

**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/ 0071/2024  
High Court of Nuwara Eliya  
Case No. HC/57/2020**

Adhiwarna Bandula Pushpakumara  
alias Suddha Mama

**ACCUSED-APPELLANT**

**Vs.**

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

**COMPLAINANT-RESPONDENT**

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

**COUNSEL** : **Hafeel Farisz with Shannon Thilakaratne  
for the Appellant.  
Maheshika De Silva, DSG for the  
Respondent.**

**ARGUED ON** : **06/03/2026**

**DECIDED ON** : **12/06/2026**

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**JUDGMENT**

**P. Kumararatnam, J.**

The above-named Appellant was indicted in the High Court of Nuwara Eliya for committing one count of Grave Sexual Abuse on the prosecutrix, punishable under Section 365(B) 2 (b) of the Penal Code as amended by Acts No.29 of 1998 and No.16 of 2006. The date of offence was between 01.11.2015 to 31.12.2015. It was alleged that the Appellant had indulged in intercrural sex on the prosecutrix, who is the daughter of the Appellant's sister. The prosecutrix was 11 years of age at the time of the incident.

The trial commenced on 05/10/2021. After leading all necessary witnesses, the prosecution had closed the case on 06/09/2023. The Learned High Court Judge had called for the defence on the same day and the Counsel for the Appellant had moved for a day to call witnesses on his behalf. The Appellant had made a dock statement and called one witness in support of his case.

The Learned High Court Judge after considering the evidence presented by both parties, convicted the Appellant under Section 365 (B) (2)(b) of the Penal Code as amended, and sentenced him to 07 years rigorous imprisonment and imposed a fine of Rs.5,000/- subject to a default sentence of 03 months simple imprisonment. In addition, a compensation of Rs.1,000,000/- was ordered with a default sentence of 02-years simple imprisonment.

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

During the argument, the Appellant was present in Court as he was granted bail pending appeal.

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

1. The Learned High Court Judge failed to consider that the version of the prosecution is improbable.
2. The Learned High Court Judge failed to evaluate in law the credibility of the witnesses of the prosecution.
3. The Learned High Court Judge had failed in law to judicially analyse the contradictions *per se* in the version of the prosecution.
4. The Learned High Court Judge had failed to consider that *ex facie* the evidence of PW1 and PW2 (the victim and her father) were contradictory to each other.
5. The Learned High Court Judge had failed to give due weight to the omissions and contradictions marked by the defence.
6. The Learned High Court Judge failed to consider that the prosecution had failed to establish the date in which the alleged offence took place.
7. The Learned High Court Judge failed to give any analysis to the version of the defence.
8. The Learned High Court Judge failed to evaluate judicially if the identity of the Appellant was established beyond reasonable doubt.

**Background of the case *albeit* as follows:**

PW1 was only 11 years old when she encountered the unpleasant incident as she described in her evidence. According to PW1, her mother had gone abroad and she was staying at her grandmother's house. The Appellant is her maternal uncle. Her mother had started to live separately with another person at Mahiyanganaya. Due to this a family problem had existed between her parents. Her father is a disabled soldier.

On the day in question, while she was sleeping with the Appellant's daughter, who is also of the same age, she had suddenly felt weight and movement on her body and her panty had been lowered up to her knee. Her frock was raised upwards and she had felt pain in her vagina. She could not identify the person who was on her body at that time, but when she flashed the torch, she had, at that time, seen the Appellant close to the door with his sarong being lowered. Although, she had tried to wake the Appellant's daughter up, she had not responded. Hence, she had rushed to her grandmother's room and informed the incident to her. Her grandmother had told her to sleep. On the following day, her grandmother had checked her vagina. According to the victim, a blood-like stain was found on her panty.

After school, the Appellant's wife had inquired about the incident from her and advised her not to tell anybody, as her aunt's daughter was also of the same age and that this incident would affect her daughter's school career. Thereafter she had gone to her house and informed about the incident to her father, PW2 and lodged a complaint at the police. In the meantime, she had called her mother who was abroad and divulged the incident to her. Her mother did not want PW1 to lodge a complaint with the police and had threatened PW1.

PW2, the victim's father, also gave evidence and confirmed the evidence given by the victim.

PW7, the JMO had noted down under the history given by the victim, that about one month back, one day when she was sleeping, she had felt someone removing her underpants, their weight on her body and pricking with something at her genital area. The victim did not mention the identity of the perpetrator. The JMO opined that there is no evidence of vaginal or anal penetration. Intercrural penetration cannot be excluded.

As the appeal grounds are interconnected, all grounds will be considered together hereinafter.

Credibility assesses the likeliness and probability that a statement is true and can be trusted, believed and accepted as true or competent. It consists of both objective and verifiable evidence along with subjective, perceived trustworthiness. The element of credibility is established by way of consistency, expertise, integrity in communication and actions, and is of utmost importance in trials of justice, such as this.

The victim in her evidence admitted of the existence of a family dispute between her father and her mother and her family. The defence suggested that this is a story made up in order to put her mother and her family into an embarrassing position.

After informing her grandmother and the wife of the Appellant, the victim had informed the incident to her father. Thereafter, she had informed about this to the JMO who had examined the victim. In the history to the doctor, she had not revealed the identity of the Appellant. She had merely mentioned to the doctor that “someone” had done this. Further, the description and the injury she noted on her vagina was not detected by the JMO. After examination, the JMO had opined that the victim was free of any genital injury.

Further, when she felt that someone was on her body, she had neither shouted nor woken up the daughter of the Appellant. Although she had said that a previous incident of sexual harassment had happened to her, no charge had been framed against the Appellant.

The victim further admitted that after she went to stay with her father, her mother had stopped sending money to them.

The Learned High Court Judge had posed the following question to the victim:

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අධිකරණයෙන් :

- ප්‍ර : ඔයා ඒ වෙලාවේ අත්තමිමට පෙන්නුවේ නැද්ද මගේ ලේ එනවා කියලා ?
- උ : අත්තමිමා බැන්නා.
- ප්‍ර : ඔව්වර සිද්ධියක් වෙනකොට ඔයාගේ එහා පැත්තේ තමුන්ගෙම වයසේම කෙනෙක් හිදාගෙන සිටියහේ නේද ?
- උ : ඔව්.
- ප්‍ර : ඉතින් ඔයා එයාටවත් කතා කලේ නැද්ද ?
- උ : කතා කලා. කොච්චර කතා කලත් හින්දෙන් බහිනවනේ.
- ප්‍ර : ඔයා කෑ ගැහුවේවත් නැද්ද ? බය හිතුවේ නැද්ද මෙහෙම දෙයක් වෙනකොට. කෑ ගැහුවේ නැද්ද ගෙදර වෙහ ගොඩක් අය ඉදලා තියෙනවානේ ?
- උ : අත්තමිමා කියාගෙන තමයි දුටුගෙන මන් ගියේ. ඔය සිද්ධිය හින්දා ඉස්කෝල තුනකට ගියා. මේ අවුරුද්දේ සාමාන්‍ය පෙළ ලියන්න බැරිවුනා.

Further, in her history to the doctor she had said that the Appellant had bitten her chest. But she had failed to state this sexual act both to the police and in her evidence.

The prosecutrix, in her evidence stated that the Appellant had sexually harassed her previously. Even though she had stated the same to the JMO, the prosecution had failed to frame this charge against the Appellant.

The Appellant, in his dock statement had denied the charge levelled against him. Due to a family dispute, the victim's mother had started to send money to them. As such, this allegation was levelled against him, his wife and his mother. But the Learned Magistrate of Walapane had discharged his wife and his mother.

Although PW2, the father of the victim said that he had informed about the incident to the Grama Niladari, he had failed to mention about this in his statement to the police. This was highlighted as an omission by the defence.

The Grama Sevaka who was called by the defence denied that PW2 had complained about a sexual harassment that had happened at the Appellant's house. Further, he had denied that he had prevented PW2 from going to the police to lodge a complaint.

Additionally, the defence led evidence with regard to a complaint lodged against another person by the victim for sexual harassment. The said case is pending in the Magistrate Court of Walapane.

In criminal trials such as this, "probability tests" on victims of sexual assault are not standard, singular tests, rather, such tests would be layered tests which include forensic, psychological and testimonial assessments in order to establish the likelihood of whether such a sexual act occurred. As such, these multiple assessments help to uphold the legal standard of proof of "beyond a reasonable doubt".

Such a burden of proof of "beyond a reasonable doubt" establishes that the prosecution bears the weight of proving the guilt of the defendant beyond a reasonable doubt, until which the defendant is presumed innocent. Clear and cogent evidence must be adduced to satisfy this standard of proof, and such evidence must not contradict each other.

In the case of **Gurcharan Singh vs State of Haryana** AIR 1972 SC 2661 it was held that:

*"as a rule of prudence Court normally looks for some corroboration on her testimony so as to satisfy its conscience that she is telling the truth and that the person accused of rape has not been falsely implicated".*

In the case of **Premasiri vs The Queen** 77 NLR 86 it was held 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 nature is sufficient to convince the jury that she is speaking the truth."*

Considering the evidence given by the victim and the surrounding circumstances, relying solely on the evidence of the victim is not prudent in this case. Her evidence is ambiguous and creates a doubt on the prosecution's case.

Justice Dheeraratne in **Sunil and others v. Attorney General [1986] 1 Sri.L. R 230** held that:

*"Corroboration is only required or afforded if the witness requiring corroboration is otherwise credible. If the evidence of witness requiring corroboration is not credible his testimony should be rejected and the accused acquitted. Seeking corroboration of a witness's 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 the absence of corroboration."*

In **Premasiri v. Attorney General [2006] 3 Sri.L.R** held that:

*"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 where the circumstances make it unsafe to dispense with it, must be present to the mind of the judge".*

In the case of **Sana v Republic of Sri Lanka** [2009] 1 SLR 48 it was further noted that:

*“The corroborative facts and evidence must proceed from someone other than the witness to be corroborated. This means that his previous statements, even when admissible cannot be used to corroborate him, such as proof of a complaint in a sexual case or a previous act of identification is not corroborative of the evidence of the witness, even though by showing consistency, it can to some extent strengthen his credibility. Where an accused is charged with rape corroboration of the story of the prosecutrix must come from some independent quarter and not from the prosecutrix herself. A complaint made by the prosecutrix to the police in which she implicated the accused cannot be regarded as corroboration of her evidence.”*

In **Wijepala v AG** [2001] 1 SLR 46 the Court held that:

*“...Evidence of a single witness, if cogent and impressive, can be acted upon by a Court, but, whenever there are circumstances of suspicion in the testimony of such a witness.... then corroboration may be necessary”.*

Considering the evidence given by the prosecutrix, the prosecution should have placed corroborative evidence, as the evidence given by the prosecutrix failed to satisfy the court on the tests of consistency, spontaneity and probability.

In this case, the victim had not mentioned the name of the perpetrator to the JMO when her history was recorded. She had mentioned about the Appellant of committing sexual harassment to her on a previous occasion, however the prosecution had not preferred a charge under Section 345 of the Penal Code. As such, I hold that this is not a proper case to believe the evidence given by

the prosecutrix to secure a conviction against the Appellant. Further, I note that the prosecution should have corroborated the evidence of the prosecutrix. Hence, I conclude that all appeal grounds placed before this court have merit.

As discussed above, the evidence adduced by the prosecution does not support the conviction entered by the Learned High Court Judge of Nuwara Eliya dated 14/12/2023. Hence, I set aside the conviction and acquit the Appellant from the charge.

Therefore, the appeal is allowed.

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

**JUDGE OF THE COURT OF APPEAL**

**R. P. Hettiarachchi, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**