

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

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

The Democratic Socialist Republic of Sri
Lanka

Complainant

Court of Appeal Case No:

HCC/0069/2025

High Court of Hambantota Case

No: **HC/37/2021**

-Vs-

Kaduru Pokuna Wanni Arachchige
Pradeep Kumara

Accused

AND NOW BETWEEN

Kaduru Pokuna Wanni Arachchige
Pradeep Kumara

Accused-Appellant

-Vs-

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

Complainant- Respondent

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

Counsel : Chatura Amaratunga for the Accused-Appellant
: Janaka Bandara D.S.G. for the Respondent

Argued on : 27.07.2026

Decided on : 01.10.2026

Pradeep Hettiarachchi, J

Judgment

1. This appeal arises from the judgment and sentences dated 22.01.2025 delivered by the Learned High Court Judge of Hambantota. The Accused-Appellant (hereinafter referred to as “the Appellant”) was indicted before the High Court of Hambantota on three charges of committing grave sexual abuse against a boy of 9 years old, offences punishable under Section 365B(2)(b) of the Penal Code, as amended by Acts No. 22 of 1995, No. 29 of 1998, and No. 16 of 2006.
2. At the trial, six witnesses, including the interpreter of the High Court, testified for the prosecution. At the conclusion of the prosecution case, the Appellant gave evidence on his own behalf and closed the case for the defence. Upon convicting the Appellant, the learned Trial Judge imposed the sentences as follows:
3. In respect of each of the first, second, and third counts, the Appellant was sentenced to eight years’ rigorous imprisonment and a fine of Rs. 5,000, with a default sentence of six months’ imprisonment. The sentences of rigorous imprisonment were ordered to run concurrently. In addition, the Appellant was ordered to pay compensation in the sum of Rs. 75,000 to the victim, with a default sentence of one year’s simple imprisonment.
4. The grounds of appeal advanced by the Appellant are as follows:

- a. PW1's evidence was not corroborated by medical evidence; and
- b. The accused-Appellant's evidence is devoid of any contradictions and has not been sufficiently evaluated by the learned Trial Judge.

Background to the appeal:

5. The victim is a boy who is presently 12 years of age. At the time of the alleged offences, he was nine years old and attending school. The Appellant was a neighbour of the victim, and according to the victim's evidence, he referred to the Appellant as "Podi Mama". The offences set out in the indictment are alleged to have been committed by the Appellant after taking the victim to his house at a time when the Appellant's mother was not at home. It is also evident from the evidence that, during the period relevant to the incident, the victim's father was employed as a driver at the Housing Authority in Gampaha and returned home only once a month.
6. The victim's evidence is that the Appellant subjected him to grave sexual abuse on several occasions and that, on each such occasion, the victim's mother was not at home and he was taken to the Appellant's house. The victim further stated that the Appellant threatened to kill him if he disclosed the incidents of sexual abuse to anyone. When the victim experienced pain in his genital area, he disclosed the incident to his mother, who subsequently lodged a complaint with the police.

Whether the victim's testimony has not been corroborated by the Judicial Medical Officer's findings?

7. In his testimony, the victim stated that, following the alleged incident of abuse by the Appellant, he noticed bleeding and redness in his genital area. He further stated that this prompted him to inform his mother of the incident, following which she accompanied him to the police station and lodged a complaint.
8. Nevertheless, according to the Medico-Legal Report marked as P2, the Judicial Medical Officer observed no injuries to the victim's genitals. It is also noteworthy that the

Judicial Medical Officer did not testify before the High Court, and the Medico-Legal Report was marked in evidence through the interpreter of the High Court.

9. According to the Medico-Legal Report, the victim was examined by the Judicial Medical Officer on 12.03.2019. The evidence of PW2 is that the victim disclosed the incident to her on 23.02.2019, while according to PW5, the complaint was lodged with the police on 10.03.2019.
10. Thus, it appears that the complaint was made approximately 15 days after the last alleged incident, and that the victim was examined by the JMO approximately 17 days after the last alleged incident. It is also noteworthy that the JMO was not called to testify before the High Court. However, the Medico-Legal Report prepared by him was admitted in evidence by consent of both parties under Section 420 of the Code of Criminal Procedure Act and marked in evidence through the interpreter of the High Court.
11. The question to be determined is whether the absence of injuries to the genitals of the victim, as observed by the JMO, undermines the credibility of the victim's testimony. A careful examination of the MLR does not completely rule out the possibility that the acts alleged by the victim had occurred. The JMO's finding was that he could not observe any injuries or redness on the victim's genitals. It is also significant that the history provided to the JMO was given not by the victim, but by his mother.
12. According to the evidence of PW2, the victim initially informed her that he was experiencing pain in his genital area and, when questioned about the cause, first stated that he had struck himself against a tree. He subsequently disclosed to her what had allegedly occurred. PW2 further stated that, when she examined the victim's genital area, she observed redness.
13. It is evident from the evidence of PW2 that she observed redness in the genital area of the victim, but did not observe any bleeding. In these circumstances, having regard to the lapse of time between the alleged incident and the date of the medical examination, it is understandable that the JMO may not have observed any injury or redness on the victim's genitals. Furthermore, the evidence of the victim indicates that the Appellant

had subjected him to sexual abuse on several occasions. Although the victim testified that he had sustained an injury and experienced bleeding from his genitals, PW2's evidence establishes that, when she examined the relevant area, she observed only redness and no bleeding.

14. This discrepancy between the account given by the victim and the observations made by PW2 is a matter that requires consideration when assessing the credibility and reliability of the victim's testimony. In my view, it indicates that the victim may have exaggerated the extent of the physical injury when giving evidence before the High Court.
15. Since the JMO was not called to testify, there was no opportunity to seek clarification regarding his precise opinion. Nevertheless, it is significant that, in the Medico-Legal Report, he did not completely rule out the possibility that the alleged acts had occurred.
16. The High Court in order to ascertain how and in what manner the incident had taken place which led to the abuse of the victim, accepted the testimony of PW1 and PW2 to be true, trustworthy and reliable. The learned High Court Judge has found that although there had been a delay in making the complaint, yet the same, by itself, cannot be a ground to reject or doubt the victim's testimony as an afterthought or unbelievable.
17. No question was put by the accused to the victim in this regard, nor any suggestion was put to him that he deliberately recorded a belated statement only to create evidence against the accused.
18. Accordingly, the Trial Court vide its judgment and order dated 22.01.2025 held that the prosecution had succeeded in proving its case beyond a reasonable doubt, and convicted the Accused-Appellant for the offences punishable under Section 365 B (2) of the Penal Code.
19. Since the Appellant has placed considerable reliance on the absence of medical corroboration and contended that it would be unsafe to sustain the conviction solely on the uncorroborated testimony of the victim, it becomes necessary to consider the legal principles governing the assessment of evidence given by a child witness. In particular, the question arises whether the uncorroborated testimony of a child witness, if found to

be credible and reliable upon a careful assessment of the evidence, is by itself sufficient to sustain a conviction, or whether corroboration is an essential requirement. It is therefore appropriate to examine the nature and evidentiary value of child testimony and the circumstances in which a court may safely act upon such evidence in the absence of corroboration.

20. It is trite law that corroboration of the testimony of a child witness is not a *sine qua non*, but is rather a matter of caution and prudence. A child of tender years may be particularly susceptible to tutoring or influence. However, that possibility, by itself, is not a sufficient ground to reject the evidence of a child witness. The Court must subject such evidence to careful and searching scrutiny and, in particular, consider whether there is any reasonable possibility that the child has been tutored or otherwise influenced. Accordingly, the evidence of a child witness must be evaluated with due care and caution, having regard to the circumstances of each case.
21. Therefore, before proceeding to record the evidence of a minor, the learned Trial Judge should conduct a preliminary examination of the child by putting appropriate questions to ascertain whether the child is capable of understanding the questions put to him or her and is able to give rational answers. The Judge must also satisfy himself that the child understands the importance of speaking the truth. Such a preliminary examination is necessary to determine whether the child possesses the requisite capacity to understand the questions and to respond to them in a rational and meaningful manner before his or her evidence is recorded.
22. In the present case, the learned Trial Judge put several questions to PW1 in order to ascertain whether he was capable of understanding the nature of the questions put to him and responding to them rationally. Only after satisfying himself that PW1 was able to comprehend the questions and provide rational answers did the learned Trial Judge proceed to record his evidence.
23. In *Ratansinh Dalsukhbhai Nayak v. State of Gujarat reported in (2004) 1 SCC 64*, the Indian Supreme Court explained that although child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, yet it is an accepted norm that if after careful scrutiny their testimony is found

to inspire confidence and be truthful, then there is no obstacle in accepting the evidence of such child witness. The relevant observation reads as under:

“The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.”

24. In ***Panchhi v. State of U.P., reported in (1998) 7 SCC 177***, the Supreme Court of India held that the evidence of a child witness should not be outrightly rejected, but the evidence must be evaluated carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and an easy prey to tutoring.
25. In ***Suryanarayana v. State of Karnataka, reported in (2001) 9 SCC 129*** held that the evidence of a child witness who has withstood the test of cross-examination should not be rejected per se if his testimony is found to be free from any infirmity. It reiterated that corroboration to the testimony of a child witness is not a rule but a measure of caution and prudence. The Court further held that while assessing the evidence of a child witness, courts must rule out the possibility of tutoring. However, in the absence of any allegation of tutoring or an attempt to use the child witness for ulterior purposes by the prosecution, the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused.

26. The Supreme Court of India in ***State of M.P. v. Ramesh in (2011) 4 SCC 786*** summarized the principles pertaining to the appreciation of evidence of a child witness as follows:

- (i) *First, it held that a child witness must be able to understand the sanctity of giving evidence on oath and the import of the questions that were being put to him. The evidence of a child witness must reveal that he was able to discern between right and wrong, and the court may ascertain his suitability as a witness through either cross-examination or by putting questions to the child in terms of Section 165 of the Evidence Act or by determining the same from the evidence or testimony of the child itself.*
- (ii) *Secondly, if the evidence of the child explains the relevant events of the crime without improvements or embellishments, and the same inspire confidence of the court, his deposition does not require any corroboration whatsoever.*
- (iii) *Thirdly, even if the courts find that the child witness had been tutored, even then the statement of a child witness can be relied upon if the tutored part can be separated from the untutored part and the remaining untutored part inspires confidence. In such cases, the untutored part can be believed or at least taken into consideration for the purpose of corroboration as in the case of a hostile witness.*
- (iv) *Lastly, it held that an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition. If the deposition of a child witness inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully and look for corroboration.*

27. In ***The State of Madhya Pradesh v. Balveer Singh (2025 INSC 261)***, the Supreme Court of India held:

“It is clear that the evidence of a child witness for all purposes is deemed to be on the same footing as any other witness as long the child is found to be competent to testify. The only precaution which the court should take while assessing the evidence of a child witness is that such witness must be a reliable one due to the susceptibility

of children by their falling prey to tutoring. However, this in no manner means that the evidence of a child must be rejected outrightly at the slightest of discrepancy, rather what is required is that the same is evaluated with great circumspection. While appreciating the testimony of a child witness the courts are required to assess whether the evidence of such witness is its voluntary expression and not borne out of the influence of others and whether the testimony inspires confidence. At the same time, one must be mindful that there is no rule requiring corroboration to the testimony of a child witness before any reliance is placed on it. The insistence of corroboration is only a measure of caution and prudence that the courts may exercise if deemed necessary in the peculiar facts and circumstances of the case.”

28. In the present case, although the victim was subjected to cross-examination, his testimony does not disclose any material inconsistencies or contradictions that would undermine its credibility. It was suggested to the victim during cross-examination that he was merely repeating in Court what his mother had tutored him to say. The victim, however, denied this suggestion.
29. The evidence of PW2, the victim's mother, discloses that there had been some altercations between her and the Appellant over several matters. However, it would be difficult to infer that such disagreements would have provided PW2 with a sufficient motive to tutor PW1 to falsely implicate the Appellant in an offence of this nature. It is also evident that, notwithstanding those disagreements, the Appellant maintained a close association with the victim's family. In fact, the Appellant had stood as a surety for the bond executed when the victim's parents obtained a financial facility to purchase a vehicle.
30. In these circumstances, having regard to the nature and quality of the victim's evidence, I find it difficult to accept the suggestion that the victim had been tutored by his mother to falsely implicate the Appellant in an offence of such gravity.
31. The Appellant also contended that the learned Trial Judge had failed to apply the principles governing the evaluation of his evidence and that, consequently, the rejection of his evidence was erroneous. In his evidence-in-chief, the Appellant merely denied the allegations against him. It is noteworthy that, although he stated that there had been

some disputes between him and the victim's mother, he did not suggest that the allegation against him had been made as a result of those disputes.

32. Significantly, the Appellant admitted that, on one occasion, he had gone to the victim's residence and scolded the victim's mother. However, according to his evidence, that incident occurred after the alleged offences. He further stated that, although he had demanded Rs. 17,000 from the victim's parents in respect of a sum of Rs. 150,000 that they had borrowed from him, no altercation or dispute had arisen on that account. More importantly, the Appellant admitted that, notwithstanding whatever differences had arisen between them, he continued to associate with the victim's family as though they were his own siblings and that they had always remained on good terms.
33. Hence, even if the learned Trial Judge did not consider the Appellant's evidence at length, such omission has not adversely affected the ultimate conclusion reached in the case, nor has it caused any substantial prejudice to the Appellant. It is significant to note that, when the Appellant's evidence is considered in its entirety, it does not raise any reasonable doubt regarding the prosecution case. In these circumstances, I am of the view that the learned Trial Judge cannot be faulted for rejecting the Appellant's evidence and proceeding to convict him.
34. The learned Trial Judge has adequately analyzed and evaluated the evidence of both the prosecution and the defence before finding the Appellant guilty of the charge set out in the indictment. It is well established that, having had the opportunity to observe the demeanour of the witnesses and assess their credibility at first hand, an appellate court is slow to interfere with the findings of a trial Judge, unless such findings are shown to be perverse or vitiated by some patent error.
35. In *Alwis vs. Piyasena Fernando (1993) 1 Sri. L R 119*, it was held that:

"It is well established that findings of primary facts by a trial Judge who hears and sees witnesses are not to be lightly disturbed on appeal."

36. Similar sentiments were articulated in ***Dharmasiri vs. Republic of Sri Lanka [2010] 2 Sri. L.R.241***, where it was held that:

“Credibility of a witness is mainly a matter for the trial Judge; the Court of Appeal will not lightly disturb the findings of a trial Judge with regard to the credibility of a witness unless such findings of the trial Judge are manifestly wrong.”

37. For the foregoing reasons, I find no basis to interfere with the findings of the Learned Trial Judge. Accordingly, I affirm the conviction and sentence imposed by the Learned High Court Judge of Hambantota on 22.01.2025. In the circumstances, the appeal is dismissed.

38. Considering all the circumstances, I order the sentence to be operative from the date of conviction, namely, 22.01.2025.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree

Judge of the Court of Appeal