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.

Court of Appeal No:

CA/HCC/0050/22

Democratic Socialist Republic of Sri Lanka

COMPLAINANT

Vs.

High Court of Monaragala

Case No: HC/21/19

Galwawege Piyadasa *alias* Dingi

ACCUSED

AND NOW BETWEEN

Galwawege Piyadasa *alias* Dingi,

Presently at Remand Prison.

ACCUSED-APPELLANT

Vs.

The Attorney General

Attorney General's Department

Colombo 12

RESPONDENT

Before : Sampath B. Abayakoon, J.

: P. Kumararatnam, J.

Counsel : Anil Silva, P.C. with Shalika Neranga for the Accused Appellant

: Madhawa Tennakoon, DSG for the Respondent

Argued on : 17-07-2023

Written Submissions : 17-10-2022 (By the Accused-Appellant)

Decided on : 23-10-2023

Sampath B Abayakoon, J.

This is an appeal by the accused appellant (hereinafter referred to as the appellant) on being aggrieved of his conviction and the sentence by the learned High Court Judge of Monaragala.

The appellant was initially indicted before the High Court of Monaragala on two counts, namely;

1. That on or about 08-07-2012, he committed the offence of abduction from the lawful guardianship, a minor at a place called Palassa within the jurisdiction of the High Court of Monaragala, and thereby committing an offence punishable in terms of section 354 of the Penal Code.
2. At the same time and at the same transaction, for having committed the offence of grave sexual abuse of the said minor and committing an offence punishable in terms of section 365 B (2) (b) of the Penal Code as amended by Penal Code (Amendment) Act No. 22 of 1995, 29 of 1998, 16 of 2006.

While the evidence in chief of the victim child who was called as PW-01 to give evidence before the trial Court was in progress, the Prosecuting State Counsel

has moved to amend the date of the offence of the charges to read as between the period of 08-07-2012 and 20-08-2012 which has been allowed by the Court. As a result, the amended indictment had been read over to the appellant for which he has again pleaded not guilty, and the trial has proceeded to its conclusion on the basis of the amended indictment.

The learned High Court Judge of Monaragala found the appellant guilty of the judgement dated 28-01-2022 for both the counts preferred against him, and after having heard the submissions of the prosecution as well as the appellant with regard to the sentence, passed the following sentence on him.

1. On the 1st count, 5 years rigorous imprisonment and a fine of Rs. 5000/-. In default of paying the fine, a simple imprisonment period of 6 months.
2. On the 2nd count, 15 years rigorous imprisonment and a fine of Rs. 10000/-. In default of paying the fine, 6 months simple imprisonment.

In addition to the above sentence and the fines, the appellant was ordered to pay Rs. 200000/- as compensation to PW-01 who was the victim of this incident, and in default of paying the said compensation, it was ordered to be recovered as a fine and a default sentence of 2 years rigorous imprisonment was imposed on the appellant.

The above-mentioned two jail terms were ordered to be concurrent to each other, which means a total period of 15 years rigorous imprisonment.

Facts in Brief

The victim child relating to this incident who gave evidence as PW-01 was 16 years of age when she gave evidence for the first time on 02-07-2019. She has been a child of about 09 years during the time period relevant to the charges. At the time she gave evidence before the trial Court, she was studying in grade 10 and was under the care of Madurukatiya Children's Home.

She has two younger sisters and a brother, and another elder sister as well. Her mother was living with a person called Ajith Prasanna along with the victim child and her siblings. She has been studying at grade 04 of the Kiuleara School at that time.

She has given her birth date as 24th February 2003 and has stated that the incidents of sexual abuse occurred in the year 2012, although she cannot remember the months or the dates.

Describing the incidents, she has stated that while she was going to school, the uncle she refers to as Dinki Maama who is a person herding cattle called her and she went with him because she could not understand the gravity of it. The mentioned Dinki Maama was a person well known to the victim child and was their neighbour. She has identified the appellant as the said person. According to her evidence, she and her parents used the well belonging to the appellant for their water needs and was in the habit of going to his house for various other needs as well.

Describing an incident, she had stated that on one day, her mother went to the well and she went subsequently to collect water, carrying a clay pot and two plastic containers in a wheelbarrow. While she was taking the wheelbarrow towards the well, the appellant has called her from a thicket nearby and when she went towards him, her mother's paramour whom she refers to as Bappa saw the incident and called her, which led to her revealing what was happening between her and the appellant to Bappa as well as her mother.

However, she has maintained that nothing happened to her on the date these incidents came to light, but previously, the appellant used to take her to a wooded area on her way to and from her school and commit intercrural sex with her. She has described how the sexual acts took place and stated that the appellant used to place his penis on her vagina and had intercrural sex with her placing the penis between her thighs.

She has explained that because of the threats made by the appellant towards her mother, she did not divulge these incidents to anybody, but later informed the sexual harassments faced by her to one of her teachers at school.

Her evidence reveals that neither she nor her parents have complained about these incidents to the police, but the police have come to their house after receiving an information about the grave sexual abuse incidents faced by the victim child.

While giving evidence and describing the details of the sexual abuse faced by her, the victim, although initially had stated that she cannot remember the month when these incidents occurred had come out saying that her statement to police was on 28th August 2012, and the sexual abuse incidents happened few months before she made the statement to the police, which appears to be the reason for the Prosecuting State Counsel to amend the date of offence in the indictment indicating a period of time as the victim child was unable to give a definitive date of the incidents.

The victim child's birth certificate has been marked as P-01 at the trial. While under cross-examination, she has identified her school as Kiuleara Primary School.

On behalf of the appellant, several contradictions in relation to the statement made by her to the police and the evidence given in Court had been marked.

The victim has maintained the position that the incident happened in the year 2012, however, in the police statement, she had stated that even on 24th August 2011, sexual abuse took place. She has denied that she made such a statement, and the said contradiction has been marked as V-01. She has denied that she said that the incident happened around 10 am in the police statement, which has been marked as V-02. In her evidence, she has stated that the incidents happened near the bunt and no one was there when the incidents occurred, but she has denied what she has stated in her police statement, that the incidents happened while returning with her sister after attending a class. The said

contradiction has been marked as V-03. The position taken up by the witness in her evidence had been that she cannot remember the dates of the incidents, however in the police statement she had stated that the incident happened the following day, meaning the 2nd incident happened a day after the 1st incident. Since the witness had denied saying so, the said contradiction has been marked as V-04.

However, it is clear from the victim's evidence that she has been consistent in her position that she was subjected to grave sexual abuse several times over a short period of time, and the said abuses came to light only after her Bappa suspected of something strange happening and questioned her.

The position taken up by the appellant had been that no such incidents took place and because the appellant made an indecent proposal to her mother, a false complaint was made against the appellant at the instigation of the mother, which has been denied by the victim child.

In this matter, the prosecution has called PW-03 who was living with the mother of the victim child as husband and wife during the time relevant to this incident. He is the person who has been referred to as Bappa by the victim child. At the time of giving evidence before the trial Court, having been convicted of an offence of murder, he was an imprisoned death row inmate.

According to him, the victim child has informed about the grave sexual abuse faced by her at the hands of the appellant. It was his evidence that even before the victim child informed, the two younger children come and informed him that Dingiri Maama took the sister, meaning the victim child, to the forest by giving biscuits to them. When he questioned the victim child, she has explained the grave sexual abuse faced by her. The witness has identified the appellant as the person mentioned as Dingiri Maama, whom he has referred to as Dingiri Ayya. The appellant was a person living next to their land, and it appears that the victim's family had been dependent on the appellant and his family for various needs. PW-03 in his evidence has stated that although he was informed of the

sexual abuse incidents faced by the victim child, he or his wife did not go to the police and complain due to them being so poor.

According to him, it was the police who came to their house and inquired about the incidents, which led him revealing to the police of what he knew. It has been stated by the witness that before these sexual abuse incidents came to be known, they had no issues with the appellant and were in very good terms.

Under cross-examination, the witness has explained in detail about the 1st incident where the child went to fetch water pulling a wheelbarrow and reasons as to why he went looking for the child as he could not hear from her. According to him, when he went looking for the child, he has seen her coming out of the thicket nearby and the appellant leaving from the other side of the thicket.

He has stated that he cannot exactly remember whether his wife informed him of any sexual advances made by the appellant towards her, and has maintained the position that because of the desperate living conditions they were in, and their inability to confront others, they decided to leave this area and go elsewhere, but it was the police who came looking for them.

The Judicial Medical Officer (JMO) who examined the child has marked his Medico-Legal Report as P-02 and has given evidence in detail of his observations of the victim child. He has failed to observe any telltale marks of sexual abuse, but has expressed the opinion that such sexual abuse can occur without any evidence being present on the body of a child.

According to the evidence of the JMO, since he was unable to communicate with the child properly, he has relied on the statement made to him by the mother of the child to record the history of the incident. The JMO has expressed the opinion that the child also may have enjoyed the incidents of abuse, as she had been slow to come out with the incidents.

The main investigating officer who conducted investigations has given evidence and had stated that the investigations into the incident commenced after the

police station received an anonymous letter regarding the incidents of sexual abuse faced by the victim child. After commencing the investigations, he has recorded the statement of the victim child and has entered his observations in relation to the places of the incidents as shown by the victim child.

According to the police evidence, the letter informing the sexual abuse incidents had been received by the police on 28-08-2012 and the victim child had shown two places where the incidents had taken place.

After the conclusion of the prosecution case, the learned High Court Judge having considered the evidence led has decided to call for a defence from the appellant, wherein, he has given evidence under oath.

According to the appellant, he is a farmer as well as a person who owned several heads of cattle. He was married with four grown up children. He has admitted that the victim child and their family were living about 300 meters away from his house and they used to have a close relationship with him and his family.

He has denied that he sexually abused the victim child and was in the habit of giving various gifts to attract the child towards him. He has maintained that the complaint against him was a false one and has claimed that the family members of the victim child used to come to his land and pluck produce for which he used to scold them, which may be the reason why a false complaint has been made against him.

While maintaining that position, the appellant has also claimed that the mother of the victim child, namely, Anusha used to ask for money from him and one day he proposed to her that she should have sex with him, for which she got angry and scolded him. He has claimed that this also may be a reason why a petition was sent against him after two or three months from the said proposal made by him.

When the prosecution and the defence cases were closed, the learned High Court Judge having considered the evidence before the Court had decided to call the

mother of the victim child who was listed as PW-02 in the list of witnesses of the indictment, but not called, in terms of section 439 of the Code of Criminal Procedure Act.

Section 439 of the Act is the provision where the Court can summon any person as a witness and examine, if the evidence of such a person appears to Court would be essential to come to a just decision of a case.

Accordingly, PW-02 mentioned in the indictment has given evidence. She has stated that she came to know about the grave sexual abuse incidents faced by her daughter through her younger son who is now a Buddhist priest. Although she has questioned her daughter, she has not revealed much detail but after punishing her, she has come out with what was happening to her at the hands of appellant whom she referred to as Dingi Ayya. However, it is clear from her evidence that she and her husband have not complained to any authority, but it was the police who came to their house and took steps to investigate after receiving an information in this regard.

Under cross-examination, she has confirmed that her family was dependent on the appellant's family for their needs, but has denied that it was the appellant who helped them, but his wife. She has stated that the appellant wanted to have an affair with her, but she did not agree. However, she did not do anything in relation to the indecent proposal of the appellant and came to know about the details of the sexual abuse incidents faced by her daughter only after police came to their house and recorded statements.

The Grounds of Appeal

At the hearing of this appeal, the learned President's Counsel formulated the following grounds of appeal for the consideration of the Court.

1. Has inadmissible evidence been led regarding the alleged previous incidents of grave sexual abuse which does not form the fact in issue

or relevant fact pertaining to the case, and therefore, is the conviction vitiated.

2. Has the learned High Court Judge taken into consideration inadmissible hearsay evidence and thereby did a miscarriage of justice occur to the appellant.
3. Has the learned High Court Judge taken into consideration that there are no corroboration of the complainant's evidence and therefore is the conviction bad in law.
4. Has the prosecution proved the case against the accused appellant beyond reasonable doubt.
5. Has the learned High Court Judge not properly analyzed defence evidence having regard to the guidelines set by the Superior Courts denying the accused appellant a fair trial.
6. Has the learned trial Judge not considered the matters favourable to the accused appellant.
7. Without prejudice to the above questions of law, is the imposition of the sentence excessive.

The learned President's Counsel contended that the initial charge against the appellant was based on a single act of grave sexual abuse supposed to have been committed on a single day. However, while the victim child was giving evidence, the indictment was amended to indicate a time period rather than a single date. But, the charge remained in relation to only one act of grave sexual abuse.

He brought to the attention of the Court section 5 of the Evidence Ordinance, which reads thus;

> **5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of other such facts as are hereinafter declared to be relevant and of no others.**

It was his position that the fact in issue was whether the appellant committed one act of grave sexual abuse during the mentioned period and therefore any

evidence regarding other acts allegedly committed by the appellant has no relevance and completely inadmissible evidence. It was his argument that the learned High Court Judge in her judgement has considered this inadmissible evidence to find the appellant guilty.

Referring to the evidence of the stepfather Ajith Prasanna where he says that the child informed him of the sexual abuse committed by the appellant on the day he saw the child going to the thicket near the well of the appellant's house, it was his contention that the evidence of the victim child had been otherwise. Her testimony has been that when she was about to go inside the thicket, her stepfather called her and questioned her, and he punished her because she did not say anything to him.

The learned President's Counsel took up the position that since the evidence in relation to the incident where the appellant stood indicted are contradictory to each other, the learned High Court Judge was wrong in relying on such contradictory evidence to convict the appellant. He pointed out further the delay in making a complaint and not making a statement to the police came looking for the victim child and her parents, also creates a doubt as to the truthfulness of the evidence of the relevant witnesses.

Commenting on the evidence of the JMO, it was his view that the evidence does not support the other witnesses' claim of a grave sexual abuse of the child by the appellant.

He lamented that the learned High Court Judge while considering the evidence in favour of the prosecution, has failed to consider the evidence that favoured the stand of the appellant who denied that he committed any sexual abuse of the child.

It was his stand that if the evidence was considered in the correct manner, the evidence that favours the appellant could have provided a sufficient basis to acquit the appellant as the prosecution has failed to prove the charges beyond reasonable doubt.

It was his position that considering all these matters together, it is obvious that a fair trial has not been afforded to the appellant.

The learned Deputy Solicitor General (DSG) who represented the respondent brought to the notice of the Court that neither the victim child nor her parents went to the police to make a complaint and it was after receiving an anonymous petition the investigations relating to this incident has commenced. It was his position that this in itself shows that the mother and the stepfather, as well as the victim child, have been truthful as to the incidents that happened to the child.

It was his position that the reasons for the child not to divulge the incidents to her mother or the stepfather had been clearly established by way of evidence and also the reasons of their reluctance to go to the police due to their dependence on the appellant and his family in their lives.

The learned DSG insisted that the evidence of the stepfather and the mother of the child are very much consistent with the evidence of the victim child. It was his position that the amending of the indictment as to the date of offence to indicate that it occurred during a certain period of time has not prejudiced the appellant as his defence was a complete denial of the act and he had all the possibilities of cross-examining the witnesses and put forward the stand as the amendment has been effected at the very beginning of the evidence given by the victim child.

He was of the view that the evidence of the JMO was consistent with the evidence of the victim child and his opinion that a sexual abuse as claimed by the victim can occur without any injuries or marks being present should be considered by taking the evidence in its totality, which has been the case in this trial.

The learned DSG moved for the dismissal of the appeal on the basis that it has no merit.

Consideration of The Grounds of Appeal

As the grounds of appeal pleaded by the appellant are interrelated, the said grounds of appeal will be considered together.

The evidence led at the trial when taken in its totality becomes clear that the family of the victim child who lived adjacent to the land belonging to the appellant were very much dependent on the appellant and his family in their daily lives. Their water source had been a well situated within the appellant's land, and even they had been dependent on the generosity of the other household members of the appellant's family to fulfill various needs.

The evidence of the child, the stepfather as well as the mother needs to be considered in that context as correctly considered by the learned High Court Judge in her judgement. The learned High Court Judge has clearly considered the evidence of the victim child, namely PW-01 considering the basic yardsticks of evaluating such evidence, namely the tests of probability, consistency, and spontaneity.

It is clear from the charge that it has been formulated on the basis of what happened on the day the stepfather observed the suspicious behaviour of the child. The learned High Court Judge too has considered the evidence before the trial Court on that basis and not on the basis of several sexual acts committed during the period. The learned High Court Judge has considered the evidence in relation to other similar instances only to test whether the evidence of the victim child and that of the stepfather and the mother can be believed.

The learned High Court Judge has considered the observations made by the investigating officer of the place of the incident and had come to a correct finding that such an incident as claimed by the victim child and the stepfather can occur.

The learned High Court Judge has considered the contradictions marked during the testimony of the victim child where she has spoken of several other incidents

of grave sexual abuse committed by the appellant on her. As observed correctly, those were not material contradictions that go into the root of the matter and has not created any doubt as to the evidence led.

In the case of **State of U.P. Vs. M. K. Anthony, AIR 1985 SC 48**, it was held:

> *"While appreciating the evidence of a witness the approach must be whether the evidence of a witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to tender it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole."*

It is also trite law that a witness may not be able to remember all the intricate details of an incident that happened some years ago and may not be able to explain the same in a Court of law due to various factors.

The victim child had been a 9-year-old girl, and she has given evidence in Court 6 years after the incident. It appears from the evidence that since the incidents of sexual abuse came to light, the victim child has been taken away from her family and was living in a children's home, probably under probation care. Being taken away from her natural environment also may lead to the victim child forgetting certain details of the incident or incidents and, being more reluctant to come out of the grave sexual abuse incidents faced by her as a small child. I find that this is what exactly that has happened in this case.

It was held in the Court of Appeal Case of **D. Tikiribanda Vs. The Attorney General-decided on 06-10-2009** reported in **Bar Association Law Reports 2010 (B.L.R.) 92** that;

> *"Mostly the victims of sexual harassment prefer not to talk about the harrowing experience and would like to forget about the incident as soon as possible (withdrawal symptom). The offenders should not be allowed to capitalize or take mean advantage of these natural inherent weaknesses of small children."*

At this stage, I find it appropriate to refer to the Indian case of **Bhoginbhai Hirjibhai Vs State of Gujarat (AIR 1983-SC 753 at pp 756-758)** very often cited in our Courts. It was held:

1) *By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.*

2) *Ordinarily, so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.*

3) *Ordinarily, a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused or mixed up when interrogated later on.*

4) *A witness, though wholly truthful, is liable to be overawed by the Court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometime so operates on account of the fear of looking foolish or being disbelieved though the witnesses is giving*

truthful and honest account of the occurrence witnessed by him – perhaps it is a sort of a psychological defense mechanism activated on the spur of the moment.

The learned High Court Judge in her judgement has well considered whether there was any unnecessary or unexplained delay in making a proper complaint to the police in relation to these incidents of grave sexual abuse.

The evidence of the stepfather and that of the mother of the victim child gives a clear insight as to their circumstances, which led them not to make a complaint to the police. As I have considered earlier, they have been overdependent on the appellant and his family. The appellant had been a much more prosperous man compared to their living standards. Being fearful of the appellant and his family, the victim's stepfather and the mother were planning to leave the area and go somewhere else rather than confronting the appellant when the police had come to their house and recorded statements in relation to the grave sexual abuse incidents.

This very fact shows that the appellant's contention that the family of the victim child was angry with him because he prevented them from plucking produce from his land has no basis. The appellant's contention that he made an indecent proposal to the mother of the victim and that was the reason why a false complaint against him was made too has no basis under any circumstance given the facts and the circumstances that have come to light during the trial.

Although the mother of the child when called by the Court to give evidence has admitted that in fact the appellant made sexual advances towards her, it appears that she has done nothing about it due to the very reasons considered earlier.

It was contended that the evidence of the victim child and that of the stepfather are contradictory to each other in relation to what happened on the day the child went to the well to fetch water, but the stepfather has given clear evidence when he went looking for the child, the child was not there and later saw her coming out of the thicket. He has seen the appellant leaving the same thicket from the

other side. When questioned, the victim child has failed to divulge what happened initially, but the stepfather's evidence clearly establishes that when he wanted to punish her, she came up in detail as to what happened to her on that day. The other incidents of sexual abuse have come to light when the police came and inquired into this matter.

The victim child's failure to give a definitive date as to the incident faced by her has to be considered given the relevant facts and circumstances applicable to the case.

The importance of proving a date mentioned in a charge was sufficiently discussed in the case of **R. Vs. Dossi (1918) 13 Cr.App.R. at 158**;

> The indictment charged the accused with indecently assaulting an 11-year-old girl on 19th March 1918. The child gave sworn testimony at the trial and the trial Judge invoked the rule of practice that it would be dangerous to convict absent corroboration. The accused provided alibi evidence for 19th March 1918, but could not do so for any other day in March. The child gave no evidence of a specific date but referred to constant acts of indecency over a considerable period of time ending at some date in March 1918.
>
> The jury found the accused not guilty of the offence on the date alleged. The Crown then amended the indictment to read "on some day in March", whereupon, the jury found the accused guilty. The conviction was upheld on appeal,
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> **Per Atkin, J.** at page 159;
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> > *"From time in memorial a date specified in an indictment has never been a material matter unless it is actually an essential part of the alleged offence."*

He continued at page 160;

> "*Thus, though the date of the offence should be alleged in the indictment, it has never been necessary that it should be laid according to truth unless time is of the essence of the offence. It follows, therefore, that the jury were entitled, if there was evidence on which they could come to that conclusion, to find the appellant guilty of the offence charged against him, even though they found that it had not been committed on the actual date specified in the indictment.*"

It is clear from the above authority as well as several other authorities that followed, the date of the offence need not be proven in order for a conviction to result, unless time is an essential element of the offence.

In the case of **Wright vs. Nicholson 54 Cr. App. R. 38,** it was held that the prosecution should not be allowed to depart from an allegation that an offence was committed on a particular day in reliance on the principle in **Dossi,** if there is a risk that the defendant has been misled as to the allegation he has to answer or that he would be prejudiced in having to answer a less specific allegation as to the importance of the provision of such particulars in the context of the right to fair trial. **(*Archbold on Criminal Pleading Evidence and Practice 2019, 1-225 at page 83*)**"

Under the circumstances, it is my considered view that the child initially not telling before the trial Court that a sexual act was committed on her on the day referred to by her stepfather would not create a doubt in itself on the evidence of the victim child or that of the stepfather.

It is well-settled law that evidence in a case has to be taken in its totality be it the evidence of the prosecution witnesses or that of the defence.

It was held in the case of **Don Samantha Jude Anthony Jayamaha Vs. The Attorney General, C.A. 303/2006 decided on 11-07-2012** that;

> "Whether the evidence of the defence or the dock statement is sufficient *to create a doubt cannot be decided in a vacuum or in isolation because it needs to be considered in the totality of evidence that is in the light of the evidence for the prosecution as well as the defence."*

In the Privy Council judgement in **Jayasena Vs. Queen 72 NLR 313,** it was held:

> *"A satisfactory way to arrive at a verdict of guilt or innocence is to consider all the matters before the Court adduced whether by the prosecution or by the defence in its totality without compartmentalizing and, ask himself whether a prudent man, in the circumstances of the particular case, he believes the accused guilty of the charge or not guilty."*

I am not in a position to agree that the learned High Court Judge failed to properly analyze the evidence and come to a finding whether the prosecution has proved the case beyond reasonable doubt. I find that the learned High Court Judge was very much mindful of the standard of proof in a criminal case when the evidence placed before the Court was analyzed and come to her conclusions.

I do not find a basis to agree that the learned High Court Judge has failed to properly analyze the defence evidence and the evidence that favours the appellant. As I stated above, when considering the evidence in its totality, I find nothing to conclude that the evidence favours the appellant's stand taken at the trial.

For the reasons considered as above, I find no reasons to interfere with the conviction of the appellant by the learned trial Judge for the charges preferred against him.

I do not find reason to believe that the sentence imposed upon the appellant was excessive given the relevant facts and the circumstances. The evidence provides a clear insight as to how the appellant used his standing over the victim child and her family to his advantage in order to commit these offences against the

victim child. Hence, I find no reason to believe that the sentence imposed on the appellant as excessive.

The appeal is dismissed for want of merit. The conviction and the sentence affirmed.

However, having considered the fact that the appellant has been in incarceration from his date of the sentence, namely 28-01-2022, it is directed that the sentence shall deem to have commenced from his date of the sentence namely, 28-01-2022.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal