PW01 has not mentioned any request to apply oil in this account.

Brief history given by the examinee

මම ගෞරව ඉන්නෙ අම්මා, තාත්තා, අයියා එක්ක. ගිය සතියට කලින් සතියේ අගහරුවාදා දවල් 3 ට විතර මම පන්සල (ඒ පන්සලේ මම දහම් පාසල් යනවා) ලගින් යාලුවෙකුගේ ගෞරව යනකොට, භාමුදුරුවෝ මට කතා කරලා ආවාස ගේ ඇතුලට එක්කගෙන ගියා. (පන්සලේ නම දන්නේ නැහැ. භාමුදුරුවන්ගේ නම දන්නේ නැහැ). ඊට පස්සේ බිම පාදුරක් දාලා භාමුදුරුවෝ හාන්සි වෙලා මට එයාගේ වූ එකයි, කකුල් දෙකයි අතගන්න කිව්වා. මම විනාඩි 5 ක් විතර ඒ වීදියට අත ගැවා. ඊට පස්සේ මම නැගිටලා ගෞරව ගියා. අම්මට කිව්වේ නැහැ ලැජ්ජ නියා. මම මගේ යාලුවෙකුට කිව්වා, එයා අපේ අම්මට කියලා ගෞරවන් පොලිසියට කියලා.

12. Furthermore, PW01’s statement to the police also has detailed a request to caress the appellant’s penis but similarly omitted any mention of applying oil.

ප්‍ර:- දැන් එතකොට තමුන් කියන හැටියට තමුන් කියන දවසේ භාමුදුරුවෝ කයා කලා කාමරයට එන්න කියලා?

උ:- ඔව්.

ප්‍ර:- තමුන් ඇහුවාද මොකටද කියලා?

උ:- මම ඇහුවා. තෙල් ටිකක් ගා ගන්න තියෙනවා කියලා තමයි කිව්වේ කකුල් දෙකේ.

ප්‍ර:- ඒ සිද්ධිය පොලිසියට කිව්වාද?

උ:- ඔව්.

ගරු උතුමානනී, මෙම තැනත්තා එවැනි කිසිම අකාරයක ප්‍රකාශයක් භාමුදුරුවන්ගෙන් විමසන ලද බවවත් තෙල් ටිකක් ගා ගන්න එන්න කියල කිව්වාවත් ඔහු පොලිසියට ලබා දුන් කටඋත්තරේ කියලා නැහැ. එම තත්ත්වය උගණනාවයක් ලෙස ගරු අධිකරණයේ අවධානයට යොමු කර සිටිනවා.

ප්‍ර:- නමුත් කියන හැටියට මොකක්ද ඒ තෙල් වර්ගය?

උ:- දන්නේ නැහැ

ප්‍ර:- බෝතලයකද තිබුණේ?

උ:- පොඩි කුප්පියක් තිබීමේ.

Vide Pages 10 & 11 of the Brief

13. These discrepancies highlight a significant inconsistency within PW01's narrative. Further, as PW01 has provided different versions of the same event at various times, to different individuals, it has an impact on his testimony. Consistent accounts are generally seen as more credible.

14. When details change, it raises questions about the accuracy of PW01's memory or the truthfulness of his testimony and statements. The reliability of PW01's narrative becomes questionable. When PW01 cannot consistently recall whether a request for oil application was made it casts doubt on the other specific details of the incident. The specific detail missing (the request to apply oil) is major in the broader context of PW01's testimony. It also suggests an intentional alteration of the account.

15. In the case of *Padmatilake v. Director General, Commission to Investigate Allegations of Bribery or Corruption [2009] 2 SLR 151*, Chandra Ekanayake, J. has held that,

Credibility of prosecution witnesses should be subject to judicial evaluation in totality and not isolated scrutiny by the Judge. When a witness makes inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses is unreliable and in the absence of special circumstances no conviction can be based on the testimony of such witnesses.

16. In such circumstances it is the view of this Court that PW01 is an unreliable witness.

17. Accordingly, this Court is inclined to interfere with the conviction, disputed judgement together with the sentencing order and set aside the same.

18. Appeal allowed, but this court does not make any order regarding costs.

Appeal allowed.

19. The registrar of this Court is directed to send this judgement to the High Court in *Avissawella* together with the original Case record for compliance.

Judge of the Court of Appeal

B. Sasi Mahendran, J.

I agree

Judge of the Court of Appeal