

**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.

**Court of Appeal Case No.
CA/HCC/ 0009/2024
High Court of Kandy
Case No. HC/58/2017**

Weerakoon Mudiyanseelage Ranjith
Bandara Weerakoon

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

**BEFORE : P. Kumararatnam, J.
R. P. Hettiarachchi, J.**

COUNSEL : **Sandeevani Wijesooriya for the Appellant.**
Wasantha Perera, DSG for the Respondent.

ARGUED ON : **11/03/2025**

DECIDED ON : **17/06/2025**

JUDGMENT

P. Kumararatnam, J.

The above-named Appellant was indicted in the High Court of Kandy for committing one count of grave sexual abuse on the victim, punishable under Section 365(B) 2 (b) of the Penal Code as amended by Acts No. 22 of 1995, 29 of 1998 and No.16 of 2016 and one count under Section 367 and Section 314 of the Penal Code on 27.03.2006.

The trial commenced on 06/02/2018 and the prosecution led the evidence of the victim and other lay witnesses and closed their case. The Learned High Court Judge had called for the defence. The Appellant had made a dock statement and closed his case.

The Learned High Court Judge after considering the evidence presented by both parties, convicted the Appellant as charged and sentenced him as follows:

- For the first count the Appellant was sentenced to 08 years rigorous imprisonment and imposed a fine of Rs.5,000/-.

- For the second count the Appellant was sentenced to 01-year rigorous imprisonment.
- For the third count the Appellant was sentenced to 6 months imprisonment.

In addition, a compensation of Rs.200000/- was ordered with a default sentence of 6 months imprisonment.

Being aggrieved by the aforesaid conviction and sentence, the Appellant preferred this appeal to this court.

The Appellant is on bail and was present in Court during the argument.

On behalf of the Appellant the following Grounds of Appeal were raised.

1. The Learned High Court Judge has erred in law by improperly analysing the contradictions and omissions in the evidence of the prosecution witnesses without clearly accepting or rejecting them and without determining their materiality and has thereby misdirected herself in the evaluation of the evidence.
2. The Learned High Court Judge has erred in law in convicting the Appellant solely on the uncorroborated evidence of PW1, who is not a credible witness, thereby rendering the conviction unsafe.
3. The Learned High Court Judge has erred in law by permitting the calling of further evidence after the conclusion of the trial, thereby denying the Appellant a fair trial.

Background of the case *albeit* as follows:

PW1 was only 14 years old when he encountered this unpleasant incident as he described in his evidence. According to him, on the day of the incident when he went to the school canteen, which was run by the Appellant, the Appellant had tried to hug the victim and had touched the genital area of the victim. At that time, the Appellant had pushed the victim down and forcibly taken the bicycle key of the victim. After school, when the victim had gone to

the house of the Appellant to take his keys, the Appellant had forcefully pushed the Appellant on a bed and performed intercrural sex for 2-3 minutes on the victim.

According to the JMO's report, the victim was examined on 27.03.2006. Although in the history it was noted that the Appellant had sexually abused and kicked the victim, apart from noting a contusion on the left lower limb, she has not expressed any opinion about sexual assault.

The Appellant in his dock statement denied the charge but admitted that he had used the victim's bicycle with the consent of the victim.

In the first ground of appeal, the Learned Counsel for the Appellant strenuously argued that the Learned High Court Judge has erred in law by improperly analysing the contradictions and omissions in the evidence of the prosecution witnesses without clearly accepting or rejecting them and without determining their materiality and had thereby misdirected herself in the evaluation of the evidence.

In a criminal case, serious contradictions, especially such contradictions regarding the core facts would put into question the prosecution's case and create reasonable doubt about the case, thus resulting in an acquittal or reversal of the conviction. Such discrepancies would break apart the credibility of the witnesses, which would make it difficult to sustain the charges beyond a reasonable doubt, as opposed to minor, non-material contradictions, which are usually ignored in such cases.

In the recent Supreme Court judgment of **SC Appeal No. 171/2012 (decided on 04.11.2024)** it was noted that:

“In evaluating contradictions, it is undesirable for a court to pick out sentences and consider them in isolation from rest of the evidence.

In evaluating contradictions inter-se of two witnesses, the Judge must probe whether discrepancy is due to dishonesty, or defective memory or whether witness's power of observation was limited - per Colin Thom's J. in Bandaranayake vs. Jagathsena. Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses cannot be given too much importance. Boghi Bhai Hirji Bhai vs. State of Gujerat"

In the case of **Yogesh Singh v Mahabeer Singh**, (2017) 11 SCC 195 it was held that:

"It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission."

E R S R Coomaraswamy in his work 'The Law of Evidence' notes the way in which the Court should evaluate contradictions and omissions:

" ... Another test that is applied in the evaluation of evidence is the test of inconsistency, contradictions per se and discrepancies in the

evidence of the witness. A witness is often contradicted by his statements to the police under section 110 of the Code, or by his depositions in the magistrate's court. Some may be positive contradictions, while others may be omissions, which may be of material facts or immaterial facts. In evaluating discrepancies, contradictions and omissions, it is undesirable for a court to pick out sentences and consider them in isolation from the rest of the statements. The entire statement should be taken into consideration to ascertain whether they are due to a deliberate attempt to suppress or depart from the truth. Witnesses should not be disbelieved on the basis of trifling discrepancies and omissions”

In the case of **Bandaranaike V Jagathsena and others** 1984 (2) SLR 397 it was noted:

“When versions of two witnesses do not agree the trial judge has to consider whether, the discrepancy is due to dishonesty or to defective memory or whether the witness' powers of observation were limited. The demeanour of the witness in the witness box must be taken into account.”

It was the position of the prosecution that the sexual abuse incident had happened at the Appellant's house and not in the canteen. The victim in his evidence stated that the Appellant had tried to hug him at the canteen and touched his penis. As he struggled, the Appellant had pushed him and he sustained a contusion on his leg.

Although, the victim said that he was abused at the Appellant's house, in the cross examination he had said that he cannot remember the place of incident.

In the vital contradictions which were marked as V4, V5, V8 and V9 the victim had said that he was abused at the canteen when he was eating string

hoppers. After the intercrural sex, when he looked at his thighs he had found some whitish substance on it.

Although the act was very serious, he had not told anybody in the school. The Learned Deputy Solicitor General, in keeping with the highest traditions of the Attorney General's Department, admitted that the said contradictions would certainly affect the core of the case.

It is brought to the notice that the Learned High Court Judge in her judgment disregarded the contradictions and the omissions on the basis of an incorrect legal principle.

After marking the contradictions and omission of the evidence of the Victim, the prosecution and the defence admitted the existence of the said contradictions and omissions in the evidence of PW1. The prosecution had used the statement given to the police by the lay witnesses. But the Learned High Court Judge had disregarded the vital contradictions and omissions on the basis that the statements had not been properly recorded by the police. If this argument is accepted, then indicting the Appellant on the same statement would be wrong. This is clearly an unfound legal principle which had been used by the Learned High Court Judge to disregard the contradiction marked and the omissions highlighted. I too agree with the Learned Counsel for the Appellant that adopting this incorrect legal principle has caused great prejudice to the Appellant and has thereby denied the Appellant a fair trial.

As the first ground considered above certainly affects the outcome of the case, I think addressing the second and third ground of appeal is not necessary in this case.

Considering the evidence given by the victim, it has failed to satisfy the court on the tests of consistency, spontaneity and probability.

As discussed above, the evidence adduced by the prosecution does not support the conviction entered by Learned High Court Judge of Kandy dated 29/08/2023. Hence, I set aside the conviction and acquit the Appellant from all the charges.

Therefore, the appeal is allowed.

The Registrar of this Court is directed to send this judgment to the High Court of Kandy along with the original case record.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL