

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

**In the matter of an Appeal in terms of
Section 331 of the Code of Criminal
Procedure Act No. 15 of 1979**

Democratic Socialist Republic of Sri
Lanka

Complainant

**Court of Appeal Case No:
CA/HCC/0166/2023**

Vs,

High Court of Polonnaruwa
Case No. HC 24/2019

Hapuvalane Jinadhamma Thero

Accused

And Now Between

Hapuvalane Jinadhamma Thero

Accused-Appellant

Vs,

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

Respondent

Before: **Amal Ranaraja, J.**
 Dr. Sumudu Premachandra, J.

Counsel: Saliya Pieris, PC with Anjana Rathnasiri for the Accused-Appellant.

Shanil Kularatne, ASG for the State.

Argued on: 24.09.2026

Judgment on: 09.10.2026

JUDGMENT

Amal Ranaraja, J.

1. The accused-appellant (hereinafter referred to as the ‘appellant’) has been indicted in the High Court of *Pollonnaruwa* in Case No. HC/24/2019. The charges in the indictment are as follows;

01. Between 23rd of November, 2014 and 23rd of January, 2015, in *Medirigiriya*, within the jurisdiction of this Court, you, in order to gain some sexual gratification, have used a certain part of your body, on one *Aluth Wave Wipula Dhamma Thero or Vihanga Nethmina Kumara Nawarathne*, a person under 16 years of age, by placing your male genitalia between his thighs; thereby, you have committed “Grave Sexual Abuse”, an offence punishable under Section 365B(2)(b) of the Penal

Code of Sri Lanka as amended by Penal Code (Amendment) Act No.22 of 1995 and No. 29 of 1998.

02. Between 23rd of November, 2014 and 23rd of January, 2015, in *Medirigiriya*, within the jurisdiction of this Court, at a separate occasion than that of the above first charge, you, in order to gain some sexual gratification, have used a certain part of your body, on one *Aluth Wave Wipula Dhamma Thero or Vihanga Nethmina Kumara Nawarathne*, a person under 16 years of age, by inserting your male genitalia into his mouth; thereby, you have committed “Grave Sexual Abuse”, an offence punishable under Section 365B(2)(b) of the Penal Code of Sri Lanka as amended by Penal Code (Amendment) Act No.22 of 1995 and No. 29 of 1998.

2. At the conclusion of the trial, the appellant has been convicted of the charges and sentenced as follows;

- i. 10 years rigorous imprisonment and a fine of Rs.50,000.00 with a term of 6 months simple imprisonment, in default, in respect of the first charge.
- ii. 10 years rigorous imprisonment and a fine of Rs.50,000.00 with a term of 6 months simple imprisonment in default, in respect of the second charge.

It has been directed that the substantive terms of 10 years rigorous imprisonment shall run concurrently. Further, the appellant has been directed to pay a sum of Rs. 100,000.00 as compensation to PW01 with a term of 4 months simple imprisonment, in default.

Case of the Prosecution

3. The appellant has been a senior monk in the same temple, where PW01 has been a seven year old student monk at the time of the alleged incidents. It is alleged that the appellant, one night, had taken PW01 to the room allocated to him and engaged in intercrural sex. On another evening, it is further alleged that the appellant engaged in oral sex, specifically inserting his penis into PW01's mouth at the same location.
4. PW01 has subsequently, informed a fellow monk, *Rev. Amithadhamma*, about the first incident. *Rev. Amithadhamma* has then prepared a letter detailing the incident involving the appellant and arranged for his mother to hand it over to the police. Subsequently, officers from the *Medirigiriya* police have commenced an investigation, during which a statement from PW01 has also been recorded.

Case of the Appellant

5. The appellant has maintained that he was framed by people who disliked him, specifically, Nihal. He has further denied any involvement in the incident detailed in the charges.

Grounds of Appeal

6. When the matter was taken up for argument the learned counsel appearing behalf of the appellant urged the following grounds of appeal
 - I. Was it unsafe for the learned High Court Judge to convict the appellant on the uncorroborated evidence of PW01?
 - II. Has the prosecution failed to produce material witnesses and documents?

III. Has the learned High Court Judge failed to consider the evidence of the defence, *i.e.* dock statement?

IV. Therefore, has the appellant been deprived of a fair trial?

7. PW01 has testified as follows;

ප්‍ර. ස්වාමීන් හන්සේට දැන් පෙනේවූ වූදින හාමුදුරුවන්ගේ කාමරයේ කරදර වූයා කිවා නේ ?

උ. ඔව්.

ප්‍ර. රාත්‍රි කාලයේ වෙන්තේ කිවා ?

උ. ඔව්.

ප්‍ර. ඔය කාමරයට ස්වාමීන් වහන්සේ යනවාද , හාමුදුරුවෝ ඇවිල්ලා එක්කරගෙන යනවාද ?

උ. හාමුදුරුවෝ ඇවිල්ලා එක්කරගෙන යනවා.

ප්‍ර. ස්වාමීන් වහන්සේ කොතැනේ ඉන්න කොටද ඇවිල්ලා අරගෙන යන්නේ ?

උ. කාමරයේ ඉන්න කොට.

ප්‍ර. අරගෙන යනවා කියලා කිවේ කවුද ?

උ. අර අතන කුඩුවේ ඉන්න හාමුදුරුවෝ.

ප්‍ර. අරගෙන යන්නේ කොහොමද. අතින් අල්ලාගෙනද. වඩාගෙනද. එන්න කියලාද යනවාද කොයි ආකාරයෙන් ද ගෙනී යන්නේ ?

උ. අතින් අල්ලාගෙන එක්කගෙන යනවා.

ප්‍ර. ස්වාමීන් වහන්සේ කොහොටද ගෙනියන්නේ?

උ. ඒ හාමුදුරුවන්ගේ කාමරයට.

ප්‍ර. ඔය පෙන්වූ ස්වාමීන් වහන්සේ ඒ කාලයේදී පන්සලේ කවුද?

උ. ලොකු හාමුදුරුවෝ.

ප්‍ර. ලොකු හාමුදුරුවෝ ඒ වෙලාවේදී මොනවාද ඇදගෙන ඉන්නේ?

උ. අදනයක්.

ප්‍ර. එතකොට ස්වාමීන් වහන්සේත් අදනයක් ඇදගෙන ඉන්නේ, ලොකු හාමුදුරුවෝත් අදනයක් ඇදගෙන ඉන්නේ කීවොත් නිවැරදිද?

උ. ඔව්.

ප්‍ර. ස්වාමීන් වහන්සේ ලොකු හාමුදුරුවන්ගේ කාමරයට අරගෙන ගියා නේ. අරගෙන ගිහින් මොකක්ද කලේ මුලින්?

උ. අදනය ගැලෙව්වා.

ප්‍ර. කාගේ අදනයද ගැලෙව්වේ?

උ. මගේ.

ප්‍ර. ඊට පසුව මොකක්ද කලේ?

උ. ඒ කරලා ඇග උඩ නැගලා කරදර කලා.

- ප්‍ර. කාගේ ඇග උඩද නගින්නේ ?
- උ. මගේ ඇග උඩ.
- ප්‍ර. ස්වාමීන් වහන්සේගේ ඇග උඩ නගිද්දී ස්වාමීන් වහන්සේ කාමරයේ කොතැනද ඉන්නේ?
- උ. ඒ භාමුදුරුවන්ගේ ඇදේ.
- ප්‍ර. ඇදේ කොයි ආකාරයෙන්ද ඉන්නේ නිදාගෙනද, පැත්තකට හැරිලාද , කොයි ආකාරයෙන්ද ඉන්නේ ?
- උ. නිදාගෙන සිටියා.
- ප්‍ර. ලොකු භාමුදුරුවන්ගේ ශරීරයේ කොතැනද පාවිච්චි කරන්නේ කරදර කරන්න ?
- උ. වූ කරන එක.
- ප්‍ර. ඒකට මම පුරුෂ ලිංගය කීවොත් හරිද ?
- උ. ඔව්.
- ප්‍ර. ලොකු භාමුදුරුවන්ගේ පුරුෂ ලිංගයෙන් කරදර කලා කීවා නේ ?
- උ. ඔව්.
- ප්‍ර. ලොකු භාමුදුරුවන්ගේ පුරුෂ ලිංගයෙන් මොකක්ද එයා කරන්නේ ඒ අවස්ථාවේදී?
- උ. කකුල් දෙක ඇතුළට දාලා ඉවර වෙලා.
- ප්‍ර. කාගේ කකුල් දෙක අතරටද දාන්නේ ?
- උ. මගේ.

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ප්‍ර. ඔය සිදුවීම වුණට පසුව ස්වාමීන් වහන්සේගේ කකුල් දෙක අතර විශේෂ දෙයක් දකිනවාද ?

උ. ඔව්.

ප්‍ර. මොන වගේ දෙයක් ද දකින්නේ ?

උ. සුදු පාට වතුර වගේ දෙයක්.

ප්‍ර. ස්වාමීන් වහන්සේට ඔය සිද්ධියට අමතරව තව කරදර වූ බව කීවා?

උ. ඔව්.

ප්‍ර. ඒ මොනවාද?

උ. පාඩම් කරන්න යමු කියලා එක්ක යනවා. හාමුදුරුවන්ගේ කකුල මිරිකන්න කියනවා.

ප්‍ර. කකුල් දෙක අතරට ඇමු සිද්ධියට අමතරව වෙන මොනවත් සිද්ධි වෙලා තිබෙනවාද?

උ. වූවා කට්ට ගන්න කීවා.

ප්‍ර. කොතනදීද ඒක වුනේ?

උ. අවාස ගේ ඇතුලේ.

ප්‍ර- ඔය සිද්ධිය වුනේ දවසේ උදේද? දවල්ද? රැද?

උ- දවල්.

ප්‍ර- දවල් කියට විතරද?

උ- වෙලාව මතක නැහැ.

ප්‍ර- දවසේ මොන වගේ වොලාවකද ඔය සිද්ධිය වුනේ?

උ- නැහැ. ටිකක් හවස් වෙලා.

ප්‍ර- කොහොම ස්වාමීන් වහන්සේ ඔය කීව සිද්ධිය වුනේ?

උ- කකුල් මිරිකන්න කීවා. අදනේ අස්සට දා ගත්තා. මමයි අරියමම
හාමුදුරුවෝවයි.

ප්‍ර- ස්වාමීන් වහන්සේට සහ අරියමම හාමුදුරුවන්ටයි යන දෙදෙනාටම ලොකු
හාමුදුරුවන්ගේ කකුල් මිරිකන්න කියලා කියනවාද?

උ- ඔව්.

ප්‍ර- ලොකු හාමුදුරුවන්ගේ කොහොටද ස්වාමීන් වහන්සේලාගේ දෙදෙනා දා
ගත්තේ?

උ- අදනේ අස්සට.

ප්‍ර- කාවද ගත්තේ?

උ- මාව.

ප්‍ර- චූලා කියන්නේ පුරුෂ ලිංගය කීවොත් හරිද?

උ- ඔව්.

ප්‍ර- චූලා කටට ගත් බව කීවා?

උ- කාගේ කටටද දැමීමේ?

උ- මාගේ කටට.

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8. That is, that the appellant engaged in intercrural sex with PW01 by placing his penis between PW01's inner thighs, and on another occasion, he also engaged in oral sex, by inserting his penis into PW01's mouth.
9. During the investigation, PW01 has undergone a medical examination. *Dr. W.R.A.S. Rajapaksha*, MD (Forensic Medicine), has examined PW01 at the District General Hospital *Pollonaruwa*. The medico-legal report prepared afterward has been submitted as evidence and marked *X1*.
10. Prior to the examination, *Dr. Rajapaksha* has recorded the history provided by PW01. In a statement to *Dr. Rajapaksha*, PW01 has indicated that the appellant sexually abused him on several occasions. Although, PW01 has not detailed these specific incidents, the statement has consistently reported sexual abuse by the appellant. Further, *Dr. Rajapaksha* has opined as follows; "*Other types of sexual acts cannot be excluded*".
11. A material contradiction refers to a significant inconsistency in statements or evidence that undermine the credibility of an assertion or claim. In the context of witness testimony, a material contradiction arises when a witness provides conflicting accounts regarding the same

events, detail or observation, thereby raising questions about their reliability and veracity of his statements.

12. Determining whether a contradiction is indeed material hinges on its relevance to the central issues of a case. Minor inconsistencies, such as discrepancies in recollection of peripheral details, may not be deemed material, as they do not significantly alter the overall narrative or the facts at stake. In contrast, contradictions that pertain to crucial elements of a case such as the identity of the perpetrator or the sequence of events are treated with greater scrutiny. When a witness delivers a narrative, it is generally expected to be coherent and consistent. However, discrepancies may surface due to various factors including memory lapses, misinterpretations or deliberate deception.

13. Regardless of the cause, a material contradiction introduces doubt that can significantly impact the outcome of the case. A contradiction has been noted during the cross examination of PW01. It is as follows;

ජර: ඔබ පොලිසියට ප්‍රකාශයක් දෙද්දි කිව්වද සජීන් අයියගේ කාමරයේ දී ලොකු හාමුදුරුවෝ මට ගල් කැපුවා , කටට දුන්නා කියලා?

උ: නැහැ.

(“සජීන් අයියගේ කාමරයේදී ලොකු හාමුදුරුවෝ මට ගල් කැපුවා කටට දුන්නා” යන කොටස වී.01 පරස්පරතාවයක් වශයෙන් ලකුණු කර සිටිනවා)

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14. Although such a single contradiction has been noted during the cross examination of PW01, this contradiction does not pertain to the crucial elements of the case, *i.e.* sexual abuse, perpetrated on PW01 by the appellant, hence, is not material.

15. Section 134 of the Evidence Ordinance No. 14 of 1895 reads as follows;

“No particular number of witnesses shall in any case be required for the proof of any fact.”

16. The primary implication of Section 134 of the Evidence Ordinance is the adoption of the principle that “evidence must not be counted but weighed”. This has several key consequences in the Sri Lankan legal system. A court can convict an accused or determine a case solely on the uncorroborated evidence of a single witness provided that the judge finds that witness to be cogent, credible, trustworthy and impressive.

17. The law does not require corroboration of witness’s testimony as an essential condition for a conviction. The trial Judge has the discretion to rely on the testimony if satisfied with its veracity after careful probing. The emphasis is shifted from a mere head count of witnesses to a careful judicial analysis and evaluation of the witness’s demeanour, consistency, and overall trustworthiness of his testimony.

18. In *Sumanasena v Attorney General* [1999] 3 SLR 137, Jayasuriya J. has held as follows:

“Evidence must not be counted but weighed and the evidence of a single solitary witness if cogent and impressive could be acted upon by a Court of law.”

19. In the present case, PW01 has testified in detail about the intercrural and oral sex involving the appellant. PW01’s testimony has been consistent. Furthermore, the testimony of PW01 has been found to be cogent, credible, trustworthy and impressive.

20. Under these circumstances, this court is satisfied that another can rely on PW01’s testimony without requiring corroboration. Consequently, it

would have been not necessary to call *Rev. Amithadhamma* to provide testimony.

21. The first information, in a criminal case in Sri Lanka, is the initial report/complaint relating to the commission of an offence. It is given orally or in writing by an aggrieved person, or a witness, to the police officer or an inquirer. It should be reduced to writing. The person making the complaint should be handed a receipt or acknowledgement containing the date, name and the reference number.
22. Regarding the document authored by *Rev. Amithadhamma*, it is essentially a report setting out the appellant's alleged misconduct. In particular, it refers to alleged sexual abuse said to have been committed by the appellant against PW01 and *Rev. Amithadhamma*, accordingly the document has the character of a report or a complaint concerning the alleged commission of an offence by the appellant.
23. This position has not been disputed by the appellant. Therefore, by its nature and purpose, the document amounts to "information relating to a commission of an offence" within the meaning contemplated by Section 109 of the Code of Criminal Procedure Act No. 15 of 1979.
24. Section 157 of Evidence Ordinance No. 14 of 1895 (as amended) provides as follows;

"In order to corroborate the testimony of a witness, any former statement made by such witness, whether written or verbal, relating to the same fact at or about the time when the fact took place or before any authority legally competent to investigate the fact, may be proved."

25. Section 157 of the Evidence Ordinance No. 14 of 1895 (as amended), in Sri Lanka allows a former statement made by a witness to be proven in court to corroborate his later testimony regarding the same fact.
26. Corroboration, contemplated under Section 157 of the Evidence Ordinance No. 14 of 1895, is not independent proof in the conventional sense. Instead, it serves as a test of consistency of witness's conduct in a statement overtime, making his testimony more credible. A prior statement admitted under this Section, cannot be used as substantive proof of the facts it narrates. It only backs up or supports the sworn testimony given in court. The prior statement must have been made "at or about the time when the fact took place". The Superior Courts in Sri Lanka have interpreted "about the time" flexibly depending on the opportunity. Also, the statement should have been made before any authority legally competent to investigate the fact.
27. Upon the receipt of the document authored by *Rev. Amithadhamma*, the investigators have commenced an investigation into the matters set out in that document. The document itself has served as the information that triggered the investigation, rather than as evidence of a prior statement by PW01.
28. In the course of that investigation, the investigators have recorded a statement by PW01. Accordingly, the document authored by *Rev. Amithadhamma* to above cannot be treated as a statement, for the purpose of Section 157 of the Evidence Ordinance No. 14 of 189,5 which deals with the admissibility of a witness's former statement in limited circumstances.
29. Since the document is not a former statement of PW01, the prosecution was under no duty to produce it as such, nor was it necessary to call the courier who delivered it, in order to corroborate PW01's testimony. Accordingly, the appellant's contention that the absence of the

document and the courier's testimony has resulted in an unfair trial must failed.

30. Our Courts have given the following guidelines with regard to the evaluation of the evidence of an accused person;

- i. If the evidence of the accused is believed, it must be acted upon.
- ii. If the evidence of the accused creates a reasonable doubt in the prosecution case, the accused must be acquitted.

The learned High Court Judge in delivering the disputed judgement has concluded as follows;

"On reasons given above, the court decides that the charge number one and charge number two of the indictment is proved beyond reasonable doubt by the prosecution of this case."

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31. It is evident that the learned High Court Judge in accepting and acting upon the prosecution witness's evidence has necessarily rejected the appellant's version, albeit implicitly. Although, the disputed judgement does not expressly reject the defence case in explicit terms, that omission amounts only to an irregularity and has not occasioned in a failure of justice.

32. Section 436 of the Code of Criminal Procedure Act No. 15 of 1979 provides as follows;

436.

Subject to the provisions hereinbefore contained any judgment passed by a court of competent jurisdiction shall not be reversed or altered on appeal or revision on account –

(a) of any error, omission, or irregularity in the complaint, summons, warrant, charge, judgement, summing up, or other proceedings before or during the trial or in any inquiry or other proceedings under this Code; or

(b) of the want of any sanction required by Section 135,

Unless such error, omission, irregularity, or want has occasioned a failure of justice.

33. In those circumstances, I am not inclined to interfere with the conviction, disputed judgement, together with the sentencing order.

34. I dismiss the appeal but make no order regarding costs.

Appeal dismissed.

35. The Registrar of this Court is directed to send this Judgement to the High Court in *Polonnaruwa* for compliance.

Judge of the Court of Appeal

Dr. Sumudu Premachandra, J.

I agree

Judge of the Court of Appeal