IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

An Appeal filed in terms of Section 331 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.

Democratic Socialist Republic of Sri Lanka

Complainant

Vs

Wanninayake Mudiyanselage Wasantha Appuhamy

Accused

Court of Appeal Case No: **CA/HCC/0059-25**

High Court of Puttalam Case No: **30-2020**

AND NOW BETWEEN

Wanninayake Mudiyanselage Wasantha Appuhamy

Accused – Appellant

Vs

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

Complainant - Respondent

Before : **P. Kumararatnam, J.**

Pradeep Hettiarachchi, J.

Counsel : Prashan Wikramarathne for the Accused – Appellant.

: Oswald Perera S.C for the Respondent.

Argued on : 17.02.2026

Decided on : 12.05.2026

Pradeep Hettiarachchi, J

Judgment

1. The Accused-Appellant (hereinafter referred to as "the Appellant") in the present case was indicted before the High Court of Puttalam on a charge of raping a girl under 16 years of age. The Appellant, being the stepfather of the prosecutrix, was accordingly charged under section 364(3) of the Penal Code.

2. At the conclusion of the trial, the Learned Trial Judge found the Appellant guilty of the said charge and convicted him. Consequently, the Appellant was sentenced to 16 years' rigorous imprisonment and a fine of Rs. 10,000/-, with a default sentence of three months' simple imprisonment. Being aggrieved by the said conviction and sentence, the Appellant has preferred the present appeal. The Appellant relies on five grounds of appeal, namely:

    a. Has the Learned Trial Judge failed to consider whether the prosecution has failed to prove the case against the Appellant beyond a reasonable doubt?
    b. Has the Learned Trial Judge considered the defence in light of the evidence of the prosecution?

c. The Learned High Court Judge has failed to give due attention to material inter se contradictions among prosecution witnesses.
d. The Learned High Court Judge has rejected the defence on erroneous grounds; and,
e. The Learned High Court Judge has failed to consider the interestedness and motive of PW2.

3. I shall first consider whether the prosecution has failed to prove the charge against the Appellant beyond a reasonable doubt. It was submitted on behalf of the Appellant that the prosecution had failed to prove the act of penetration and the date of the offence, and that the prosecutrix's responses were vague and evasive. The prosecutrix testified before the High Court of Puttalam 16 years after the alleged incident. It was also observed and recorded by the Learned High Court Judge that the prosecutrix was in an advanced stage of pregnancy at the time she gave evidence.

4. Accordingly, when evaluating the prosecutrix's testimony, these factors must be duly considered, and it would be unreasonable to expect the prosecutrix to recount, with precision and without any inconsistencies, an ordeal she is alleged to have experienced during her childhood. Accordingly, so long as there are no inconsistencies or contradictions that go to the root of the case and thereby compel the Court to disbelieve her testimony, the mere presence of minor inconsistencies does not render her evidence unworthy of credence.

5. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, may not prompt the Court to reject the evidence in its entirety. The following authorities are of considerable relevance to this issue.

6. *"Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions."* As held by the Supreme Court of India in the ***Bhajan Singh @ Harbhajan Singh & Ors vs. State of Haryana on 2011 (7) SCC 421.***

7. In the case of ***Veerasamy Sivathasan vs. AG SC Appeal 208/2012*** (15 December 2021). which cited the case of ***State of Uttar Pradesh vs. M. K. Anthony*** held that;

> *"While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view of the deficiencies, draw-backs and infirmities pointed out in evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. ... Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals..."*

8. In the case of ***Mahathun and Others vs. The Attorney General [2015] 1 SLR 74,*** it was held inter alia that:

> *"Where evidence is generally reliable, much importance should not be attached to the minor discrepancies and technical errors. The Court of Appeal will not lightly disturb the findings of a trial judge with regard to the acceptance or rejection of the testimony of a witness unless it is manifestly wrong."*

9. In ***Mekala Sivaiah vs. State of Andhra Pradesh, (2022) 8 SCC 253,*** wherein it has been held that unless the findings are perverse and rendered in ignorance of material evidence, this Court should be slow in interfering with concurring findings. The Supreme Court observed that:

> *"It is well settled by judicial pronouncement that Article 136 is worded in wide terms and powers conferred under the said Article are not hedged by any technical hurdles. This overriding and exceptional power is, however, to be exercised sparingly and only in furtherance of cause of justice. Thus, when the judgment under appeal has resulted in grave miscarriage of justice by some misapprehension or misreading of evidence or by ignoring material evidence then this Court is not only empowered but is well expected to interfere to promote the cause of justice. It is not the practice of this Court to re-appreciate the evidence for the purpose of examining whether the findings of fact concurrently arrived at by the trial court and the High Court are correct or not. It is only in rare and exceptional cases where there is some manifest illegality or grave and serious miscarriage of justice on account of misreading or ignoring material evidence, that this Court would interfere with such finding of fact."*

10. It is also pertinent to mention that, during the cross-examination of the prosecutrix, not a single contradiction or omission was brought to the notice of the Court. The Learned Trial Judge, in her judgment, has carefully analyzed and evaluated the prosecutrix's evidence in the proper perspective, particularly taking into account the time lapse between the date of the offence and the trial, the tender age of the prosecutrix at the time of the offence, and her advanced stage of pregnancy at the time she gave evidence.

11. Furthermore, the Learned Trial Judge has adequately dealt with the difficulty faced by the prosecutrix in giving evidence regarding the exact date of the offence. The evidence of the prosecutrix's mother, coupled with that of PW3, the police officer who recorded the statements of both the prosecutrix and her mother, when considered together, demonstrates that there is no uncertainty as to the date of the offence. The Trial Judge carefully analyzed the evidence of the prosecutrix, her mother, and PW3, and concluded that the prosecutrix's failure to mention the exact date of the offence caused no prejudice to the Appellant, particularly since the Appellant's defence was a total denial of the commission of the crime.

12. The Appellant further argued that the prosecution had not proved the act of penetration and that the medical evidence did not support the prosecution's case. In her testimony, although the prosecutrix was initially somewhat reluctant to explain exactly what the Appellant had done to her, she nevertheless clearly described his actions. At page 66 of the Appeal Brief, the prosecutrix explicitly explained the act of penetration. Accordingly, the Appellant's argument in this regard must fail.

"ප්‍ර: තමුන්ගේ ඇග උඩ ඉඳලා තමුන්ට මොකක්ද කලේ?

උ: එයා පිරිමි ඇගෙන් මගේ ගැනු ඇඟට දැම්ම.

ප්‍ර: ඒ දල කොපමණ වෙලාවක් හිටියද?

උ: හුග වෙලාවක්, ටිකක් හිටිය." (vide page 66 of the Appeal Brief)

13. The Medico-Legal Report and the testimony of the Judicial Medical Officer both demonstrate evidence of chronic vaginal penetration. However, the Appellant argued that this medical opinion is inconsistent with the prosecutrix's testimony, in which she claimed the acts occurred only once or twice.

14. It is important to emphasize that the prosecutrix was a child of tender age, ten years old or younger, when she endured this ordeal. Given her age, background, and the fact that the abuse was perpetrated by a close relative (her stepfather), it is entirely expected that she would attempt to repress such traumatic memories and remain reluctant to recount every detail. Therefore, although her testimony did not account for the extended duration of abuse suggested by the JMO's findings, this discrepancy does not, in my view, erode her credibility. The Learned Trial Judge's analysis of the medical evidence was thorough and led to a logical conclusion.

15. Another ground advanced by the Appellant was that the Learned Trial Judge had reached a finding that all the necessary ingredients of the charge had been proved by the prosecution before evaluating the defence evidence. It is observable from the judgment that the Learned Trial Judge, after considering the prosecution evidence, concluded that all the ingredients of the charge set out in the indictment had been

established. This conclusion was expressed before she considered the defence evidence.

16. Nevertheless, it must be emphasized that each judge has his or her own style of writing judgments. Provided that the judge has sufficiently analyzed the evidence of both parties, applied the correct legal principles, and refrained from relying on inadmissible evidence, the sequence in which the evidence is analyzed does not vitiate the judgment. In the present case, before analyzing the defence evidence, the Trial Judge did not conclude that the charge had been proved beyond a reasonable doubt; rather, she merely stated that the evidence adduced by the prosecution had established the ingredients of the charge.

17. Thereafter, the Learned Trial Judge proceeded to evaluate and analyze the defence evidence. Whether the charge was proved beyond a reasonable doubt is a matter to be determined upon a consideration of both the prosecution and the defence evidence. In her analysis, the Learned Trial Judge has carefully examined the dock statement and has clearly set out her reasons for declining to accept the dock statement of the Appellant.

18. It is noted that certain observations made by the Learned Trial Judge may not fully accord with accepted legal principles, particularly where she placed reliance on a suggestion made by the defence during cross-examination. Nevertheless, when the findings of the Learned Trial Judge are considered in their totality, no conclusion other than the guilt of the Appellant could reasonably have been reached.

19. It is also significant to emphasize that minor errors or irregularities in a judgment do not necessarily render it liable to be set aside. The Code of Criminal Procedure Act and the Constitution provide mechanisms for rectifying such errors, omissions, or irregularities, so long as they do not prejudice the substantial rights of the parties.

20. Section 436 of the Code of Criminal Procedure Act No. 15 of 1979 states as follows:

"Subject to the provisions hereinbefore contained any judgment passed by a court of competent jurisdiction shall not be reversed or altered on appeal or revision on account- (a) of any error, omission or irregularity in the complaint, summons, warrants, charge, judgment, summing up or other proceedings before or during trial or in any inquiry or other proceedings under this code; or (b) of the want of any sanction required by section 135, ***Unless such error, omission, irregularity, or want has occasioned a failure of justice****." [Emphasis added]*

21. Article 138 of the Constitution of the Democratic Republic of Sri Lanka states:

"The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be [committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance], tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and restitutio in integrum, of all causes, suits, actions, prosecutions, matters and things [of which such High Court, Court of First Instance] tribunal or other institution may have taken cognizance: Provided that no judgment, decree, or order of any court shall be revised or varied on account of any error, defect or irregularity, ***which has not prejudiced the substantial right of the parties or occasioned a failure of justice****". [Emphasis added]*

22. In view of the foregoing, I find no merit in the Appellant's submission regarding the manner in which the Learned Trial Judge structured her judgment or the sequence in which the prosecution and defence evidence were considered.

23. Another ground advanced by the Appellant is that the Learned Trial Judge failed to consider the motive and interestedness of PW2, the mother of the prosecutrix. PW2 had married the Appellant following the demise of her husband, Sebasthian Appuhamy. According to PW2, the Appellant had been subjecting her and her children to continuous harassment.

24. On the day of the incident, PW2 had gone to a nearby temple to attend a meeting of the fishing community. Upon her return, she was informed of the incident by her children as well as by the Appellant's niece, who was also residing with them. Thereafter, PW2 went to the house of one of her aunts and stayed there overnight. On the following morning, she proceeded to the police station with the prosecutrix and lodged a complaint.

25. Evidently, PW2 and her children were experiencing considerable hardship due to the Appellant's conduct. However, no assault or similar incident was reported immediately prior to the lodging of the complaint with the police. The harassment endured by PW2 and her children appears to have been a continuous occurrence rather than a recent development. In these circumstances, it is difficult to accept that the complaint was motivated by or precipitated solely due to such prior harassment, thereby diminishing the likelihood of any ulterior motive arising from those circumstances.

26. The fact that this witness went to the house of one of her aunts and, on the following morning, proceeded to the police station was not disputed by the Appellant during cross-examination. In the absence of such an incident, there would have been no apparent reason for PW2 to leave her residence and remain elsewhere until the following morning. It is also in evidence that the Appellant had come in search of PW2 and her children and had threatened them; this evidence, too, was not challenged during cross-examination.

27. In these circumstances, it is difficult, if not impossible, to infer that PW2 had any motive or interest in falsely implicating the Appellant.

28. The Appellant further contended that the Learned Trial Judge rejected the defence evidence on erroneous grounds. However, it is apparent that the Learned Trial Judge carefully analyzed and evaluated both the prosecution and the defence evidence, and provided sufficient reasons for rejecting the defence version.

29. More importantly, the Learned Trial Judge gave due consideration to certain positions taken by the Appellant in his dock statement and observed that those matters had not even been suggested to the prosecution witnesses during cross-examination. In such circumstances, the Learned Trial Judge was justified in treating those assertions as afterthoughts.

30. The Learned Trial Judge has also carefully examined the prosecutrix's evidence and has provided reasons as to why her credibility and trustworthiness remain intact. In the absence of any material contradictions or omissions in her testimony, and in view of the fact that it is devoid of inherent improbabilities, I see no reason to disbelieve the prosecutrix's evidence, notwithstanding the presence of minor infirmities.

31. It is also noteworthy that the Learned Trial Judge had the advantage of observing the demeanour of the witnesses. Accordingly, appellate courts are slow to interfere with the findings of a Trial Judge unless it is demonstrated that the Trial Judge has manifestly misdirected herself on a material issue, thereby causing prejudice to the Appellant.

32. In ***Alwis vs. Piyasena Fernando (1993) 1 Sri. L R 119,*** it was held that:

> *"It is well established that findings of primary facts by a trial Judge who hears and sees witnesses are not to be lightly disturbed on appeal."*

33. Similar sentiments were articulated in ***Dharmasiri vs. Republic of Sri Lanka [2010] 2 Sri. L.R.241***, where it was held that:

> *"Credibility of a witness is mainly a matter for the trial Judge, the Court of Appeal will not lightly disturb the findings of a trial Judge with regard to the credibility of a witness unless such findings of the trial Judge are manifestly wrong."*

34. In the Court of Appeal decision ***of Kumar de. Silva and 2 others vs. Attorney General [2010] 2 Sri LR 169***, Sarath de. Abrew J had held that;

"Credibility is a question of fact, not of law. The acceptance or rejection of evidence of witnesses is therefore a question of fact for the Trial Judge."

35. In ***Ariyadasa V. Attorney General [2012] 1 Sri LR 84,*** the Court of Appeal held that;

"Court of Appeal will not lightly disturb a finding of a Judge with regard to the acceptance or rejection of a testimony of a witness, unless it is manifestly wrong, when the Trial Judge has taken such a decision after observing the demeanour and deportment of a witness……"

36. In the circumstances, I find no basis to interfere with the findings of the Learned Trial Judge with regard to the credibility of the prosecution witnesses or the manner in which the defence evidence was evaluated. The findings are well-reasoned and are amply supported by the evidence on record. Accordingly, I affirm the conviction and sentence dated 13.02.2025 of the Learned High Court Judge of Puttalam. The sentence shall run from the date of the conviction.

37. The appeal stands dismissed.

Judge of the Court of Appeal

P. Kumararatnam, J

I agree,

Judge of the Court of Appeal