

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

**In the matter of an Appeal in terms of
Section 320 of the Code of Criminal
Procedure Act No. 16 of 1979.**

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

Court of Appeal
Case No. CA HCC 148/2024

Complainant

Vs.

High Court of Hambanthota
Case No. HC/87/20

Francisco Patabendige Lalith Prasanna

Accused

AND NOW BETWEEN

Francisco Patabendige Lalith Prasanna

Accused-Appellant

Vs.

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

Complainant-Respondent

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

Counsel: Rajindra Kandededara for the Accused-Appellant.

 Maheshika Silva, D.S.G. for the Respondent.

Argued on: 06.02.2026

Judgment on: 13.03.2026

JUDGMENT

AMAL RANARAJA, J.

1. The accused appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Hambanthota* in High Court case number HC 87/20.

The charge in the indictment is as follows:

Charge 01

That on or about the period between January 01, 2014, and January 31, 2014, the appellant committed rape on a minor girl under the age of 16 and thereby committed an offence punishable in terms of section 364(2)(e) read with section 364(2) of the Penal Code.

2. At the conclusion of the trial, the learned High Court Judge has convicted the appellant of the charge and sentenced him to a term of ten years rigorous imprisonment and also directed the appellant to pay a

sum of Rs. 100000.00 to PW01 as compensation with a term of one year rigorous imprisonment in default.

Case of the prosecution

3. PW01 born on April 27, 1999, has resided with his parents during the period in question. The appellant has been married to PW01's cousin.
4. One day, PW01's cousin has gone to a clinic. PW01, being assigned to keep an eye on the baby of the former has taken the baby to her own house to care for it and the baby has soiled itself while in PW01's care. PW01 has returned the baby to her cousin's house to obtain a change of clothes for the baby. At that point, the appellant has hugged PW01 and suggested they begin an affair. An affair has subsequently developed between the two.
5. Subsequently, on a date PW01 was alone at home, the appellant has visited PW01 and engaged in sexual intercourse with her.
6. On March 08, 2014, a plan has been executed where PW01 has met the appellant at a location agreed upon earlier in order to elope. However, an uncle of PW01 has apprehended them and foiled their attempt to elope.
7. A police complaint has been lodged on the same day and an investigation commenced. During such investigation, PW01 has been produced before *Dr. A.S. Seneviratne, Consultant Judicial Medical Officer* in the *District General Hospital of Hambanthota* for an examination. The medico-legal report has been submitted as evidence marked 3702.

Case of the appellant

8. The appellant has conceded that he had a consensual affair with PW01, but has firmly denied the allegation of rape.

Grounds of appeal

9. When the matter was taken up for argument, the learned Counsel for the appellant urged the following grounds of appeal.
 - i. Has the date of the offence been proved?
 - ii. Has the prosecution failed to prove the age of the prosecutrix and thereby, has the prosecution failed to prove the charge beyond a reasonable doubt?
10. The learned Counsel for the appellant contends that the prosecution has failed to prove the appellant's guilt beyond a reasonable doubt because the date of the alleged offence was not established.
11. Section 165(1) of Code of Criminal Procedure Act No. 15 of 1979 reads as follows:

“The charge shall contain such particulars as to the time and place of the alleged offence and as to the person (if any) against whom and as to the thing (if any) in respect of which it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged and to show that the offence is not prescribed.”

12. It is argued that a criminal charge must always state the precise time of the alleged offence. However, while the precise time should be included whenever possible, it is not absolutely necessary in every case. The true

purpose of a charge is to provide the accused with adequate notice of the allegation so that a defence can be prepared and the trial remains fair.

13. In many offences, the exact time may not be known and requiring it would encourage artificial precision and lead to technical dismissals. In many cases, such as repeated abuse over several months, a victim may be able to describe the events and context but not the exact time. If the law demanded a specific time, regardless of the circumstances, it would either force the prosecution to speculate or prevent legitimate cases from being tried at all. Therefore, what matters is not precision for its own sake, but whether the charge provides sufficient notice to ensure a fair trial.
14. It may be argued that the time must always be stated because an accused may rely on an alibi. This concern is valid where the defence genuinely depends on a specific time. However, it does not justify an absolute rule. Stating the specific time of the offence in a charge is desirable but it is not absolutely necessary in every case.
15. The controlling principle should be whether the charge gives adequate notice and prevents prejudice to the accused because specific time is often unknown and not always an element of the offence.
16. Section 166 of the Code of Criminal Procedure Act No. 15 of 1979 reads as follows:

“Any error in stating either the offence or the particulars required to be stated in the charge and any omission to state the offence or those particulars shall not be regarded at any stage of the case as material, unless the accused was misled by such error or omission.”

17. The appellant has presented a narrative denying the specific allegations contained within the charge. This action on its own fails to demonstrate the appellant was misled by any alleged omission in the charge. Moreover, should such an omission be identified, it could be deemed immaterial and therefore disregarded.

18. In *R Vs. Dossi* 12 Cr. App. R. 158, it has been held as follows:

“That a date specified in an indictment is not a material matter unless it is an essential part of the alleged offence; the defendant maybe convicted although the Jury find that the offence was committed on a date other than that specified in the indictment. Amendment of the indictment is unnecessary, although it will be a good practice to do so (provided there is no prejudice) where it is clear on the evidence that if the offence was committed at all, it was committed on the day other than that specified.”

19. In her testimony, PW01 refers to her birthday as follows:

ප්‍ර- තමුන්ගේ උපන් දිනය කවදද?

උ- 1999.04.27

ප්‍ර- උප්පැන්න සහතිකය නැවත දැක්කොත් හඳුනා ගැනීමට හැකියාවක් තිබෙනවද?

උ: ඔව්.

[vide page 40 of the Appeal Brief]

20. Crucially, the appellant has failed to dispute the date of birth provided by PW01 in her testimony. This critical piece of evidence has remained unchallenged throughout the proceedings. Indeed during the rigorous cross examination of pw01, the appellant’s counsel has not presented or suggested any alternative date of birth or have they sought to impeach this specific aspect of PW01’s evidence.

21. It is a well-established principle of law that a fact presented in evidence, which is not actively challenged, contradicted or disputed by the opposing party during the trial is considered an admitted fact. Such inaction on the part of the appellant signifies an acceptance of the veracity of the evidence as presented.
22. Accordingly, given the appellant's explicit failure to contest this aspect, PW01's date of birth is properly considered an admitted fact in these proceedings.
23. Therefore, the appellant's subsequent contention that the prosecution has not adequately established PW01's date of birth is entirely devoid of merit and cannot succeed.
24. In *Edrick De Silva Vs. Chandradasa De Silva* 70 NLR 170 at 174, H.N.G. Fernando C.J. has stated that "*where the plaintiff has in a civil case led evidence sufficient in law to prove a factum probandum, the failure of the defendant to adduce evidence which contradicts it adds a new factor in favour of the plaintiff. There is then an additional "matter before the Court", which the definition in Section 3 of the Evidence Ordinance requires the Court to take into account, namely that the evidence led by the plaintiff is uncontradicted*".
25. In *Sarwan Singh Vs. State of Punjab* AIR 2022 SC 3652, the Supreme Court of India has stated that "*it is a rule of essential justice that whenever the opponent has declined to avail himself of the opportunity to put his case in cross-examination it must follow that the evidence tendered on that issue ought to be accepted*".

26. In those circumstances, I am not inclined to interfere with the conviction, disputed judgment or the sentencing order and proceed to affirm the same. I dismiss the appeal and make no order regarding costs.

Appeal dismissed.

27. The Registrar of this Court is directed to send this judgment to the *High Court in Hambanthota* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree

Judge of the Court of Appeal