

**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/ 0141/2024
High Court of Matara
Case No. HC/221/2017**

Saranasinghe Matara Arachchi

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

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

COUNSEL : **Vineshka Mendis for the Appellant.**
Sudharshana De Silva ASG, PC, with
Tharaka Kodagoda, SC for the Respondent.

ARGUED ON : **24/02/2026**

DECIDED ON : **01/06/2026**

JUDGMENT

P. Kumararatnam, J.

The above-named Appellant (hereinafter referred to as The Appellant) was indicted by the Attorney General for committing two counts under Section 365 B (2) (b) of the Penal Code for committing the offence of Grave Sexual Abuse on Asanka Miyuranga between the period of 14.04.2012 and 24.07.2012.

The trial commenced on 14/02/2020. After leading all necessary witnesses, the prosecution closed the case. The Learned High Court Judge had called for the defence and the Appellant had made a dock statement from the dock and closed the case.

The Learned High Court Judge after considering the evidence presented by both parties, convicted the Appellant for the 1st count as and sentenced the Appellant to 10 years of rigorous imprisonment and imposed a fine of Rs.25,000/- subject to a default sentence of one-year simple imprisonment. In addition, a compensation of Rs.150,000/- was ordered with a default sentence of 06 months simple imprisonment.

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. At the time of argument, he was produced via the Zoom platform by the prison authorities.

The following Grounds of Appeal are raised on behalf of the Appellant.

1. The Learned High Court Judge erred in law in failing to reject the PW1's uncreditworthy testimony and acquit the Appellant of all the charges.
2. Even if PW1's testimony could be relied on, the Learned High Court Judge erred in law in failing to seek independent corroboration.
3. The Learned Trial Judge erred in law in finding the prosecution had discharged its burden of proving the case beyond reasonable doubt.
4. The Learned Trial Judge erred in law in failing to use his direction to impose a mitigated or suspended sentence.

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

According to PW1, the victim of this case, he was about 12 years old when he had undergone this ordeal. The Appellant was a businessman who ran a grocery shop near the victim's house. One day the victim's mother had sent the victim to buy a box of matches from the Appellant's shop. At that time the Appellant had taken the victim to a bed placed at the rear side of the shop, and had removed his trouser, applied coconut oil over his anus and indulged in anal intercourse with the victim. The Appellant had performed the said act for about five minutes and the victim had felt pain. Giving money to the victim, the Appellant had told him not to divulge this to anybody.

The victim had told the incident to his mother three days after the incident. His mother PW2, Priyanthi had taken the victim to Thihagoda Police and lodged the complaint.

According to PW11, the JMO who examined the victim, it was noted that PW1's sphincter was lax and there was a healed wound in the anus. He opined that a lax sphincter and wound can occur due to repeated anal penetration and the wound he noted was around one week old. The JMO further opined that the victim is an ordinary child.

In the first ground of appeal, the Appellant contended that the Learned High Court Judge erred in law in failing to reject the PW1's uncreditworthy testimony and acquit the Appellant of all the charges.

In cases of child abuse, the children who might be victims or witnesses in these cases would have to testify in court, where such testimonies would be of utmost importance in the resolution of such cases. In other legal matters, it is a known fact that the victim's account (the victim's side of the story) would be a vital and decisive component in trial proceedings. However, it is important to bear in mind the vulnerabilities and emotional instabilities of children as opposed to adults. Further, it must be noted that children would lack the necessary communication skills to properly articulate traumatic events.

Testimonies of child witnesses or victims would be extremely crucial in considering the events in question of a child abuse case, however, the main principle that must be upheld throughout such cases is the principle of impartiality – in other words, the side making the most coherent, logical and understandable arguments would usually be the side the jury would believe.

In the case of **State of Madhya Pradesh v. Balveer Singh**, (2025) 2 SCC 261 the court held that:

“It is a well-settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself is no ground to reject the evidence of a child witness. The Court must make careful scrutiny of the evidence of a child witness. The Court must apply its mind to the question whether there is a possibility of the child witness being tutored. Therefore, scrutiny of the evidence of a child witness is required to be made by the Court with care and caution.”

In the case of **Daradagamage Chandraratne Jayawardane alias Shantha v. The Attorney General** - Court of Appeal case No. CA/85/2013, decided on 25.05.2018, it was observed:

“Time and again courts have discussed the acceptance of evidence of children of tender ages. Our judges are not there to test the memory of the witness, they are expected to find actual fact and the truth. Witnesses are human beings; they are not memory machines nor robots to repeat the incident as it was. Further, the natural behaviour of human beings is to forget incidents, especially sad memories. No one wants to re-visit painful moments and keep detailed memories with them. We are also mindful most of our courts with due respect, are not child friendly.”

In the case of **Bhanei Prasad @ Raju v. State of Himachal Pradesh**, 2025 INSC 934, decided on 4 August 2025 it was held:

“It is now well settled that the testimony of a child victim, if found credible and trustworthy, requires no corroboration. The Courts below have not merely accepted the victim’s account, they have validated it through

unimpeachable scientific evidence. The DNA report sealed the evidentiary chain and has dispelled all doubts in the prosecution case which is sought to be assailed by the petitioner.

This Court has repeatedly underscored that in offences involving sexual abuse, especially against children, the trauma suffered by the victim is lifelong. The scars are not merely physical but psychological, cutting across every fiber of trust, safety, and dignity.”

The learned Counsel for appellant argued that the victim was a mentally impaired, but according to the JMO who examined the victim first, the opinion of a psychiatric was obtained where he had arrived at the conclusion that even though the victim is diagnosed with a moderate to severe learning disability, he opined that the victim was an ordinary child, and that the victim is in a capacity to testify in a court.

Although the victim had told the doctor that the Appellant had performed anal intercourse 3-4 times in different days, he restricted his evidence to only one incident that had happened to him. Although he said that he was narrating what his parents had taught him, his evidence was very consistent with the medical evidence. Further, although the defence suggested to PW2 and PW3 that the abuse was perpetrated on the victim by a person called Pasindu Ramanayake, this position was not put to the victim by the defence. Further, when the witnesses were questioned about the existence of a land dispute with the Appellant, PW2 and PW3 the mother and the father respectively had refuted that proposition but admitted the existence of a land dispute with the brother of the Appellant. The Learned High Court Judge had very correctly and extensively considered the evidence given by PW1, PW2 and PW3 in his judgment. Further, the learned High Court Judge had given plausible reasons as to why he disregards the contradictions marked on the evidence given by PW1.

As the evidence given by the victim and the other witnesses is clear and quite consistent, the Learned High Court Judge has accurately considered and accepted them in this case. Hence, this ground of appeal is devoid of any merit.

In the second ground of appeal the Appellant contends that even if PW1's testimony could be relied on, the Learned High Court Judge erred in law in failing to seek independent corroboration.

In **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat** AIR 1983 SC 753 the Indian Supreme Court held that:

“The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement.”

“Refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion?”

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”.

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”.

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, shaken 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”.

In this case, the Learned High Court Judge had very clearly analysed the evidence given by the victim and he is very correct in accepting the victim's evidence in this case as accurate to come to his finding. Hence, this ground also has no merit.

In the third ground of appeal, the Learned Counsel for the Appellant contended that the Learned Trial Judge erred in law in finding the prosecution had discharged its burden of proving the case beyond reasonable doubt.

In this case, the Learned High Court Judge had considered the evidence presented by both parties in his judgment. Therefore, it is incorrect to say, that the Learned High Court had failed to note that the prosecution has not proved the case. Hence, this ground also has no merit.

In the final ground of appeal, the Learned Counsel for the Appellant contended that the Learned Trial Judge erred in law in failing to use his direction to impose a mitigated or suspended sentence.

The Learned High Court had considered all aggravating and mitigating circumstances to pass the sentence.

Now, the Learned Counsel for the Appellant submits that the Appellant is 74 years of age and feeble. Therefore, he moves to re-consider the sentence imposed to a minimum sentence.

Considering all the circumstances of this case, especially considering the age of the Appellant, I reduce the 10-year sentence to a 7-years sentence operating from the date of conviction, i.e., from 19.01.2024.

The fine and the compensation imposed by the learned High Court Judge will remain same.

Subject to the above variation in the sentence, the appeal is hereby dismissed.

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

JUDGE OF THE COURT OF APPEAL