

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 Criminal Procedure Act,
No. 15 of 1979.

Sinnathamby Pathmanathan

ACCUSED-APPELLANT

Court of Appeal
CA Case No: CA/HCC/179/2023

HC of Kilinochchi
Case No. NP/HC/KN/19/2022

Vs.

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

RESPONDENT

AND NOW

Sinnathamby Pathmanathan

ACCUSED-APPELLANT

Vs.

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

COMPLAINT-RESPONDENT.

Before: **Hon Justice B. Sasi Mahendran, J.**
 Hon Justice Amal Ranaraja, J

Counsel: Ershan Ariyaratnam for the Accused-Appellant
Malik Azeez, SG for the Respondent.

Written 08.01.2024 (by the Accused-Appellant)

Submissions: 02.07.2024 (by the Respondent)

On

Argued On: 13.05.2026

Judgment On: 15.06.2026

JUDGEMENT

B. Sasi Mahendran, J.

The Accused- Appellant (hereinafter referred to as the Appellant), the father of the victim was indicted before the High Court of Kilinochchi for having committed the offence of rape on one minor, namely Pathmanathan Vathani, on or about 05.01.2013, punishable under Section 364 (3) of the Penal Code as amended by Act No.22 of 1995 and as further amended by No.29 of 1998 and No. 16 of 2006.

Upon conclusion of the trial, the Learned High Court Judge, by judgment dated 12.07.2023, found the Appellant guilty of the charge and imposed a sentence of 17 years of rigorous imprisonment and a fine of Rs. 10,000/- and 1 year imprisonment in default.

Being aggrieved by the said conviction and the sentence, the Appellant sought to challenge the validity on the following grounds,

1. The Learned High Court Judge has failed to consider the Prosecution has not proved their case beyond reasonable doubt, the elements in the indictment
2. The Learned High Court Judge has failed to consider the credibility and probability of the Prosecution's case not considered the Defence case.

The prosecution's case, which gave rise to the conviction, is as follows,

PW1, Pathmanathan Vathani, the victim in this case, testified that she was seven years old at the time of the alleged incident. She stated that she lived with Appellant and her siblings. According to her, on the day of the incident she was alone at home studying when the Appellant returned home in an intoxicated state and asked her to prepare food. She informed him that she had not cooked any food and that her elder sister had gone to their maternal grandmother's house. Thereafter, the Appellant assaulted her with a stick from a Portia tree and demanded that she remove her frock. When she refused, the Appellant tore the frock from the back and forcibly removed it. He then removed her shorts and embraced her. According to the witness, she screamed as she could not bear the pain caused by the assault. She further stated that the pain was severe and that her legs became swollen as a result of the beating.

The Appellant tried to embrace her, but she resisted and struck back. Despite her resistance, she could not overcome him. The Appellant then forced her to lie down on the floor. By that time, she was completely nude. He continued to assault her, demanding that she remove her pair of shorts. Thereafter, the Appellant himself gradually pulled down the shorts to her thighs. After removing his own clothes, the victim was then forced to lie on the floor facing upwards, while the Appellant mounted her, facing her. According to the witness at that time, the Appellant had sexually abused the victim. Thereafter, he inserted his penis into her vagina, causing her pain. Subsequently, several neighbours arrived at the scene, following which the matter was reported to the Probation Officers.

Upon an analysis of the Medico-Legal Report marked "P-1", issued by the Judicial Medical Officer, it is observed that the victim had been admitted to hospital on 07.01.2013 and was medically examined on 10.01.2013. According to the history recorded by the Judicial Medical Officer, the victim had alleged that the Appellant had sexually abused her. However, the medical examination revealed no vaginal discharge or bleeding. Furthermore, no injuries were detected in the genital or

upper thigh regions. The hymen was described as annular and intact, and no injuries were observed in relation thereto.

The opinion of the JMO is kissing, and fondling cannot be excluded, as such acts may not necessarily leave any physical injuries. Vaginal penetration beyond the hymen is excluded; however, inter-labial penetration cannot be excluded. Injuries numbered 2 and 3 are possibly caused by blows inflicted with a blunt, elongated, and non-pliable weapon such as a cane.

Upon the conclusion of the prosecution case, the Appellant stated that he was unaware of the incident and that he was sick and disabled. It is noted that the Appellant does not specifically deny the acts attributed to him.

In conclusion, the prosecution case rests primarily on the testimony of PW1, the victim, whose evidence describes an incident of forceful sexual assault including alleged vaginal penetration by the Appellant. When I peruse the MLR medical opinion, excluded vaginal penetration beyond the hymen does not exclude the possibility of other forms of sexual abuse such as inter-labial penetration.

Accordingly, while the medical evidence does not fully corroborate the allegation of complete sexual penetration as narrated by PW1, it does not, in itself, negate the occurrence of sexual abuse or physical assault. The credibility of PW1's testimony, therefore, becomes central to the determination of guilt, and the court must assess whether her evidence is sufficiently reliable and cogent to sustain a conviction in the absence of full medical corroboration of penetration.

When I analyse the testimony of PW 01, it is evident that she remained consistent with regard to the abuse that caused the appellant to the victim. We note that there were no contradictions that were marked by the defence. We further observe that her testimony has been steady and coherent throughout the examination and cross-examination regarding the rape. It is pertinent to refer to the following judgments. Penetration

In *Premasiri V. The Queen* 77 N.L.R 86, Court of Criminal Appeal, Alles, J held:-

“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 character as to convince the Jury that she is speaking the truth.”

In *Sunil and another V. The Attorney General*, 1986 1 SLR 230, it was held that:-

“ 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.”

In the case of *Thambarasa Sabaratnam v. Attorney General*, CA 127/2012, decided on 03.08.2015, H.N. J. Perera, J. (as he was then)

“Thus the court could have acted on the evidence of the victim provided the trial Judge was convinced that she was giving cogent, inspiring and truthful testimony in court.”

In light of the judgments and the evidence she has presented, and with no substantial grounds to question her credibility, I find no reason to reject her account of events.

Upon careful consideration, I find that the prosecution has established, beyond a reasonable doubt, that regarding the commission of the offence. In the light of the foregoing, the conviction and the sentence imposed by the Learned High Court Judge are hereby affirmed.

I am not inclined to interfere with the disputed judgment, 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