

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

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

Court of Appeal CA Case No :
HCC/0210/23

HC of Balapitiya Case No.
CRI/2449/19

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

COMPLAINANT

Vs.

Rev. Uduwila Sujatha,
Thapowana Aranya Senasanaya,
Diawatiya
Uduwila, Elpitiya.

ACCUSED

AND NOW BETWEEN

Rev. Uduwila Sujatha,
Thapowana Aranya Senasanaya,
Uduwila, Elpitiya.

ACCUSED-APPELLANT

Vs.

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

RESPONDANT.

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

Counsel: Saliya Pieris PC with Rukshan Mendis for the Accused-Appellant.
Akila Dalpatadu, S.C for the Respondent.

Written : 15.11.2024 (by the Accused – Appellant)

Submission 25.08.2025 (by the Complainant - Respondent)

On

Argued On: 27.03.2026

Judgment On: 26.05.2026

JUDGEMENT

B. Sasi Mahendran, J.

The Accused- Appellant (hereinafter referred to as the Appellant) was indicted before the High Court of Balapitiya for having committed the offence of Grave Sexual Abuse on one minor namely Keraminiya Supun Dilanka on or about 16.09.2009, punishable under Section 365 B (2) (b) 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 29.08.2023, found the Appellant guilty of the charge and imposed a sentence of 10 years of rigorous imprisonment and a fine of Rs. 20,000/- and 6 months of rigorous imprisonment in default. Further, a compensation of Rs. 200,000/- was ordered to be paid to the victim; in default, a term of 2 years of simple imprisonment is imposed.

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

- i. Did the learned High Court Judge fail to consider that the prosecution has not proven the ingredients of the charges beyond reasonable doubt based on the medical evidence?
- ii. Did the learned High Court Judge err in deciding that the medical evidence support and corroborates the version stated by the victim?
- iii. Whether the learned High Court Judge erred in evaluating evidence as to the probability and consistency of the version of events narrated by the victim (PW 1)?
 1. Improbability and inconsistency as to the purpose of why the victim was staying at the temple
 2. Was the victim child living in the temple during the time of the impugned acts of the appellant
 3. Improbabilities and inconsistencies as to the series of events that took place on the date of the offence as narrated by the victim?
- iv. Whether the learned High Court judge failed to consider all the evidence revealed at the medical examination when arriving at the judgement?
- v. Did the learned High court judge err in law and/ or evaluating evidence when deciding that the accused coming to the police station a as a subsequent conduct
- vi. Did the learned High court judge fail to consider the alibi and the dock statement of the accused in light of the totality of the evidence revealed at the trial?

The facts and circumstances of the case are as follows,

PW 1, Keraminiyage Supun Dilanka, was the victim in this case and was only nine years old at the time of the alleged incident. According to his testimony, he came from a broken home. After his mother developed a mental illness, he moved to live at his mother's sister's (Loku amma) house. After his arrival, the victim began attending a school located near the temple. The Appellant was the chief monk of the temple. In due course, and upon the request of another monk, the victim decided to ordain as a monk. In preparation for this, he moved into the temple premises.

According to the witness, on 21st August 2009, the victim was summoned to the room of the Appellant in the temple. The witness stated that the doors and windows of the room had been closed, and the Appellant removed the clothes worn by the victim, who was seated on the bed. Thereafter, the Appellant inserted his male organ into the anus of the victim. When the victim cried out in pain, pleading with the Appellant to stop, the Appellant discontinued the act. The victim further testified that, out of shame, he refrained from narrating the incident to anyone.

Subsequently, the victim testified that four days later, another incident occurred, during which the appellant placed his male organ between the victim's thighs. The witness further stated that sperm was observed at that time. After that, without informing anyone, the victim left the temple and went to his Loku Amam's house, where he disclosed the incident to her. The victim further admitted that while he was making his statement, the appellant came to the police station.

During cross-examination of PW 1 on behalf of the appellant, the following six contradictions were noted, and they are as follows:

1. **V.1** – 'I finished my work at the temple and went to school.'
2. **V.2** – 'First came and stayed at Kapila's uncle's house.'
3. **V.3** – 'Because of that scolding, I took the clothes and books I had brought and went home.'
4. **V.4** – 'I was told to take off my pants. I took off my pants.'

5. V.5 – ‘Did not scream in fear.’

6. V.6 – ‘The other monk fell asleep at that time.’

In addition to these contradictions, two omissions were shown to the court. I am mindful that this incident occurred in 2009, when he was 9 years old, and the victim was giving evidence after 13 years.

PW 3, Judicial Medical Officer Dr K.S. Dahanayake, examined the victim on 21 September 2009 at Karapitiya Hospital. The victim provided a history to the witness, and upon examination, the findings were consistent with the history given by the victim. Further, according to the witness, he had observed redness accompanied by tenderness in the anus of the witness. Corroborating the timing of the incident with PW 1, the witness stated that the age of the wound in the anus was consistent with that time.

At this juncture, it is pertinent to refer to the relevant portion of the testimony.

Page 124 of the brief,

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උ : පිළිස්සුම් තුවාලය බරපතල නොවන ගණයට අයිති වෙන තුවාලයක්. ඊට පස්සේ මේ පිළිබඳව මතයක් ප්‍රකාශ කිරීමේ දී මම ප්‍රකාශ කළේ පරීක්ෂා කරන දවසට ආසන්න දවසක සිදුවුණු ගුද මාර්ගය හරහා ප්‍රවේශයක් වීමේ හැකියාවක් පවතින බව. භෞතික සාධක මා හට දරුවා ප්‍රකාශ කළ ඉතිහාසය සහ ඒ දෙක එකතුවෙලා ගත්තට පස්සේ හැකියාවක් තිබෙනවා මේ දරුවාගේ ගුද මාර්ගය හරහා ප්‍රවේශයක් සිදුවීමට.

Upon analyzing the testimony of the JMO, PW 3, it is evident that his findings corroborate the victim’s testimony, and the medical history provided was consistent with the victim’s version of events.

At the conclusion of the prosecution’s case, the appellant, in a dock statement, denied all allegations against him and asserted that he was not present at the temple at the relevant time.

I note that although the appellant sought to rely on a plea of *alibi* in his defence, he did not suggest to the prosecution witnesses that he was absent at the material time. The plea of *alibi* was raised for the first time only in his dock statement.

At this juncture, it is pertinent to refer to the following judgment.

In the case of *Rathnayake v. the Democratic Socialist Republic of Sri Lanka*, 2020 (1) SLR at 328 page 335, Wickremasinghe J held that,

“Further the learned Counsel for the Appellant has drawn the attention of court to the defence of alibi taken up by the Accused-Appellant in his dock statement. He has not taken up this position at the non-summary stage other than in the dock statement. In the case of Jayatissa v. Hon. Attorney General, when an alibi is set up as a defence, there are certain fundamentals to be observed:-

a) If an alibi is established by unsuspected testimony, that will be satisfactory and conclusive.

b) An alibi should cover the time of the alleged offence so as to exclude the Accused's presence at the crime scene at the relevant time.

c) The credibility of an alibi is greatly enhanced, if it was set up at the time the accusation was first made and was constantly maintained. If it is taken up belatedly-the effect of the alibi will be less.

d) An alibi can be falsified by mistaken identity and the difference of time in the clocks. A few minutes will make all the difference. A false alibi will weaken the defence case and strengthen the prosecution case.”

I hold that the defence of alibi was taken as an afterthought.

The learned High Court Judge rejected the defence version on the basis that the defence had not succeeded in creating any doubt regarding the testimony of PW 1, who was alleged to have been induced by others to make a false allegation against the appellant. The Learned Judge further considered the conduct of the appellant,

noting that he attempted to influence the police to settle the matter. The Court observed that it was improbable that the appellant would voluntarily come to the police station and attempt to settle the matter if he had not been involved in the incident.

In addition to that, there is evidence from PW 5 that when PW 1 and PW 5 came to the police to make a complaint, the appellant was present and attempted to settle the matter. At this juncture, it is pertinent to refer to the evidence of PW 5.

PW 5, the Officer-in-Charge of the Alpitiya Police Station, testified that on 21 September 2009 at 9:45 a.m., PW 2 arrived with PW 1 and made a complaint regarding the matter. PW 5 directed PW 4 to record the statement of the victim. Thereafter, the appellant was present at the police station, and during that time the victim identified the appellant and stated that he was the person who committed the offence. According to the victim, the appellant had come to the police station to settle the matter.

Page 137 of the brief,

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උ : එහෙම ම බලපෑමක් සිද්ධ වුනේ නැහැ.

ප්‍ර : එහෙම ම කියන්නේ යම්කිසි බලපෑමක් ඇති වුනාද?

උ : විත්තිකාර භාමුදුරුවන්ගේ ඉල්ලීමක් තිබුනා මේක බේරලා දෙන්න කියලා. අවසන් කරලා දෙන්න කියලා පැමිනිල්ල.

අධිකරණයෙන්:

ප්‍ර : ඒ කියන්නේ අවසන් කරලා දෙන්න කියලා මොකක් ද කිව්වේ?

උ : මේක සමාදාන කරලා දෙන්න කියන එක.

However, this fact was not disputed by the Appellant during PW 5's cross-examination.

It is true that a number of contradictions were marked by the defence during the testimony of PW 1. As indicated earlier in this judgment, the incident occurred when the victim was nine years old, and his evidence was given after a lapse of thirteen years. The question before this Court is whether these contradictions are sufficient to undermine the truthfulness of the witness.

At this juncture, I am guided by the following judgments

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.”

Sisira de Abrew J in *Tikiri Banda Kulasekara v. The Republic of Sri Lanka*, CA Appeal No: 96/2002, Decided on 12.11.2007, and held that;

“Thus, there is a contradiction on this point. With regard to this contradiction, I must mention here that the prosecution cannot be expected to prove a case according to a mathematical formula and with 100% accuracy as the case must be proved by evidence given by human beings. These kinds of contradictions do occur when human witnesses give evidence. In my view, this is not a vital contradiction and no prejudice has been caused to the appellant by the failure on the part of the trial judge to consider it.”

My considered view is that the contradictions and omissions highlighted by the defence do not go to the root of the case and are insufficient to create any doubt over the prosecution’s version.

In addition to that, the learned High Court Judge accepted the evidence of PW 1 as truthful. I am mindful that the learned trial judge, during the course of the trial,

had the opportunity to observe the victim, PW 1, and his demeanour, an opportunity which this Court does not possess. In particular, the trial judge was able to observe the demeanour of the witness while being cross-examined.

I hold that the learned High Court Judge evaluated the evidence of the victim together with the testimony of PW 3, the Judicial Medical Officer, and accepted their testimonies as truthful. It should also be noted that the Learned Judge provided reasons for rejecting the appellant's dock statement.

In those circumstances, I am disinclined 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