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.

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

Court of Appeal
Case No. CA HCC 202/2023

Complainant

Vs.

High Court of Ampara
Case No. HC 1693/2016

Herath Mudiyanselage Sujith Tharaka Chathuranga *alias* Ranga

Accused

AND NOW BETWEEN

Herath Mudiyanselage Sujith Tharaka Chathuranga *alias* Ranga

Accused-Appellant

Vs.

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

Complainant-Respondent

Before: **B. Sasi Mahendran, J.**
Amal Ranaraja, J.

Counsel: Anuja Premaratne, P.C. with Ishan Gampolage and Emal Gunasekara for the Accused-Appellant.

Malik Azeez, S.C. for the Respondent.

Argued on: 08.10.2025

Judgment on: 30.10.2025

JUDGMENT

AMAL RANARAJA, J.

1. The accused appellant (hereinafter referred to as the "Appellant") has been indicted in the *High Court of Ampara* in High Court case number HC/AMP/1693/2016.

   The charges in the indictment are as follows,

   Charge 01
   That on or about September 06, 2012, at *Ellegoda*, in the District of *Ampara*, within the jurisdiction of this Court, the appellant committed the offence of kidnapping, of a minor girl from lawful guardianship and thereby committed an offence punishable under section 354 of the Penal Code.

   Charge 02
   That in the course of the same transaction as above, the appellant committed the offence of grave sexual abuse by placing his penis on the

vagina of the earlier mentioned minor girl for sexual gratification, and thereby committed an offence punishable under section 365B(2)(b) of the Penal Code, as amended.

2. At the conclusion of the trial, the learned High Court Judge has proceeded to convict the appellant of both charges and sentenced him to 7 years rigorous imprisonment in respect of the second charge.

3. The appellant aggrieved by the conviction, disputed judgment and the sentencing order has preferred the instant appeal to this Court.

Case of the prosecution

4. On the day of the incident, PW01, her siblings together with two of their uncles i.e. younger brothers of PW01's mother, who also had been in their teens have gone to a tank close by to have a bath.

5. On their return, PW01 and others have gathered near a "kon" tree to pick its fruits. While the crowd was engaged in picking the "kon" fruits, PW01 has moved away to collect firewood.

6. In that instance, the appellant who had been in the vicinity, has allegedly dragged PW01 further into the forest and committed grave sexual abuse on her by engaging in a sexual act by placing the penis of the appellant on the vagina of PW01.

7. Following the filing of the complaint, an investigation has been initiated. The investigators have presented PW01 before a *Consultant Judicial Medical Officer* for an examination. The relevant medico-legal report has been entered into evidence as exhibit පැ02.

Case of the appellant

8. The appellant has asserted that he, along with the individuals mentioned in the testimony of PW01 went to bathe in a nearby tank. After their bath, they have stopped near a "kon" tree to pick its fruits.

9. Following this, the appellant has returned home and has not participated in any of the activities with PW01 as described in the second charge.

Grounds of appeal

10. When the matter was taken up for argument, the learned President's Counsel for the appellant raised the following grounds of appeal:

    i. Has the learned High Court Judge erred in not considering the inherent weaknesses of the case for the prosecution?

    ii. Has the learned High Court Judge erred in not considering the contradictions between the several witnesses for the prosecution?

    iii. Has the learned High Court Judge erred in acting on hearsay evidence?

    iv. Is the sentence imposed on the accused appellant excessive considering his age at the time of the incident?

11. It is the testimony of PW01 that on the day of the incident referred to in the charges she went to a tank for a bath, accompanied by her siblings

and her uncles. On their return they had stopped to pick “kon” fruits. While the others were at it, PW01 has moved away to collect firewood.

12. At that instance, an unidentified person has held PW01 from behind, covering her eyes and mouth. Thereafter, PW01 has been dragged further into the forest, at which time she has lost consciousness.

13. Four to five minutes later, PW01 has regained consciousness, gone back home accompanied by her siblings and informed their mother about the incident.

14. In this context, PW01 has asserted that she was completely unaware of any criminal activity being perpetrated against her. Furthermore, she has taken up the position that she does not have any knowledge of a specific individual who may have committed an offence against her. This lack of awareness raises important questions about the circumstances surrounding the incident.

15. PW01 has also not provided any testimony regarding any sexual abuse allegedly perpetrated by the appellant. Moreover, she has not specified the nature of the acts that the appellant is accused of committing.

16. In this case, the testimony of PW01, being the victim of the incident specified in the second charge, is of paramount importance. Her evidence serves as a crucial pillar on which the prosecution will build its case. The prosecution would have to heavily rely on her first-hand account to establish the facts surrounding the incident.

17. A detailed narrative provided by the victim will not only describe the events but also shed light on the motivations and the circumstances that led to the crime.

18. Furthermore, the prosecution's case will rest significantly on this primary testimony, as it forms the foundation upon which other pieces of evidence will be presented.

19. While additional witnesses may offer corroborating testimonies, their evidence will serve primarily to support and reinforce the material facts stated by PW01. Therefore, the testimony of those supporting witnesses can be regarded as secondary to the material narrative provided by the victim i.e. PW01.

20. The intricate details regarding the commission of the crime – such as sequence of events, will be revealed by PW01's testimony.

21. PW01's experiences and observations are critical as they light up the context of the incident, which may otherwise remain obscured.

22. Thus, any corroborative evidence must be aligned with the victim's testimony, ensuring that it supports the established narrative.

23. Without PW01's direct and compelling testimony, the prosecution's ability to convincingly present its case would be significantly undermined. It is through the eyes of PW01 that this Court will gain insight into the reality of the incident, as her testimony stands as the central thread connecting various elements of the prosecution's argument.

24. Accordingly, the testimonies of PW03 and PW06 who have claimed to have a witnessed the appellant and PW01 in a compromising position in the forest, though not conceding is considered cogent, provide only a

basis for suspicion. These testimonies do not conclusively provide that the specific incident outlined in the second charge occurred.

25. While the observations of PW03 and PW06 may raise questions about the interaction between the appellant and PW01, they fall short of establishing the essential elements required for the second charge. Suspicion alone is not sufficient to meet legal standard of proof needed to substantiate the allegation being made.

26. In the case of *The Queen Vs. M.G. Sumanasena* [1963] 66 NLR 350, Basnayake, C.J. held that:

> *"In a criminal case suspicious circumstances do not establish guilt. Nor does the proof of any number of suspicious circumstances relieve the prosecution of its burden of proving the case against the accused beyond reasonable doubt and compel the accused to give or call evidence"*

27. Further, the testimonies of PW03 and PW06 reveal significant contradictions concerning the manner in which both the appellant and PW01 were dressed or undressed at the time each witness claims to have observed them in a compromising position.

28. Specifically, PW03 has asserted that PW01 and the appellant were naked. In contrast, PW06 offers a conflicting account stating that the appellant was dressed in a trouser. These discrepancies not only cast doubt on the credibility of the witnesses but also complicate the overall narrative of the incident in question.

29. In page 14 of the disputed judgment, the learned High Court Judge has stated as follows:

> "පැ.සා.01 ඇයටම සුවිශේෂී හේතුවක් මත තමාගේ මුල් ප්‍රකාශයන්ට අනුව සාක්ෂි ලබා නොදී එම සිද්ධිය වන විටම තමාට සිහිය නැති වූ බව ප්‍රකාශ කරමින් සිද්ධිය පිළිබඳ සාක්ෂි දීමෙන් වැළකී ඇති නමුත් ඇය චිත්තිය පෙන්වා දීමට ක්‍රියා කරන ආකාරයට කිසි විටකත් අධිකරණයේදී අසත්‍ය ප්‍රකාශ සිදු කර නැත.
> කෙසේ වෙතත් පැ.සා.01 ගේ සාක්ෂි බැහැර කල ද ඇය සිහි නැතිව සිටියා යැයි කීම සම්බන්ධයෙන් කියන සාක්ෂිය අනුව සහ චිත්තිය 1 සිට 16 දක්වා ලකුණු කරන ලද පරස්පරතාවයෙන් ද පැහැදිලිවම ඔප්පු වන එකම කරුණ වන්නේ ඇය අසත්‍ය ප්‍රකාශ කරන සාක්ෂිකාරියක් නොව පැ.සා.01 චිත්තිකරු බේරීම සඳහා අධිකරණයට සිද්ධිය නොකියා සිටින තැනැත්තියක් යන්න බව පමණකි. අසත්‍ය ප්‍රකාශ කරන සාක්ෂිකාරියක් යන්නෙන් හැඳින්වෙන්නේ යම් සිද්ධියක් සම්බන්ධයෙන් එවැනි සිද්ධියක් සිදු වූ බවට හෝ සිදු නොවූ බවට මුල් ප්‍රකාශයට පරස්පරව සාක්ෂියක් ඉදිරිපත් කරන තැනැත්තියකි. පැ.සා.01 එවැනි සාක්ෂිකාරියක් නොවේ.
>
> මෙහි දී සිදු වී ඇත්තේ ඇය මුලින් පොලිසියට සහ වෛද්‍යවරයාට කරන ලද ප්‍රකාශයන්ට පරිබාහිරව යමින් මේ අවස්ථාවේ දී චිත්තිකරුට එරෙහිව අපරාධ සිද්ධිය සම්බන්ධයෙන් ප්‍රකාශ කිරීමෙන් වැළකී සිටීම පමණකි. ඇය අධිකරමයේ දී ප්‍රකාශ කර ඇත්තේ සිද්ධිය සිදු වූ ආකාරය සම්බන්ධයෙන් ප්‍රශ්න ඇසීමට නොහැකි වන අයුරින් ඉතා සූක්ෂම ලෙස එම සිද්ධියේ දී මුල් අවස්ථාවේ දීම තමාට සිහි නැති වූ බව ප්‍රකාශ කිරීමයි.
>
> පැ.සා.01ගේ සාක්ෂිය මෙම නඩුවේ දී මා බැහැර කර ඇත්තේ අපරාධ නඩු විධාන සංග්‍රහයේ 110(3) වගන්තියට පටහැනිව ක්‍රියා කරමින් අදාළ පොලිස් ප්‍රකාශ යොදා ගනිමින් අවිධිමත් හරස් ප්‍රශ්න නගමින් මා ඉහත පැහැදිලි කර ඇති ආකාරයට චිත්තිය ක්‍රියාකිරීම චිත්තිකරු විසින් තමාම සිදු කර ගෙන ඇත්තේ චෝදනාවල සඳහන් ක්‍රියාව තමන් විසින් සිදු කරන ලද බව තහවුරු වන ආකාරයට කටයුතු කිරීම පමණි."

30. In light of the circumstances, it is evident that the learned High Court Judge has reviewed the contents of the statement as made to the investigators, contained in the I.B. extracts and has regarded the

contents of such statements as substantive evidence. However, this practice is not permitted by law.

31. In Sri Lanka, a trial court cannot go through a statement of a witness recorded in the Police Information Book (I.B. extracts) and consider its contents as substantive evidence. Such statements are generally inadmissible and cannot be used to prove a fact in issue.

32. Statements recorded in the I.B. are used for a limited and specific purpose, the court can only look at these statements when a witness is testifying in court and is confronted with a previous statement they made to an investigator. This process serves to test the credibility of a witness and establish omissions. The defence can use a prior inconsistent statement to contradict a witness's testimony given in court. The defence can also bring up an omission in a prior statement to challenge the witness's memory and credibility.

33. In *Punchi Mahattaya v. The State* [1973] 76 NLR 564, Fernando P. held that:

"Court of Criminal Appeal (or Supreme Court in appeal) has not authority to peruse statements of witnesses recorded by the police in the course in their investigation, (i.e., statement in the Information Book) other than those properly admitted in evidence by way of contradiction or otherwise."

34. The matters discussed being as above, it is the view of this Court that it is not necessary for it to delve into the third and fourth grounds of appeal.

35. In those circumstances, I am inclined to interfere with the conviction, disputed judgment together with the sentencing order and I set aside the same accordingly.

Appeal allowed

I make no order regarding costs

36. The Registrar of this Court is directed to send a copy of this judgment for the *High Court of Ampara* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree

Judge of the Court of Appeal