

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

In the matter of an Appeal under and in terms
of Section 331 (1) of the Code of Criminal
Procedure Act No.15 of 1979.

CA Case No: CA-HCC 161/2022

HC of Colombo Case NO: HC-332/2017

The Democratic Socialist Republic of Sri
Lanka.

COMPLAINANT

Vs

Mohammad Badurdeen Mohammad Pirafdeen

ACCUSED

And Now in Between

Mohammad Badurdeen Mohammad Pirafdeen

ACCUSED -APPELLANT

Vs

The Attorney General

Attorney General's Department

Colombo 12.

COMPLAINAT- RESPONDENT

Before: B. Sasi Mahendran, J.
Amal Ranaraja, J

Counsel : Shavindra Feranando PC with Rishnie Dernandopulle for the Accused-Appellant
Dishna Warnakula, DSG, for the Respondent

Written

Submissions: 10.07.2023 (by the Accused-Appellant)

On 12.12.2023 (by the Respondent)

Argued On: 30.01.2026

Judgment On: 27.04.2026

JUDGEMENT

B. Sasi Mahendran, J.

The Accused-Appellant (hereinafter referred to as 'the Appellant') was indicted before the High Court of Colombo for committing the offence of Statutory Rape on one minor, namely Manohari Swathi Suganya, on or about 08th March 2012, punishable under Section 364(2)(e) of the Penal Code as amended.

At the trial, the prosecution presented evidence through 7 witnesses and marking productions P1-P6 and thereafter closed its case. The Appellant, in his defence, made a dock statement.

Upon conclusion of the trial, the Learned Judge of the High Court, by judgment dated 01st September 2022, found the Accused guilty of the charge and imposed a sentence of 12 years of imprisonment and a fine of Rs. 25,000/- and 6 months imprisonment in default. Further, compensation of Rs. 200,000/- was ordered to be paid to the victim; in default, a term of one year's simple imprisonment is imposed.

Being dissatisfied with both the conviction and the sentence imposed by the Learned High Court Judge, the Appellant preferred an appeal before this Court, articulating the following grounds in support of their challenge.

1. Contradictions marked on behalf of the appellant as V1 and V2 cast a doubt in the prosecution version,
2. Omissions
3. Accused's statement to the police
4. Judgment of the learned High Court Judge has not favorably considered the contradictions V1 and V2, failure to properly evaluate the evidence of PW1 with the - evidence of PW2, failure to consider the omissions, failure to consider the implausibility of the prosecutrix's evidence and use of different yardsticks to evaluate the evidence for the prosecution and the defense, failure to consider the dock statement and failure to afford the benefit of the doubt to the appellant

The facts and circumstances of this case are as follows,

PW-1, Manohari Swathi Suganya, the victim in this case, testified that she was 13 years old at the time of the incident and 20 years old when giving evidence before the Court.

According to the victim, the Appellant was her neighbor. On 08.03.2012, she stated that the Appellant came to her house in the evening while she was watching television after school with her sister, while her mother, PW 2, who was pregnant, was asleep. The Appellant asked the victim for his house keys and requested that she accompany him to his house, but she refused. Thereafter, the Appellant went inside his house, switched on the cassette player, and subsequently returned wearing a pink towel. Then the appellant had covered her mouth and forcibly taken her to his residence. Then taken her to the room of the appellant while no one was at home and started to hug her and came on top of her. She then screamed, but observed that no one else was present in the Appellant's house, and the appellant had threatened to hit and kill her. The Appellant had tried to kiss her and attempted to remove the victim's clothing, during which she tried to hold onto her frock. When he was unable to remove it, he proceeded to take off her underskirt and underwear and then inserted his male organ inside the vagina of the victim.

Page 59 of the brief,

ප්‍ර : ඒ වෙලාවේ තමුන්ට ඒක දැනුනද?

උ : ඔව් මට දැනුනා

ප්‍ර : ඊට පස්සේ ස්වාතී මොකද කළේ?

උ : ඊට පස්සේ එයා මාව කොහොම හරි තද කරලා එයාගේ පුරුෂ ලිංගය ම ලිංගයට දැම්මා

The witness stated that when she resisted, the Appellant went to the living room, at which point she attempted to leave the room. He returned and again tried to rape her, but the victim did not allow him to do so. According to the witness angered, the Appellant went to the bathroom located outside. The victim, without wearing her underwear, then went back to her house. At that time, PW 2 was searching for her. Initially, the victim did not disclose the incident due to the Appellant's threats, but later she revealed the matter to her mother. According to the victim, PW 2 then contacted her father and informed him of the incident. Upon his arrival, he questioned the Appellant, who denied any wrongdoing, and subsequently, a formal complaint was lodged later that night. And she was produced before the JMO.

During the testimony, she revealed another incident prior to this incident, about one year earlier, the Appellant had asked the victim to come to his residence, but she did not comply. According to the witness, the Appellant later handed the victim a letter to read while she was standing in front of her house, stating that he could not read Sinhala. Following this, he grabbed her hand, covered her mouth, and forcibly took her to his residence. The victim stated that, after being taken to the Appellant's residence, he forced her into a room. Once inside, he placed her on a bed and restrained her by positioning his legs on top of hers and attempted to remove her clothing. The victim stated that, when she resisted by hitting the Appellant and warned that she would disclose the incident to his wife, she began crying and felt faint at that moment. Then the Appellant has threatened her, saying that if she revealed anything, he would kill her pregnant mother.

During cross-examination, the witness stated that the Appellant attempted to remove her clothes but was unable to do so when she fainted. PW 1 categorically testified that the Appellant threatened her, warning that if she disclosed the incident, he would kill her pregnant mother. The witness further stated that on the day in question, the Appellant, while holding her mouth, took the victim to his residence, which was situated approximately 10–15 meters away.

The defence highlighted an omission, noting that the witness had not mentioned in her police statement that she fainted on that day.

Page 67 of the brief,

ප්‍ර : ඔබට පොලිසියට කටඋත්තරය දෙන වෙලාවේ කලින් දවසක සිදුවීමක් වන වේලාවේ ඔබට කලන්තයක් හැඳුනා කියන කතාව සඳහන් කලාද ?

උ : ඔව්.

(එය උණතාවයක් ලෙස සටහන් කරයි)

ප්‍ර : මම යෝජනා කරනවා ඔබ පොලිසියට එසේ සඳහන් කරලා නැහැ කියලා "

උ : මම කිව්වා.

(එම ප්‍රකාශයද උණතාවයක් ලෙස සටහන් කරයි).

The witness consistently stated that due to the Sound of the cassette player, no one could hear her voice. The witness also stated that her sister was asleep when the Appellant came to the house. Another omission was marked by the defence, pointing out that while the victim testified she shouted when the Appellant grabbed her, this detail was not included in her police statement. She admitted that in her police statement, she had stated the Appellant was wearing a T-shirt and shorts. She further explained that she could not remember the details exactly.

The defence highlighted a contradiction, noting that in her police statement the victim had said the Appellant attempted but failed to remove her underwear, whereas in her testimony she stated that he succeeded in removing it. The witness further testified that at first, she resisted his attempt to insert his organ, but eventually he did. Another contradiction was marked where, in her police statement, the victim had said the Appellant mentioned opening the door to leave. The witness admitted that the Appellant had lodged a complaint in the Borella Police Station prior to them. The defence suggested that the Appellant had revealed something concerning the victim's father, which led to her father assaulting him. The witness denied this suggestion, stating instead that when the Appellant denied allegations, her father struck him.

PW-9, Dr. H.M. Ruhul, the JMO, testified that he examined the victim on 9 March 2012. According to the brief history provided by the victim, she described two incidents: the first in December 2011 and the second on 8 March 2012, in which the appellant inserted his male organ. The PW 9 stated that the medical findings were consistent with her history, confirming that she had experienced penetration between the labia. He explained that

such penetration causes pulling of the tissues on both sides of the labia, which can result in tearing. Importantly, he clarified that the penetration observed was not through the hymen but rather into the vaginal area. The witness further emphasized that there was no evidence of penetration through the hymenal opening, but there was clear medical evidence of penetration between the labia.

During cross-examination, JMO, he confirmed the presence of injuries caused by pulling between the labia, noting that such injuries indicated the application of considerable force. When questioned by the defense as to whether the wound between the labia, specifically the injury recorded under No. 06 F, could have been caused by a finger or nail, the doctor categorically denied this possibility. He explained that if such an injury were caused by a finger, a rupture of the tissues of the hymenal membrane would be expected, but no such rupture was observed. Therefore, he concluded that the injury could not have been caused by a finger.

Upon the conclusion of the prosecution's evidence, the Appellant, in his dock statement, denied the allegations. He further stated that the father of the victim, having spread rumors against him, came to his residence accompanied by two others. After inquiring about the incident, they assaulted the Appellant.

The main argument advanced by the defence is that the learned High Court Judge failed to properly consider the omissions and contradictions in the evidence, and instead accepted the testimony of the victim without adequate scrutiny. I am mindful that the prosecutrix gave evidence after a lapse of six years regarding an incident alleged to have occurred in 2012. At the time of the incident, she was only 13 years old.

When considering the omissions and contradictions highlighted by the defence, it must be noted that human memory is fallible, particularly over such a long period of time. Our courts have consistently held that if the contradictions and omissions do not go to the root of the case, the evidence may nevertheless be accepted as credible.

I am mindful of the following judgments, which lay down the principles on how omissions and contradictions in witness testimony should be considered.

I am reminded of the observation made in *Bhoginbhai Hirjibhai vs. State of Gujarat*, AIR 1983 SC Page 753 at page 755, observed thus;

“By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.”

I am also mindful that the prosecution’s version of events has been corroborated by the testimony of the medical officer (JMO). I hold that the medical evidence does support the evidence of PW 1, the victim.

I hold that the learned High Court Judge has evaluated the evidence of the victim and accepted her testimony as truthful. Also, it should be noted that he provided reasons explaining why he rejected the Appellant’s dock statement.

In those circumstances, I am not inclined to interfere with the judgment delivered by the Learned High Court Judge together with the sentencing order and dismiss the appeal.

The Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL