

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, read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Democratic Socialist Republic of Sri Lanka

Complainant

Vs

Court of Appeal Case No:
CA/HCC/0037/2025

High Court of Ratnapura Case
No: **HCR/275/2019**

Pichchamuththu Ramar

Accused

AND NOW BETWEEN

Pichchamuththu Ramar

Accused – Appellant

Vs

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

Complainant - Respondent

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

Counsel : M.A.A.M. Behshad with M. Wickramanayaka for the Accused-Appellant
: Yuhan Abeywickrama, DSG for the Respondent.

Argued on : 06.08.2026

Decided on : 16.10.2026

Pradeep Hettiarachchi, J

Judgment

1. In the present case, the Accused-Appellant was indicted on three counts, namely, committing rape on two occasions on a girl under the age of 16 years and committing grave sexual abuse against the same girl.
2. At the conclusion of the trial, the learned Trial Judge acquitted the Appellant of the first two counts but found him guilty of the third count, namely, committing grave sexual abuse. Accordingly, the Appellant was sentenced to eight years' rigorous imprisonment. He was also ordered to pay a fine of Rs. 10,000, with a default sentence of three months' simple imprisonment. Furthermore, the Court ordered the Appellant to pay compensation of Rs. 50,000 to the prosecutrix, with a default sentence of six months' simple imprisonment.
3. Being aggrieved by the said conviction and sentences, the Appellant has preferred the instant appeal. The grounds of appeal advanced by the Appellant are as follows:
 - a. The learned Judge has failed to consider the intrinsic infirmities of the prosecution case, particularly as to the third charge of the indictment, and the said failure vitiates the said judgment, conviction and sentence:

- b. The learned Judge has failed to attach due weightage to the statement made by the Appellant from the dock, and therefore, the said judgment, conviction and sentence are bad in law;
 - c. The said judgment and conviction are contrary to the law and evidence adduced at the trial;
 - d. The learned Judge has failed to conclude that the prosecution has failed to establish its case beyond reasonable doubt;
 - e. The learned Judge has failed to consider that the requested amendment to the indictment was done after the contradictory statements of PW1;
 - f. The learned Judge has failed to consider proper medical evidence relating to the accused; and
 - g. The learned Judge has failed to consider the linguistic barrier of the prosecutrix.
4. Some of the aforementioned grounds of appeal are interconnected and can therefore be considered together. Accordingly, I shall consider together the grounds relating to whether the learned Trial Judge failed to consider the infirmities in the prosecution case, whether the prosecution proved its case beyond reasonable doubt, and whether the conviction of the Appellant is contrary to the law and the evidence adduced at the trial.
5. According to the evidence of the prosecutrix, on the day of the incident, she was alone at home, as her father had left for work and her sister had gone to school. When the Appellant knocked on the door, the prosecutrix opened it, believing that it was her father. The Appellant then dragged her into the living room, assaulted her, and ordered her to lie on the floor. Thereafter, the Appellant removed both the prosecutrix's clothes and his own clothes, placed his penis against the prosecutrix's genitals, and pressed it against them.
6. The prosecutrix further testified that, when she screamed, the Appellant left her. She sustained injuries and experienced difficulty in urinating later that night. She subsequently disclosed the incident to her sister, who, in turn, informed their father. According to the prosecutrix, she was thereafter hospitalized for a period of two weeks and subsequently went to the police to report the incident. It was also revealed during the medical examination conducted by the Judicial Medical Officer (JMO) that the

prosecutrix was infected with genital herpes and vaginal candidiasis, sexually transmitted diseases.

7. The prosecutrix was 11 years old at the time of the incident, which is alleged to have occurred in 2012. She testified before the High Court in 2021, approximately nine years after the alleged incident. In these circumstances, it cannot reasonably be expected that the prosecutrix's testimony would be entirely free from inconsistencies or other infirmities, particularly having regard to the considerable lapse of time between the alleged incident and the trial. What is important, however, is to determine whether such infirmities go to the root of the case and, thereby, render the prosecution evidence unreliable.
8. During the cross-examination of the prosecutrix, the attention of the Court was drawn to several omissions in her statement to the police. Having regard to the tender age of the prosecutrix at the time of the incident, it would be unreasonable to expect her to recount before Court every detail of her unpleasant ordeal in a precise and chronological order. Accordingly, unless such omissions go to the root of the prosecution case, they do not, in my opinion, materially affect the credibility of the prosecutrix's testimony.
9. However, where the prosecutrix's testimony is inconsistent on material points, thereby undermining her credibility, such inconsistencies cannot be lightly disregarded merely on the ground that she is of tender age. More importantly, where the prosecutrix's testimony gives rise to the possibility that a person other than the Appellant may have been involved in the alleged offence, it is incumbent upon the prosecution to eliminate that possibility by adducing the necessary evidence.
10. It was further contended that the fact that the prosecutrix had tested positive for a sexually transmitted disease, whereas no evidence of such an infection was detected in the Appellant, undermined the credibility of the prosecutrix's testimony. It was therefore submitted that the learned Trial Judge ought to have considered this circumstance in favour of the Appellant. In view of this contention, it is necessary to examine the evidence of the Judicial Medical Officer (JMO) and Dr Saibdeen, who examined both the prosecutrix and the Appellant.

11. In considering this contention, it is necessary to examine the evidence of the Judicial Medical Officer and Dr Saibdeen, who examined both the prosecutrix and the Appellant. The mere fact that the prosecutrix was found to be suffering from a sexually transmitted disease, while no such infection was detected in the Appellant, does not, in itself, establish that the prosecutrix's account is either true or false. The evidential significance of these findings must be assessed in the light of the medical evidence concerning the nature of the disease, the timing of the examinations, and the possibility of transmission in the circumstances of the alleged incident.
12. According to the evidence of the JMO, he examined the prosecutrix at Ratnapura Hospital on 17.11.2012, following the prosecutrix's admission to the hospital on the same date under BHT No. 103219. Prior to the examination, the prosecutrix's medical history was recorded. Upon examination, the JMO referred the prosecutrix to the STD Clinic, where she was diagnosed with two sexually transmitted diseases. The report of the STD Clinic, prepared by Dr. Saibdeen, was marked in evidence as P2. It is pertinent to note that Dr. Saibdeen was called as a witness by the defence and testified at the trial.
13. Whilst referring to the report marked as P2, the JMO explained the nature of the two diseases detected in the prosecutrix. According to the report, the prosecutrix was suffering from genital herpes and vaginal candidiasis at the time of the examination. The JMO further stated that these two conditions are commonly transmitted through direct sexual contact between individuals.
14. The JMO expressed the opinion that the history provided by the prosecutrix could be accepted in light of the clinical findings and the report issued by the STD Clinic. During cross-examination, the JMO was questioned about his proficiency in the Tamil language. He stated that he had passed the Tamil language efficiency bar examination. He further explained that, having regard to the tender age of the prosecutrix, the manner in which she described the alleged act to him was consistent with her account being truthful.
15. When questioned about the incubation period of the particular disease, the JMO declined to express an opinion, stating that he was not an expert in that subject. As

stated earlier, Dr. Saibdeen, who prepared the report marked as P2, testified as a witness for the defence.

16. The most significant aspect of the evidence given by Dr Saibdeen was his opinion regarding the window period of the particular virus. According to his testimony, symptoms would begin to appear at least two weeks after infection. However, having regard to the findings upon examination of the prosecutrix, particularly the blisters observed on her genital area, the witness opined that the prosecutrix had been infected approximately five to six days prior to the date of the examination. He further stated that it was not possible to observe symptoms immediately after a person had sexual contact with an infected individual. The witness also explained that herpes is a condition that cannot be completely cured and that its symptoms may recur from time to time.
17. During cross-examination, the witness further explained the distinction between Type 1 and Type 2 herpes, as well as the different stages of the disease. He identified two stages, namely, the first episode and the second episode. He clearly stated that the prosecutrix was experiencing the first episode and that symptoms would normally manifest within 2 to 14 days of infection. Although the witness stated that he could not express a definitive opinion as to the precise time of infection, his evidence indicated that the prosecutrix could have been infected within the 14 days preceding the date of the examination.
18. In view of the foregoing medical opinions, the question that arises for determination in this appeal is whether the absence of any physical signs of herpes in the Appellant can be relied upon as a ground for rejecting the prosecutrix's evidence.
19. It is trite law that the absence of medical evidence does not necessarily warrant the acquittal of an accused charged with a sexual offence where the other evidence is sufficiently cogent and convincing. In the present case, there is no positive evidence to establish that the Appellant was infected with any sexually transmitted disease at the time he was examined by the medical officers. At the same time, the possibility that the Appellant was infected with a sexually transmitted disease cannot be entirely excluded,

as no definitive investigation was carried out at the clinic due to the lack of the necessary facilities.

20. In the case of the ***State of Karnataka v. S.Raju (2007) 11 SCC 490***, the court held that:

“In the case of absence of medical evidence, rape accused can be convicted. Therefore, the corroboration with medical reports is not necessary in every case.”

21. In the ***State of MP v. Dayal Sahu (2005) 8 SCC 122***, the court held that:

“An appellate court shall not reverse the findings of guilt on the basis of irrelevant circumstances. Where the evidence of the prosecutrix and other witness was found reliable, accused shall not get the benefit of doubt for non-examination of doctor of the prosecutrix.”

22. More importantly, the evidence indicates that herpes may remain dormant in the body for a prolonged period without manifesting any symptoms. Therefore, the mere fact that no physical signs of herpes were observed in the Appellant at the time of his examination does not, by itself, warrant his acquittal if the other evidence against him is sufficiently cogent and compelling.

23. Hence, it is necessary to analyze the prosecutrix’s evidence to determine whether it inspires sufficient confidence to sustain the Appellant’s conviction or, conversely, gives rise to reasonable doubts regarding the credibility of her testimony.

24. In her testimony, the prosecutrix categorically stated that she had not disclosed to the JMO what had happened to her. Instead, she had related the incident to her sister, who subsequently informed their father, who in turn conveyed the information to the JMO. It is pertinent to note that neither the prosecutrix’s sister nor her father was called as a witness by the prosecution.

25. Furthermore, when the prosecutrix was referred to the specialist doctor at the STD Clinic, she denied having experienced any sexual abuse. Dr. Saibdeen, in his testimony, clearly stated that when he questioned the prosecutrix in this regard, she denied any such abuse. It is noteworthy that Dr. Saibdeen was conversant in Tamil and had

communicated with the prosecutrix in that language. Therefore, there appears to have been no language barrier that would have prevented the prosecutrix from disclosing the alleged abuse to him.

26. The credibility of the prosecutrix's testimony is further called into question by the evidence that her father also shared the same bed with her at night. Furthermore, the reasons given by the prosecutrix for disclosing the alleged incident to her sister in the first instance cast further doubt on the truthfulness of her account, particularly when considered in the light of the medical evidence. The prosecutrix stated that she had sustained injuries to her genital area as a result of the alleged act committed by the Appellant and had experienced pain while urinating on the very night of the incident.

“ප්‍ර: දැන් මේ සිදුවීමට පස්සේ ඔබ මොකද කළේ?”

උ: තාත්ත ආවට පස්සේ තාත්තට කිව්වා. තුවාල හෙම මට සිදු වෙලා තිබුන. ඊට පස්සේ තාත්තා මව ඉස්පිරිතාලයට එක්ක ගෙන ගියා. ඉස්පිරිතාලෙට ගිහින් ඇරලලා ආවට පස්සේ පොලිසින්හෙම ආවා.

.....

ප්‍ර: දැන් ඔබට මේ විත්තිකරයාගෙන් මේ සිදුවීම වෙන් කලින් වෙන කාන් එක්ක හරි ඔබ ලිංගිකව හැසිරී තිබෙනවද?

උ: නැහැ.

ප්‍ර: ඔබ කිව්වා ඔබේ තුවාල වුන කියල?

උ: ඔව්.

ප්‍ර: ඒ තුවාල වුනේ ඔබේ ඇගේ කොහෙද?

උ: මෙහෙ. (සාක්ෂිකාරිය ඇයගේ ස්ත්‍රී ලිංග ප්‍රදේශයට අත තබා පෙන්වා සිටී).

ප්‍ර: ස්ත්‍රී ලිංග ප්‍රදේශයේ තුවාල සිද්ධ වෙලා තියෙනවා කියල ඔබ දන ගතගත්තේ කොයි වෙලාවේද?

උ: වූ කරන්න අමාරුවක් හදුනා ඉන් පස්සේ තමයි දන ගත්තේ.

ප්‍ර: එතොකොට ඔබට වූ කරන අමාරුව ඔය සිද්ධිය වෙලා කොච්චර දවසකට පස්සෙද?

උ: එදිනම රාත්‍රියේ.

ප්‍ර: දැන් ඔබට වූ කරන්න අමාරුව ආවට පස්සේ ඔබ මොකද කළේ?

උ: මම ගිහිල්ලා අක්කට කිව්වා. අක්කා තාත්තට කිව්වා.” (vide pages 70-71 of the Appeal Brief)

27. However, this assertion was not corroborated by the medical evidence. According to the JMO, no evidence of penetration was found upon examination of the prosecutrix. In these circumstances, the prosecutrix’s testimony that she sustained injuries as a result of the alleged abuse by the Appellant and experienced pain while urinating, which eventually prompted her to disclose the incident to her sister on the very night it occurred, becomes difficult to reconcile with the medical evidence.
28. It is a well-established legal principle that corroboration is not necessary where the evidence of the prosecutrix is reliable and trustworthy. However, where her testimony is inconsistent and incompatible with the available evidence, particularly the medical evidence, it would be unsafe to convict the Appellant solely on the uncorroborated testimony of the prosecutrix.
29. Justice Dheeraratne in *Sunil and others v. Attorney General [1986] 1 Sri. L.R. 230*, held that:
- “Corroboration is only required or afforded if the witness requiring corroboration is otherwise credible. If the evidence of witness requiring corroboration is not credible his testimony should be rejected and the accused acquitted. Seeking corroboration of a witness’s evidence should not be used as a process of inducing belief in such evidence where such evidence is not credible. It is very dangerous to act on the uncorroborated testimony of a woman prosecutrix of a sex offence but if her evidence is convincing such evidence could be acted on even the absence of corroboration.”*
30. The infirmities in the prosecutrix’s evidence, particularly the fact that her history was conveyed to the JMO by her father rather than by the prosecutrix herself, and her subsequent denial of any such incident when interviewed by Dr. Saibdeen at the STD Clinic, are matters that require careful scrutiny before her testimony can safely be relied upon.

31. In the present case, although the contradictions and omissions in the prosecutrix's testimony may not, in themselves, be particularly significant, her evidence, when considered in its entirety and in conjunction with the testimony of the other witnesses, gives rise to a reasonable doubt as to whether she may have been subjected to abuse by a person other than the Appellant. Where such a reasonable doubt arises, the benefit of that doubt must be given to the Appellant.
32. It is noteworthy that, by the time Dr. Saibdeen interviewed the prosecutrix, she had already been examined by the JMO. In the circumstances, there appears to have been no apparent reason for her not to disclose the alleged incident to Dr. Saibdeen. In fact, according to Dr. Saibdeen's testimony, the prosecutrix categorically denied having been subjected to any abuse. As is evident from his evidence, Dr. Saibdeen had expressly asked the prosecutrix whether she had been subjected to sexual abuse by any person, to which she answered in the negative.

ප්‍ර: ඒ කියන්නේ දීපු රෝග ඉතිහාසයෙන් පසුව පරීක්ෂා කිරීමක් කලා?

උ: ඔව්.

ප්‍ර: දැන් මහත්මයා කිව්වනේ ලිංගික අතවරයක් වෙලා තියෙනවද කියලා දරුවාගෙන් අහලා හිටිය කියලා?

උ: ඔව්.

ප්‍ර: දරුවාගෙන් ඇහුව කියලා?

උ: ඔව්.

ප්‍ර: එකට දරුවා මොකක්ද ඒ දරුවා දීපු උත්තරයක් මොනවා හරි දීලා මහත්මයාල සටහන් කිරීමක් කරගන්නවද?

උ: ඔව්.

ප්‍ර: මොකක්ද ඒ ළමයා දීපු උත්තරය.

උ: මේ ළමයා එක ප්‍රතික්ෂේප කලා. කිසිම ලිංගික අතවරයක් හෝ කරදරයක් සිදු වුනේ නැහැ කියලා.

ප්‍ර: ඒ ළමයා ප්‍රකාශ කර සිටියා එහෙම ලිංගික අතවරයක් වුනේ නැහැ කියලා?

උ: නැහැ කියලා.

ප්‍ර: ඒක මහත්මයාල ඒක ඔය ලිඩල් කියලා පෝරමයේ සටහන් කරලා තියෙනවද?

උ: සටහන් කරලා තියෙනවා. (ඉංග්‍රීසියෙන් කියවයි.)

ප්‍ර: ඒ ප්‍රකාශය නැවත කියවන්න.

උ: ඇය ප්‍රතික්ෂේප කලා සම්බන්ධයක් තිබුන කියල. කරදරයක් නොවුන කියලත් ප්‍රකාශ කලා. තුවාල මතු වුනේ කැසීමකින් පසුව කියල ඇය සඳහන් කලා.

ප්‍ර: ඒ කියන්නේ ඔබතුමා ප්‍රශ්නයක් ඇහුවට පස්සේ ලිංගික අතවරයක් තමුන්ට වුනාද කියල ඇය කියා හිටියේ එවැනි ලිංගික අතවරයක් වුනේ නැහැ. නමුත් කැසීමකින් තමයි මේ තුවාල මතුවුනේ කියල කියා සිටියා?

උ: ඔව්.” (*vide pages 188 -189 of the Appeal brief*)

33. The prosecutrix's statement was recorded by the police only after she had been examined by both the JMO and Dr. Saibdeen. The first opportunity for the prosecutrix to disclose what had happened to her was when she was examined by the JMO. However, as the prosecutrix herself admitted, it was her father who narrated the history to the JMO, and she did not personally disclose the alleged incident to him. In the absence of the father's testimony, the accuracy and veracity of the history provided to the JMO could not be independently tested, as the prosecution did not call him as a witness.
34. According to the prosecutrix's testimony, she disclosed the alleged incident to her sister because she experienced pain while urinating on the night of the very day on which she claimed to have been abused by the Appellant. However, when the medical evidence is considered, it appears that the prosecutrix may already have been infected with herpes by the time of the alleged incident, as both doctors expressed the opinion that symptoms of herpes generally manifest within 2 to 14 days of infection. The prosecutrix's evidence also indicates that she had blisters on her genital area on the day of the alleged incident. In these circumstances, particularly in view of the evidence that the prosecutrix's father also shared the same bed as the prosecutrix, it was incumbent upon the prosecution to adduce evidence sufficient to exclude the reasonable possibility of the involvement of a third party in the commission of the alleged offence.
35. Regrettably, the prosecution has failed to discharge that duty adequately. It is pertinent to reiterate that the history provided to the JMO was given by the prosecutrix's father and not by the prosecutrix herself. Furthermore, when questioned by Dr. Saibdeen, the doctor at the STD Clinic, the prosecutrix denied having been subjected to any sexual abuse. In these circumstances, the prosecution ought to have called the prosecutrix's

father to testify so that the circumstances in which the history was provided to the JMO could be properly examined.

36. When all these circumstances are considered cumulatively, the possibility of the involvement of a third party cannot be completely excluded. In view of the foregoing infirmities in the prosecution case, I am of the opinion that it would be unsafe to allow the Appellant's conviction to stand.
37. The learned High Court Judge has failed to appreciate the foregoing infirmities, which give rise to considerable doubt regarding the credibility of the prosecutrix's testimony. To elaborate further, the fact that the prosecutrix did not personally provide the history to the JMO, her subsequent denial of having been subjected to any sexual abuse when interviewed by Dr. Saibdeen, the presence of symptoms of herpes on the day of the alleged incident, and, more importantly, the prosecution's failure to call the prosecutrix's father as a witness collectively raise serious doubts as to the truthfulness of her testimony.
38. If the prosecutrix was able to disclose the alleged incident to her sister, it is pertinent to ask why she did not personally disclose the incident to the JMO and instead relied on her father to narrate the history. Furthermore, given that the prosecutrix denied having been subjected to any sexual abuse when questioned by Dr. Saibdeen, it remains uncertain what she had actually told her father and what information he subsequently conveyed to the JMO. In the absence of the father's testimony, these matters remain unexplained and further undermine the reliability of the prosecution's case.
39. For the reasons stated above, it is my considered view that the prosecutrix's testimony does not inspire sufficient confidence to sustain the Appellant's conviction, particularly in view of the inconsistencies between her testimony and the medical evidence. In the circumstances, I shall not proceed to consider the other grounds of appeal advanced on behalf of the Appellant.
40. Upon consideration of the foregoing factual and legal context, it is manifestly unsafe to allow the conviction to stand. Accordingly, the conviction and sentence imposed on the

Appellant are set aside, and the Appellant is acquitted of the charge. The appeal is therefore allowed.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal