

**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 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.

The Democratic Socialist Republic of Sri Lanka.

COMPLAINANT

Court of Appeal

Case No.CA/HCC/0268/2025

Vs.

High Court of Puttalam

Case No. HC/63/2021

Herath Mudiyanseelage Suresh

Pushpakumara,

No.208, Ihala Mandalana,

Pallama.

(Presently at Madamawila, Godakawila,
Marawila)

ACCUSED

AND NOW BETWEEN

Herath Mudiyanseelage Suresh

Pushpakumara,

No.208, Ihala Mandalana,

Pallama.

(Presently at Madamawila, Godakawila,
Marawila)

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT- RESPONDENT

Before: **Amal Ranaraja J.**

&

Dr. Sumudu Premachandra J.

Counsel: Rushdhie Habeeb with H. Yousuf for the Accused-Appellant.

Sajith Bandara, SC for the Respondent.

Accused-Appellant is produced via zoom platform by the Prison Authorities.

Written Submissions: By the Accused-Appellant filed on 08/04/2026.

By the Respondent filed on 01/09/2026.

Argument On : 02/09/2026.

Judgement On : 02/10/2026.

Dr. Sumudu Premachandra J.

1] The Accused Appellant is charged with a single offence of grave sexual abuse from the period of 01/05/2018 to 05/10/2018 under Section 365 B (2) (b) of the Penal Code.

2] The evidences show that the Accused, who was known to the Victim as “Suresh Aiya” and was the partner of her elder sister, sexually abused the approximately 12-year-old Victim while she was alone at home and subsequently threatened to kill her mother and sister if she disclosed the incident. The Victim (PW 01) remained silent because of these threats and later attempted to leave home, intending to travel towards Galle to become a Buddhist nun. Then, her Grade 7 teacher was informed by peer students that she is going to Galle after school. The teacher noticed her distressed condition following which she took victim to her sister and the victim disclosed the incident to her sister and mother. A complaint was made to the Nawagattegama Police on 06/10/2018, and the Accused was arrested on 07/10/2018, in Marawila. The Prosecution relied principally on the evidence of PW 01, PW 02, and PW 10, the class teacher, the Victim’s birth certificate and Medico Legal Report (P1 and P2), the evidence of the Judicial Medical Officer, and the police investigation.

3] The Defence challenged the Prosecution case by relying on inconsistencies and omissions in the Victim’s statements and other details of the incident. The Defence also relied on the Victim’s admission that she had previously made an untruthful allegation concerning another person, the mother’s differing accounts of when she first learned of the abuse, the Victim’s inability to identify the precise date of the offence, the delay in making the complaint, and the absence of significant physical or forensic evidence. The JMO examination found

no tears or injuries to the hymen or external genitalia, but the medical evidence diagnosed the Victim with severe psychological distress. The Prosecution explained the delay by reference to the threats made against the Victim and the psychological trauma arising from them.

4] After a contested trial, the Appellant was convicted for the charge and sentenced to 8 years' rigorous imprisonment. In addition, Rs.10,000/- fine imposed and Rs.200,000/- compensation is to be paid to the Victim, in default 3 months and 1-year simple imprisonment were imposed respectively.

5] Being aggrieved to the said conviction and sentence, the Appellant prefers this appeal on the following grounds;

- 1.** The Learned High Court Judge has erred in law in regard to the burden of proof and the quantum of proof.
- 2.** The overall approach of the Learned High Court Judge followed in the analysis and evaluation of evidence is contrary to the law.
- 3.** The Learned High Court Judge had failed to appreciate that PW 01 is not a trustworthy witness.
- 4.** The Learned High Court Judge had failed to appreciate that the Prosecution has failed to prove its case beyond a reasonable doubt.
- 5.** The Learned High Court Judge erred in law by severing portions from the evidence of PW 01 and the other witnesses called by the Prosecution and holding that such witnesses are trustworthy.
- 6.** The Learned High Court Judge has failed to consider that the Medico Legal Report and evidence of the Medical Officer also contradict the evidence of PW 01.
- 7.** The Learned High Court Judge erred in law in rejecting the dock statement of the Accused on behalf of the Defence.

8. The Learned High Court Judge has erred in law and facts.

6] When considering the evidence of PW 01, she was 12 years old at the incident, however, in a short history she has mentioned she is 13 years old. She has testified at the age of 17 years. It is seen that she had clearly testified what happened to her at the time of the incident. She said the Accused came in a motorbike on the particular date; he was in a blue shirt. He asked for a glass of water and when she brought the glass of water, she had seen that the front door was closed by the accused. Then she was dragged to a bed and he placed his penis on her vagina. Thus, the act is clearly expressed by the Victim.

7] To the belatedness, she said that the Accused threatened to kill the mother and elder sister. Moreover, she had mentioned at the testimony, the Accused coached if this incident accidentally slipped off her tongue, tell it was not the truth. Thus, it is superficially seen that the evidence of the PW 01, the Victim, tally with the other Witnesses' evidence.

8] The learned Trial Judge had, in assessing the evidence, applied the principles in **Bhoginbhai Hirjibhai v State of Gujarat** AIR 1983 753, **Banda v Attorney General** (1999) 3 SLR 168, and **Dharmasiri v Republic** (2012) 1 SLR 268, recognizing that minor inconsistencies do not necessarily undermine credible testimony when the central narrative remains intact.

9] The Defence principally challenged the credibility and reliability of PW 01 and the other Prosecution Witnesses, relying on substantial contradictions and omissions between PW 01's evidence in court and her original police statement, marked as V-01 to V-05. These included inconsistencies concerning how the Accused entered the house, whether PW 01's mouth was covered, whether she screamed, and the nature of the alleged physical injuries. The Defence further relied on the evidence of the Judicial Medical Officer (PW 07), who found no fresh

or old injuries, no genital trauma and no physical signs of forcible penetration, and no medical evidence directly connecting PW 01's medical condition or adjustment disorder with the alleged assault. PW 03's evidence was also challenged because she initially referred to an unknown offender before subsequently implicating the Accused.

10] The Defence additionally relied on evidence from PW 10, PW 01's teacher, concerning alleged scolding, physical punishment and family pressure at home, together with alleged prior animosity and police complaints between the Accused and PW 01's family, as circumstances supporting the possibility of a false implication.

11] In support of the appeal, the Learned Counsel for the Defence argued that the Prosecution failed to establish the charge beyond reasonable doubt, emphasizing that the burden of proof remained entirely with the Prosecution and that the Accused was not required to prove his innocence.

12] I now consider the merits of the case. Article 13 (5) of the Constitution (Every person shall be presumed innocent until he is proved guilty: Provided that the burden of proving particular facts may, by law, be placed on an Accused person) norms that the court should draw the presumption of innocence until guilty of the Accused is proved and this provision enriched by Article 13 (3) (Article 13(3) Any person charged with an offence shall be entitled to be heard, in person or by an Attorney-at-Law, at a fair trial by a competent court.) enabling the right to represent by an attorney at law and by giving fair trial. The golden rule in criminal law is that the burden is on the Prosecution to prove guilty of the Accused. Thus, the ingredients of the charge must be proved.

13] in proving a fact, "Proved" or "Disproved" of a fact is defined in Section 3 of the Evidence Ordinance. It defines what is meant by proved and disproved. It says;

*"A fact is said to be proved when, after considering all the matters before it, the Court either believes it to exist or considers **its existence so probable***

that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

*A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers **its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.** A fact is said not to be proved when it is neither proved nor disproved.” [Emphasis is added]*

14] Thus, the yardstick of existence of fact should be decided in the angle of prudent man. The yardstick of the existence of a fact must be decided not by a trained judicial mind such as judges or attorneys, must be by a prudent man who is not a lunatic or mentally retarded who thinks in totality of evidence, whether the fact is believed to be proved or not, whether the charge can be sustained or not considering the totality of oral and documentary evidence which came from the witness box; substantive evidence.

15] In **Nandana Kumarage Sujeewa Nishanka Karunaratna vs Officer-in-charge, Police Station, Rambukkana,** SC APPEAL NO: SC/APPEAL/61/2023, Decided on: 09/10/2024, His Lordship Samayawardhena, J. held what is reasonable doubt as;

“The prosecution must prove the accused’s guilt beyond a “reasonable doubt”, not beyond “any doubt”. A reasonable doubt refers to a doubt based on logical reasoning through proper evaluation of evidence. This requires the trier of fact to weigh all evidence supporting guilt against evidence suggesting innocence, considering the strengths and weaknesses on both sides. If, after this evaluation, the evidence overwhelmingly favors the prosecution and eliminates any reasonable doubt about the guilt of the accused, the case can be deemed proven beyond a reasonable doubt. This standard applies to the totality of the evidence as a whole, not to each individual piece of evidence the prosecution relies on to prove the guilt of the accused.”

16] We are in a system of rules of evidence adopted by English Law. It should be stressed that the case is decided by the evidence on oath by the witnesses affirming telling the truth and nothing but the truth. Biblical verse John 19:35 says;

“The man who saw it, has given testimony, and his testimony is true. He knows that he tells the truth, and he testifies, so that you also may believe.”¹¹

17] Hence, witnesses and their role in determining outcomes of cases are crucial for trials in the courts. A favorable witness in providing favorable testimony works for strengthening the case of the party producing that Witness. However, it must be assessed not in isolation but as a whole and along with other supportive evidence. We are being judges, State Counsels, Defense Counsels not at the vicinity of the crime, it is the witness who tells the facts thus we have to assess on the level of a prudent man whether the incident could happen or not.

18] In this trial the following contradictions were marked. In වී 1, the contradiction was that “ඊට පස්සේ දැක්කා කළුපාට බයික් එකක් කුස්සිය පැත්තේ ජනේලය ළඟ නවත්වලා තියෙනවා”. In her evidence, incident took around 1pm to 2pm, she had opened the main door and was expecting someone. However, in the police statement, she said, that she heard someone was walking near the side window and then she opened the door and the Accused entered the house. Then, she asked why he has come. This position was marked as වී 2 and it was “මම සුරේෂ් අයියාගෙන් ඇහුවා ඇයි මෙතේ ආවේ කියලා”. In the evidence, she denied any conversation between the Accused and her. Then, in the police station she had told the following as වී 3, “මම කැගැහුවා” and වී 4 as “මට ගොඩක් රිදුණා. මම කැගැහුවා. කවුරුත් ආවේ නැහැ” and වී 5 as “මගේ වූ කරණ තැනයි , බඩයි ගොඩක් රිදුණා”. The trial court had noted the following omissions that “වුදිතගේ අතින් කට වැහුවා” and “පොරවන ෂීට් එක වින්දිත තැනැත්තිය සහ වුදිත යන දෙදෙනාම විසින් පොරවා ගත බව”. In her police statement, she has told that she screamed, but she denied at the testimony that she screamed but

¹¹<https://www.bibleref.com/John/19/John-19-35.html> Accessed on 29/09/2026

no one had come. In the Police Statement, she said that she felt pain in the vagina and groin. It is seen that the police statement was recorded before going to the JMO. There were no injuries in the medical report. This part was not supported by the medical evidence. Thus, evince in mainly contradicting the police statement. The above contradictions mainly related to grave sexual abuse and she said she did not feel pain at the testimony. The attention can be drawn that if she felt pain in the vagina and groin that the Accused had penetrated her, but medical report indicates otherwise.

19] It is further seen until the question was confronted, she had hidden there was a previous incident not relating to grave sexual abuse by someone else. She testified;

“ප්‍ර. ගාල්ලේ ඉස්කෝලේ යන කාලේ විදුම් ට මොනවා හරි කරදරයක් සිද්ධ වුනාද කාගෙන් හරි ?
උ. නැහැ.

ප්‍ර. විදුම් පාසලේ ඉදන් කැලේකට එක්කන් ගිහිල්ලා කරදරයක් වුනේ නැද්ද?

උ. පාසලේ ඉදන් නැහැ. මම 01 වසරේදී වගේ අයියා කෙනෙක් කැලෙකට ඇදන් ගියා . සීයා තමයි බේරාගත්තේ.

ප්‍ර. දැන් මීට කලින් කරදරයක් උනේ නැහැ කියලා කිව්වේ?

උ. එකෙන් කරදරයක් උනේ නැහැ

ප්‍ර. කැලෙට එක්කන් ගිය එක කරදරයක් නොවේද විදුම් ?

උ. ඔව්. ඊට පස්සේ සීයා තමයි එක්කන් ආවේ.

ප්‍ර. එක කරදරයක් නේද? උ. ඔව්”

20] Though, this fact may not be important to this incident, it revealed that the Victim was not new to this situation and it question the reliability of the witness.

21] වි 6, contradiction was marked through the Victim’s sister. She has told the police that the Victim did not reveal the perpetrator first and had told her “අහනකොට කිව්වා ළමා සමාජයට ගිහින් එද්දී කරදරයක් උනා කියලා”. But, in her evidence, she

said the Victim directly told her that the perpetrator is the Accused “Suresh Kumara”. This is major contradiction inter se.

22] Are the above contradictions material? A material contradiction is a significant and irreconcilable inconsistency in a Witness's statements or evidence that goes to the core of a legal case and creates reasonable doubt. It involves with central facts such as the identity of the Accused, the core action of a crime, or vital elements of a dispute rather than minor, peripheral details. Unlike trivial discrepancies or normal human memory lapses, a material contradiction severely undermines the reliability and truthfulness of a Witness. In a trial, proving a material contradiction can lead to the rejection of a Witness's testimony and may result in an acquittal or a ruling in favour of the Accused.

23] In a material contradiction two statements flatly oppose each other on a crucial point. There is a small variation in the details, such as a slight miscalculation of time or a minor difference in description, which courts usually accept as normal human fallibility. In this case all contradictions are involved with major acts. The door was closed, but in the evidence, the door was open, she felt a pain in the vagina and groin. But in evidence she said no pain was caused in line with non-penetration. It should be noted that the evidence should consider inter se and per se with other evidence. The Victim cannot be held as a tender child who does not know the physical act. She was 12 years’ and had already attended puberty at the time of the incident. The learned trial judge had failed to consider the Accused was the sister’s partner and she had a child from him. The Accused was underage and the sister did not consent to marry him. The sister suspected the Accused had other affairs. However, the Accused wanted to be with her. Thus, the Accused was pestering the sister. In her mother’s statement, the sister was admitted to the mental hospital over these incidents. Thus, she was not normal. Thus, her mental behaviour is volatile. Further, the learned trial judge also failed to consider that the Victim told PW 10, the teacher who found her at the bus stand that she wanted to become a Buddhist nun, because of extensive pressure of the Victim’s mother and elder

sister. This is inter se contradiction between two witnesses. It is a fact, the Victim's family complained against the Accused to the Nawagattegama Police two times previously. One prudent man can think, that they wanted the Accused to be out of the scene. In the light of the above, I am of the view that the above contradictions must be assessed, in view of the prudent man, not on the trained judicial mind.

24] It is to be noted that the state must prove every element of a charge beyond a reasonable doubt. If a contradiction shakes the core of the proof, a logical and sensible doubt arises, the judge must give the Accused the benefit of the doubt as a matter of right, leading to a not-guilty verdict.

25] In the case in hand, there was a single act, thus the Victim cannot be jumbled with any previous sexual acts. If the Victim is subjected to continuous or few more sexual assaults a prudent man can believe she may have jumbled with a previous act. But if it is a single act, there cannot be any mess with the evidence. Thus, I consider that the learned trial judge ought to have considered the contradictions in favor of the accused in the back drop of the case, at her conclusion. It is to be noted that direct evidence can be concocted without a single contradiction when the Witnesses get together and make up a story. In such circumstances, it is a trial judge's bounded duty to consider the background of the story. In this case, the scene of the crime was shown by the sister not by the Victim "මම අපරාධ ස්ථානය දැරියගේ සොහොයුරිය වන රුවනි මහේෂිකාගේ මග පෙන්වීම යටතේ සොයාගත්තා." The Accused was the paramour of Ruwani Maheshika, who was underage and pestering them. She had shown the scene of crime, if she was not there at the material time, how can she show the place? Thus, in applying the prudent man's test, one can think the story may have concocted to remove the Accused from the scene. Thus, this benefit of doubt is reasonable and must be given to the Accused. Thus, I hold the conviction is unsafe.

26] In **Ambika Prasad v State of New Delhi**, 2000 SCC CRL 522, Indian Supreme Court held;

“A criminal trial is meant for doing justice to the accused, victim and society. So that law and order is maintained. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties.”

27] For the reasons stated above, I set aside the conviction and the sentence dated 11/09/2025. The Accused Appellant is acquitted and discharged.

The appeal is allowed.

JUDGE OF THE COURT OF APPEAL

AMAL RANARAJA J.

I agree

JUDGE OF THE COURT OF APPEAL