

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

**In the matter of an Appeal in terms of
Section 331(1) 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/0126/24**

High Court of Kuliyaipitiya
Case No. High Court/029/19

Vs,

Jayasinghe Kankanamlage Premasiri
Jayasinghe *alias* Metiyagane Mahattaya
Mama

Accused

And Now Between

Jayasinghe Kankanamlage Premasiri
Jayasinghe *alias* Metiyagane Mahattaya
Mama

Accused-Appellant

Vs,

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

Complainant-Respondent

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

Counsel: K.V.D.U.R. Wijegunaratne for the Accused-Appellant

 Hiranjan Peiris, ASG for the State.

Argued on: 23 .07.2026

Judgment on: 11.09.2026

Judgment

Amal Ranaraja. J.

1. The accused-appellant (hereinafter referred to as the ‘appellant’) has been indicted in the High Court of *Kuliyapitiya* in Case No. HC/029/2019. The charges in the indictment are as follows;

01. That between the period of the 01st of January, 2013 and the 15th of February, 2013, within the jurisdiction of this Court, in *Dikirikawe Panapitiya*, you in order to gain some sexual gratification have used a certain part of your body on one *Rajapaksha Suriya Bandara Arachchilage Rachini Shalika*, a person under 16 years of age, i.e. by rubbing your male genitalia in between her legs; thereby you have committed an offence of “Grave Sexual Abuse” punishable under Section

365B (2)(b) of the Penal Code of Sri Lanka as amended by Penal Code (Amendment) Act No.22 of 1995, Penal Code (Amendment) Act No. 29 of 1998 and Penal Code (Amendment) Act No. 16 of 2006.

02. That between the period of the 01st of January, 2013 and the 15th of February, 2013, at a separate occasion than that of the above first charge, within the jurisdiction of this Court, in *Dikirikawe Panapitiya*, you in order to gain some sexual gratification have used a certain part of your body on one *Rajapaksha Suriya Bandara Arachchilage Rachini Shalika*, a person under 16 years of age, i.e. by rubbing your male genitalia in between her legs; thereby you have committed an offence of “Grave Sexual Abuse” punishable under Section 365B (2)(b) of the Penal Code of Sri Lanka as amended by Penal Code (Amendment) Act No.22 of 1995, Penal Code (Amendment) Act No. 29 of 1998 and Penal Code (Amendment) Act No. 16 of 2006.

03. That on or around the 16th of February, 2013, at the location mentioned in the above first charge, you in order to gain some sexual gratification have used a certain part of your body on one *Rajapaksha Suriya Bandara Arachchilage Rachini Shalika*, a person under 16 years of age, i.e. by rubbing your male genitalia in between her legs; thereby you have committed an offence of “Grave Sexual Abuse” punishable under Section 365B (2)(b) of the Penal Code of Sri Lanka as amended by Penal Code (Amendment) Act No.22 of 1995, Penal Code (Amendment) Act No. 29 of 1998 and Penal Code (Amendment) Act No. 16 of 2006.

2. At the conclusion of the trial, the appellant has been convicted of the first charge and acquitted of the second and the third charges. Upon conviction the appellant has been sentenced as follows;

- I. 7 years rigorous imprisonment and also has been imposed a fine of Rs. 5000.00 with a term of 1 month simple imprisonment, in default.

The appellant has also been directed to pay a sum of Rs. 100,000.00, as compensation to PW01 with a term of 1 year simple imprisonment, in default.

Further, it has been directed that the term of 1 year simple imprisonment in default, shall run consequent to the term of 7 years rigorous imprisonment.

Case of the Prosecution

3. PW01, born in October 2000, has lived in *Dikirikawe Panapitiya*, a town located in the North-Western Province of Sri Lanka. She has attended *Mitiyagane Maha Vidyalyaya* and has been a year 7 student at that time. She has resided with her parents and younger brother. Her grandmother has also lived close by. Both her parents have been employed and would return home after she and her brother came back from school. It had been customary for her to complete her homework upon returning from school. Afterwards, she and her brother would go to their grandmother's house until their parents returned from work.
4. On the day of the incident, PW01 and her brother have returned from school. The brother had then left home to attend extra lessons, leaving PW01 alone. At that time, the appellant, who was known to PW01 and employed by her grandmother to clear an adjacent property has come by and requested some water to drink. PW01 has obliged.

5. Thereafter, PW01 has returned to her room. The appellant has allegedly followed her, subsequently, threatened her with a knife, has committed sexual abuse as detailed in the first charge, i.e. engaged in intercrural sex with PW01 against her will.
6. PW01 has shared the incident with a school friend. In turn, the friend has notified a teacher about what had happened. The teacher has then questioned PW01, who has provided a written explanation of the incident involving the appellant. This written explanation has been submitted as evidence and marked *ප්‍ර 02*. Following a police complaint, an investigation has commenced.
7. PW01 has subsequently been presented to *Dr. A.P. Karagampitiya*, a medical officer attached to the outpatient department (OPD) of the Teaching Hospital in *Kurunegala*. Upon examining PW01, *Dr. Karagampitiya* has prepared a medico-legal report. This report has produced as evidence and marked *ප්‍ර 03*.

Case of the Appellant

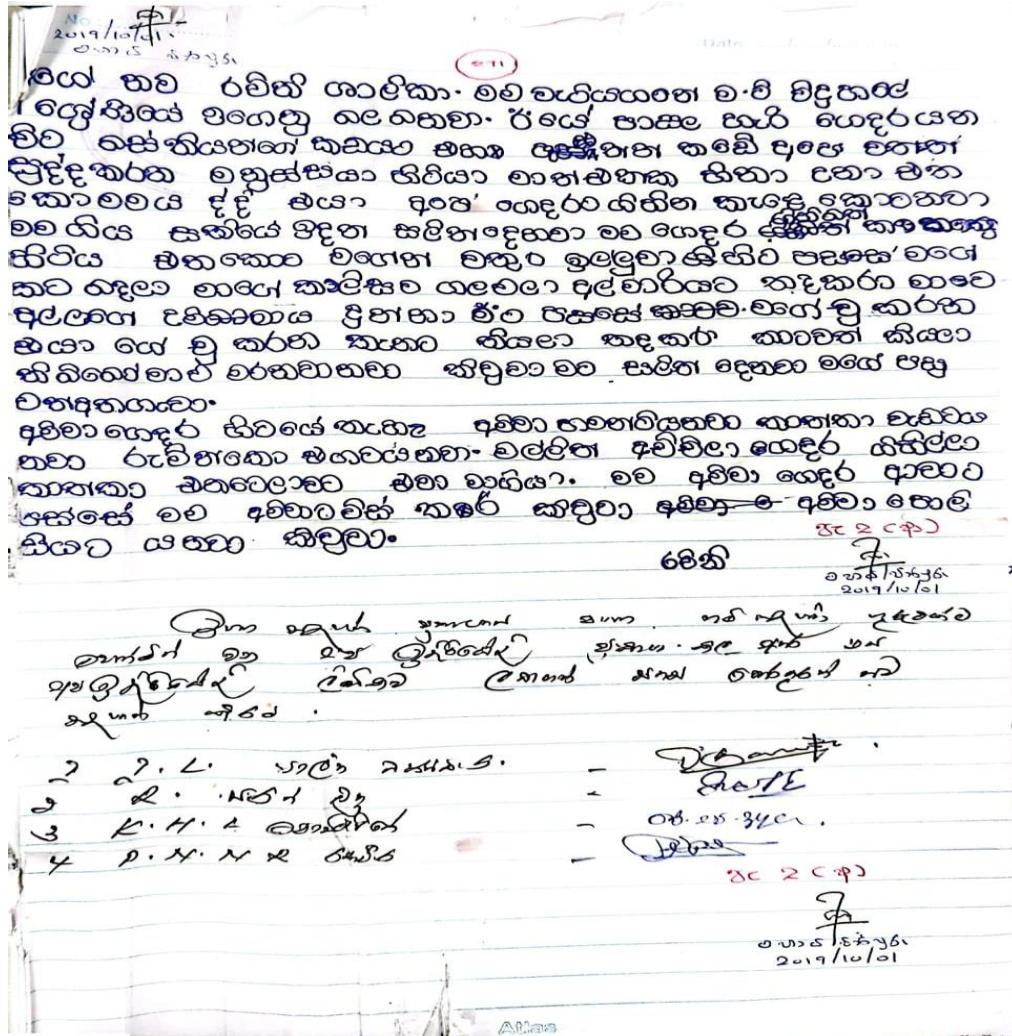
8. The appellant has denied the incidents described in the charges. He has also denied offering money to PW01, asserting instead that he provided funds to PW01's brother for the purchase of books.

Grounds of appeal

9. When the matter was taken up for argument, the learned counsel appearing on behalf of the appellant has urged the following grounds of appeal;

- I. Failure to apply the judicial caution required in assessing the evidence of child witness when there is overwhelming evidence against;
 - i. Contradictions per se and inter se of the evidence of PW01 and PW04.
 - ii. Authenticity of the letter 02 and signs of tutoring.
 - iii. Teacher's conduct in channelling the complaint.
 - iv. Police investigators unduly and culpably interested in the outcome.
 - v. Lack of corroborative value of medico-legal evidence and the inability of 'short history given by the patient' to determine consistency.
 - II. Failure to consider an alternative narrative arising from PW01's attainment of menarche.
 - III. Failure to consider investigative lapses, leading to material irregularities and denial of fair trial.
10. The written explanation submitted to the designated teacher by PW01 been produced as evidence, marked 02. The appellant has contended that the structure of this explanation is beyond the capacity of a child of PW01's age. Accordingly, PW01 is alleged to have been coached before drafting the contents of 02 and the statement given to the investigator.

11. A reading of $\mathfrak{P}_i$ 02 shows that PW01 has expressed in simple language the incident involving the appellant. For the convenience of those relevant, I reproduce the contents of $\mathfrak{P}_i$ 02;



Vide ¶ 02 on Page 271 of the Brief

12. PW01 has explained the manner in which the appellant had attempted to familiarise himself with her. She has then recounted how, on the date of the incident, the appellant has come to her house, requested a glass of water and subsequently, engaged in the sexual act with her under threat.

13. The explanation provided is, as stated above in simple language, avoiding any legal jargon to clarify the incident. Although the appellant

has argued that the structure of this explanation was beyond the capacity or understanding of PW01, he has not elaborated on this point in a convincing manner.

14. The capacity to explain an incident as well as the understanding and structure of the explanation is relative. There is no single universal method for doing so. The ability to express oneself clearly is crucial in this context. There is no evidence that PW01 was incapable of expressing herself as demonstrated in of $\mathfrak{z}_l$ 02. Hence, the contention that PW01 has been coached before drafting the contents of $\mathfrak{z}_l$ 02 and the statement given to the investigator must fail.
15. The appellant has also argued that there are significant discrepancies in the testimony of witnesses, PW01 and PW04 as well in the statements they provided to the investigator. Consequently, the appellant asserts that this inconsistency calls into question the reliability of their testimonies, suggesting they should not be used as the basis for convicting the appellant of the charges faced.
16. Marking a contradiction, in a witness's testimony is a core cross-examination technique used to impeach credibility. It involves confronting a witness with his own prior inconsistent statements (such as a previous police statement) to expose irreconcilable differences in his account. Confronting and impeaching a witness by such technique (the marking step) involves the following; the witness's attention is to be drawn to the exact part of the previous statement that contradicts his current testimony. Quote the specific lines from the prior recorded statement. Ask the witness to explain why his previous statement differs from his current testimony. If the witness denies making the previous statement, the cross examining attorney will officially mark that specific, inconsistent portion of the previous statement as a Court exhibit. The investigating officer or the person who recorded the statement will later be called to prove it was actually made.

17. In the case of *Agampodi Wijepala de Soyza vs Officer in Charge, Ahungalla and Another SC Appeal 159/2018*, decided on 07.07.2021, P. Padman Surasena J (as he was then), has held as follows,

“Moreover, the Evidence Ordinance in section 145 specifically provides for the manner in which a witness can be cross-examined and confronted with the statements made by such witness previously and the procedure to be adopted when proving such statements. It is worthwhile to reproduce here the said section.

Section 145.

(1) A witness may be cross-examined as to previous statements made by him in writing or reduced into writing and relevant to matters in question without such writing being shown to him or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

(2) If a witness, upon cross examination as to a previous oral statement made by him relevant to matters in question in the suit or proceeding in which he is cross examined and inconsistent with his present testimony, does not distinctly admit that he made such statement, proof may be given that he did in fact make it; but before such proof can be given the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he made such a statement

The scheme of the above section clearly demands that the following mandatory steps must be adhered to, when marking and proving an inconsistency.

Firstly, a cross-examining counsel who intends to show that the evidence of the witness under cross examination is contradictory with a previous statement made by him, must ask questions relevant to such matters in question without such previous statements being shown to him.

Secondly, if such witness comes out with something that is prima facie inconsistent with any part of such statement, it is then only the section allows such counsel to bring such parts of such statement which are to be used for the purpose of contradicting him, to the attention of such witness.

Thirdly, if such witness has stated something inconsistent with his previous statement and does not distinctly admit making such previous statement, then the cross-examining counsel is under a duty as per subsection 2 of the above section to ask whether or not such witness has made such a previous statement.

Fourthly, it is thereafter only the cross-examining counsel can proceed to prove that such witness has in fact made such previous statement."

18. However, trivial, minor inconsistencies, rarely impact the core of the case. To successfully discredit a witness, the contradiction must be material to a key fact in the issue.

19. In the case of *Bandara Vs. The State* (2001) 1 SLR 63, Kulathilake J, has stated,

“Our Courts have laid down the principle that the discrepancies and inconsistencies which do not relate to the core of prosecution case ought to be disregarded especially when all probabilities factor echoes in favour of the version narrated by a witness.”

20. PW01 has testified to the events described in the first charge. While the appellant has contended that PW01’s testimony contains discrepancies, such discrepancies have not been established as noted elsewhere in the judgement.

21. In her history provided to Dr. A.P. Karagampitiya, Medical Officer, PW01 has stated as follows;

(a) රෝගියා විසින් දෙන ලද කෙටි ඉතිහාසය
ஆ. நோயாளியின் சுருக்க வரலாறு
(b) SHORT HISTORY GIVEN BY PATIENT

In January 2013, one day "Mahaththaya" came to her home, got hold of her, squeezed her chests and buttocks. He then removed his trousers, put his penis on her genital area and went away. Another day he came and had inter crural - intercourse with her, keeping her standing against a cupboard.

Vide Page 11 of the Case Brief

Accordingly, she has remained consistent in that regard. The testimony of PW01 has been cogent and convincing.

22. The appellant has also sought to undermine the credibility of PW01’s testimony by alleging that her account included a penile-vaginal penetration involving the appellant and the credibility of such testimony is not supported by the absence of evidence that PW01 had attained menarche at the time.

23. Menarche is a girl's first menstrual period, making the biological capacity for reproduction. Penile-vaginal penetration is physically possible before menarche because, the reproduction organs are present. The vaginal canal exists and can allow penetration but, it carries severe risks of physical trauma and emotional harm.
24. Research suggests that child witnesses often exhibit a tendency to exaggerate when recounting events. This phenomenon can be attributed to a variety of factors, including psychological development of children, their emotional responses to traumatic events and the influence of external circumstances.
25. Children perceive and interpret the world differently. Their understanding of events particularly those that are distressing or frightening can be influenced by their imagination and emotional state. In moments of anxiety or fear, a child's instinct may lead them to distort experiences as a coping mechanism. This natural inclination to exaggerate can stem from their attempts to make sense of overwhelming situations, adding unnecessary details to their accounts to echo with what they perceive as the seriousness of the event.
26. Children are also often eager to please adults and may feel pressure to conform to perceived expectations. This pressure can lead them to exaggerate their accounts in an attempt to create a narrative that aligns with what they believe others want to hear.
27. Children's memories are also easily influenced by suggestions, discussions with family members or others of similar events. Such factors may result in distortions and exaggerations as children attempt to reconstruct memories that are not entirely accurate. Further, traumatic events in particular can provoke strong feelings, resulting in vivid recollections but these memories may not always reflect factual accuracy. The intensity of emotions can blur the lines of reality for

young witnesses, prompting them to recount experiences with dramatic flair even if such exaggeration diverges from actual events.

28. Section 134 of the Evidence Ordinance of Sri Lanka is as follows;

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

29. The law focuses on the weight and credibility of testimony rather than counting witnesses. A court can base a judgement or conviction on the uncorroborated testimony of a single witness if the judge believes it. Courts do not need multiple witnesses to verify a single event or fact.

30. In the decided case of *Sumanasena vs Attorney General 1999 3 SLR 137*, Jayasuriya J, has stated,

“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.”

Consequently, the learned High Court Judge was correct in considering the testimony of PW01 and acting upon it. It also contradicts the claim that the investigators have not performed a proper investigation, given their failure to record relevant witnesses.

31. In those circumstances, I am not inclined to interfere with the conviction, disputed judgement together with the sentencing order and proceed to affirm the same. The term of 7 years rigorous imprisonment shall commence from the date the instant judgement is read and explained to the appellant in the High Court of *Kuliyapitiya*.

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

Appeal dismissed.

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

Judge of the Court of Appeal

Dr. Sumudu Premachandra, J.

I agree

Judge of the Court of Appeal