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

In the matter of an Appeal made under Section 331 of the Code of Criminal Procedure Act No.15 of 1979.

Court of Appeal Case No.
CA/HCC/ 0069/2024
High Court of Puttalam
Case No. HC/74/2021

Rathnayake Mudiyanselage Nimal Rathnayake

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

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

COUNSEL : **Shiral D.Wanniarachchi for the Appellant.**
Suharshie Herath, DSG for the Respondent.

ARGUED ON : **04/03/2026**

DECIDED ON : **15/06/2026**

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JUDGMENT

P. Kumararatnam, J.

The above-named Appellant was indicted by the Attorney General for following offences:

1. For committing an offence of Grave Sexual Abuse on Dissanayake Mudiyanselage Suhanya Prabashini between the period of 01.07.2018 and 01.11.2018 an offence punishable under Section 365 B (2) (b) of the Penal Code.
2. During the same time period, for committing an offence of Grave Sexual Abuse on Dissanayake Mudiyanselage Suhanya Prabashini an offence punishable under Section 365 B (2) (b) of the Penal Code.

The defence Counsel, before the start of the trial, raised a preliminary objection with regard to the deficiency in the indictment. After the lengthy submissions on the preliminary objection raised by both parties, the Learned High Court Judge, discussing the legal position of presenting an indictment, very correctly dismissed the preliminary objection and allowed the prosecution to amend the indictment.

The trial commenced on 18/10/2022. After leading all necessary witnesses, the prosecution closed the case. The Learned High Court Judge had called for the defence and the Appellant opted to make a statement from the dock.

The Learned High Court Judge after considering the evidence presented by both parties, convicted the Appellant for the 2nd Count and sentenced the Appellant to 16 years of rigorous imprisonment and imposed a fine of Rs.20000/- subject to a default sentence of 06 months simple imprisonment. In addition, a compensation of Rs.200,000/- was ordered with a default sentence of 01-year simple imprisonment.

Further, the Appellant was acquitted from the 1st Count by the Court.

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

The Learned Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence. During the trial he was connected via the zoom platform from the prison.

Although on perusal of the Written Submissions of the Appellant, it appears no specific grounds of appeal had been urged, at the hearing the following Grounds of Appeal were raised on behalf of the Appellant.

1. The evidence given by the victim is contradictory.
2. The Learned High Court Judge has delivered the judgment purely on hearsay evidence.

The Facts of this case *albeit* briefly are as follows:

PW1, the victim of this case, was about 11 years old when she had undergone this bitter ordeal. The Appellant, is well known to her as her family as he is a neighbour of the victim. The Appellant is a married person with children. At the time of committing the offence, the Appellant was attached to the Sri Lanka Army. On the day of the offence, on the request of her brother, the victim had gone to the Appellant's house to borrow the air pump. At that

time, the Appellant, raising the volume of the audio player which was on at that time, had pushed the victim on the bed and committed the offence as described in the 2nd charge. Due to fear of the Appellant, she did not divulge this incident to her parents. But she had told the incident to her class teacher after two weeks of the incident fearing that the Appellant would commit the offence again on her.

PW7, the JMO who examined the victim stated that the victim is free from vaginal penetration. But he had not excluded intercrural or inter labial penetration.

PW2, the mother of the victim testified that she came to know about the incident from school and thereafter made a statement to the police.

PW7, JMO who examined the victim on 03. 11. 2018 had opined that even though no injuries were observed on the victim's body he could not exclude an intra-crural act being committed on the victim.

PW4, the class teacher of the victim had confirmed that the victim had told her about the incident that she underwent.

PW3, the brother of the victim confirmed that he sent his sister to borrow the air pump from the Appellant on that day. Further, he had come to know the incident from the school teacher.

According to PW6, the police officer who had conducted the investigation stated that the investigation was commenced upon receiving a complaint from the victim who had lodged her complaint along with her mother. Thereafter, he had recorded the statement from the victim and arrested the Appellant.

The Appellant in his dock statement, denied that he committed the offence on the victim. He had further said that the victim had told her teachers that her mother was having an affair with the Appellant and both the mother and father usually fight over this problem.

In the first ground of Appeal the Appellant contends whether the Learned High Court Judge considered the credibility of the evidence of the victim properly as her evidence is contradictory.

In cases such as this, the testimonial trustworthiness, credibility and mainly the probability of PW1 must be ascertained with proper care and caution by the Trial Judge. In order to accept the evidence given by a child witness, the Learned Trial Judge must be satisfied on such a child witness's competence and credibility after proper assessment. Therefore, I consider it extremely relevant as per the appeal grounds of this case, that the following authorities derived from other jurisdictions are discussed.

It was recognized in England as early as 1778 that children could be competent witnesses in criminal trials.

In **R v. Brasier**168 Eng. Rep.202 [1779] the court held:

> "…….*that an infant, though underage of seven years, may be sworn in a criminal prosecution, provided such infant appears, on strict examination by the Court, to possess a sufficient knowledge of the nature and consequences of an oath… for there is no precise or fixed rule as to the time within which infants are excluded from giving evidence; but their admissibility depends upon the sense and reason they entertain of the danger and impiety of falsehood, which is to be collected from their answers to questions propounded to them by the Court; but if they are found incompetent to take oath, their testimony cannot be received ….".*

In **Ratansinh Dalsukhbhai Nayak v. State of Gujarat** [2004] 1 SCC 64 the court held that:

> *"The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher Court if from what is preserved in the records, it is clear his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make beliefs. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaked and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the Court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness".*

In **Ranjeet Kumar Ram v. State of Bihar** [2015] SCC Online SC 500 the court held that:

> *"Evidence of the child witness and its credibility would depend upon the circumstances of each case. Only precaution which the court has to bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one".*

E.R.S.R Coomaraswamy in his "Law of Evidence" Volume 2 Book 2 at page 658 has stated referring to child witness;

> "There is no requirement in English law, that the sworn evidence of a child witness needs to be corroborated as a matter of law. But the jury should be warned, not to look for corroboration, but of the risks involved in acting on the sole evidence of young girls and boys, though they may do so if convinced of the truth of such evidence…….This requirement is based on the susceptibility of children to the influence of others and to the surrender to their imaginations".
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> At page 659 it states "As regards the sworn testimony of children, there is no requirement as in England to warn of the risk involved in acting on their sole testimony, though it may desirable to issue such a warning, though the failure to do so will generally not affect the conviction".

The victim was 15 years old when she gave evidence before the court. The Learned High Court Judge in her judgment has very correctly and comprehensively considered the evidence given by the victim.

In an offence of this nature, the presence of 3rd person would be very rare, as the perpetrator would usually commit the sexual act in isolation. In this case too the Appellant had used the same *modus operandi* ensuring no 3rd person was present at the time he committed the offence. Therefore, it is a futile argument that the prosecution should have called corroborating evidence.

In **Inoka Gallage v Kamal Addararachchi** [2002] 1 SLR 307 the court held that:

> *"Corroboration is not a sine qua non for a conviction in a rape case. As a general rule there is no reason to insist on corroboration". It is only a rule*

of prudence. If the evidence of the victim does not suffer from basic infirmity and the probability factors does not render it unworthy of credence".

In the case of **Premasiri v Attorney General** (2006) 3 Sri L R. 106, it was held:

"There is no rule that there must be corroboration in every case, before a conviction can be allowed to stand. It is well settled law that a conviction for the offence of rape can be based on the sole testimony of the prosecutrix, if it is reliable, unimpeachable and there is no infirmity;

If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestation;

The rule is not that corroboration is essential before there can be a conviction in a case of rape but the necessity of corroboration as a matter of prudence except w here the circumstances make it unsafe to dispense with it, must be present to the mind of the judge."

In the case of **Sunil And Another v The Attorney-General** [1986] 1 SLR 230 it was held:

"Corroboration is only required or afforded if the witness requiring corroboration is otherwise credible. If the evidence of the witness requiring corroboration is not credible his testimony should be rejected and the accused acquitted. Seeking corroboration of a witness' evidence should not be used as a process of inducing belief in such evidence where such evidence is not credible. It is very dangerous to act on the uncorroborated testimony of a woman victim of a sex offence but if her evidence is

convincing such evidence could be acted on even in the absence of corroboration."

The Learned Counsel for the Appellant argued that the prosecution had placed hearsay evidence to support their claim. However, PW3, the brother of the victim quite corroborated the evidence of the victim that she went to borrow the air pump from the Appellant. The evidence given by PW4 is clearly consistent with the evidence given by the victim. Therefore, it is incorrect to say that the prosecution had placed hearsay evidence in this case.

The Learned High Court Judge had considered the evidence of the victim and other witnesses fairly and squarely by analysing their evidence to decide this case. Hence, no substantial rights of the Appellant had been prejudiced. Therefore, the grounds raised have no merit. It is noteworthy to mention that the evidence given by the victim did not suffer any contradiction or omission.

The Learned High Court Judge had properly considered the evidence presented by the Appellant in her judgement. Although the Appellant gave a lengthy dock statement, the stance taken in his dock statement was not put to the relevant witnesses. Hence, it is very clear, what had come out in his dock statement is an afterthought.

In this case, the victim had given firm evidence as to the atrocities committed on her by the Appellant. Even though the incident had happened when the victim was at a tender age, she had given evidence without any contradictions or omissions.

Considering the evidence led in this case, I conclude that this is not an appropriate case in which to interfere with the judgement delivered by the Learned High Court Judge on 15/02/2024 against the Appellant.

In this case and with the existence of other circumstances, I think imposing a 16-year sentence is excessive. As such, I set aside the 16 years rigorous imprisonment imposed on the second count and replace it with 11 years rigorous imprisonment.

The fine, compensation and default sentence imposed will remain same. I further order the sentence imposed to be operative from the date of conviction namely 15/02/2024.

I therefore, dismiss the appeal subject to the above variation in the sentence.

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

JUDGE OF THE COURT OF APPEAL