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 Criminal Procedure Act No.15 of 1979.

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

Complainant

CA HCC 226/23

Vs.

High Court of Embilipitiya
Case No. **HC 117/2019**

Padalaangala Ganawasi Thero *alias*
Manathunga Arachchige Jayantha

Accused

AND NOW BETWEEN

Padalaangala Ganawasi Thero *alias*
Manathunga Arachchige Jayantha

Accused-Appellant

Vs.

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

Respondent

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

Counsel: Saliya Peiris P.C., Geeth Karunaratne, Sithara Chathurangi and Mark Fernando for the Accused-Appellant.

Azard Nawavi, A.S.G., for the Respondent.

Argued on: 24.03.2026

Judgment on: 04.05.2026

Judgment

AMAL RANARAJA, J.

1. The accused-appellant (hereinafter referred to as appellant) has been indicted in the High Court of Embilipitiya in High Court Case No. HC 117/19. The charge in the indictment is as follows;

01. That between the dates of 01st of March, 2018 and 31st of May, 2018, within the jurisdiction of this Court, in *Sri Gnanaloka Mulika Privena, Sevanagala,* you in order to gain some sexual gratification, have used a part of your body, namely your male genitalia on the body of one *Mahagama Ariyagnana Thero, alias Kalansuriya Janith Dilshan, alias Suriyawewa Sudheera Thero,* a person under 16 years of age, by placing it between his thighs. Thereby, you have committed an offence of 'Grave Sexual Abuse' punishable under Section 365B (2)(b) of the Penal Code 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 learned High Court judge has convicted the appellant of the charge and sentenced him as follows;

    i. Imposed a fine of Rs.10,000.00 with a term of 12 months simple imprisonment in default. Further, has imposed a jail term of 20 years rigorous imprisonment, in addition to the fine.

       The appellant has also been directed to pay a sum Rs. 100,000.00 as compensation to PW01, with a term of 12 months simple imprisonment in default

3. The appellant, aggrieved by the conviction, judgement together with the sentencing order has preferred the instant appeal of this Court.

Case of the Prosecution

4. At the time of the alleged incident referenced in the charge, PW01 has been a student monk residing in a *Pirivena*. The appellant has also been residing at the same *Pirivena*, though not as a student monk. PW01 has shared a room within the premises with three other student monks, while the appellant has occupied a separate room allocated to him.

5. On the night of the alleged incident, PW01 and the three other student monks have been in their shared room, one asleep and the others awake, having retired for the day. The appellant has allegedly knocked on their door and asked PW01 if he was in possession of a bottle of petrol. When PW01 has responded in the negative, the appellant has allegedly pushed PW01 onto a mattress on the floor of the room. He has then proceeded to undress both PW01 and himself as described and subsequently, sexually abused PW01 as detailed in the charge.

Case of the Appellant

6. The appellant has denied the allegations, contending he has been framed due to animosity from the father of PW01.

7. When the matter was taken up for argument the learned President's Counsel, appearing on behalf of the appellant urged the following grounds of appeal;

    i. Has the learned High Court Judge failed to consider the improbability of the evidence of PW01?

ii. The prosecution has failed to call PW03, the witness material to establish the prosecution's version and therefore, an adverse inference can be drawn against the prosecution's case.

iii. Whether the learned High Court Judge has erred in evaluating the contradictions of PW02, marked by the defence which go to the root of the matter.

iv. Whether the learned High Court Judge has failed to properly analyse the evidence adduced by the defence.

v. Whether the sentence imposed on the appellant was excessive or unjustifiable.

8. The test of probability is a cornerstone of legal, judicial and investigative analysis used to gauge the credibility and reliability of a testimony. Instead of relying solely on a witness's demeanour, this test subjects his story to an examination of whether it aligns with common sense, surrounding circumstances, and existing evidence.

9. When assessing witness credibility, the test of probability evaluates several factors, i.e. whether the testimony is consistent with itself (internally) and with established facts or documentary evidence. Does the narrative make sense given the time, place, and conditions of the event. Does the witness's version align with how people typically behave, or does it seem illogical or impossible?

10. Significant contradictions in a witness's evidence can heavily affect his credibility and leave his testimony improbable. A witness's account could be weighed against a competing one, thereafter the more plausible version taken into consideration upon the application of the test of probability.

ප්‍ර: එහෙම ඉන්නකොට දොරට තට්ටු කලා කියලා කිව්වා නේ?

උ: ඔව්.

ප්‍ර: ඒ කියට විතර වගේ ද?

උ: 11.00 ට 12.00 ට වගේ.

ප්‍ර: දොරට තට්ටු කරද්දී ඔබ වහන්සේ මොකද කලේ?

උ: ඒ වෙලාවේ තව හාමුදුරු කෙනෙක් ඇහැරිලා හිටියේ.

ප්‍ර: කවුද ඇහැරිලා හිටියේ?

උ: ඥානවිමල හාමුදුරුවෝ.

ප්‍ර: ඊට පස්සේ මොකද වුනේ?

උ: මම දොර ඇරියා.

ප්‍ර: ඊට පස්සේ මොකද වුනේ?

උ: පෙට්‍රල් බෝතලයක් තියද කියලා ඇහුවා.

ප්‍ර: කවුද ඇහුවේ?

උ: ඥානවංශ හාමුදුරුවෝ. මම කිව්වා මම දැක්කේ නැහැ කියලා. ඊට පස්සේ මාව බදාගෙන මෙට්ටෙට දැම්මා.

ප්‍ර: කොතන තිබුනු මෙට්ටයට ද දැම්මෙ?

උ: බිම තිබුනු මෙට්ටයට.

ප්‍ර: ඒ වෙලාවේ අනිත් හිමි නමවල් තුන්දෙනත් ඒ කාමරේ හිටියා ද?

උ: ඔව්.

ප්‍ර: ඒ අය මොනවා කරමින්ද හිටියේ?

උ: ඒ අයගෙන් එක්කෙනෙක් ඇඳේ අනිත් පැත්තට හැරිලා හිටියා. ඊට පස්සේ අනිත් කෙනාව මම ඇහැරෙව්වා. අර නම මතක නැති හාමුදුරුවන්ව.

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11. It is alleged that the appellant knocked on the door of the room occupied by PW01 and others at approximately 11.00 pm on the day in question. This late hour is typically when most individuals would have retired for the day and would be asleep. Given these circumstances it could be inferred, that if the appellant had intended to commit an act of sexual abuse of PW01, it was meant to be done in secrecy.

12. However, according to PW01's testimony, two of the other student monks occupying the room had been awake, when the appellant allegedly pushed PW01 onto a mattress on the floor of the room. Thereby, the appellant would have been exposed to the student monks who were awake and any secrecy anticipated brought to nought. Furthermore, the appellant has occupied an independently allocated room at the same premises. However, the appellant has not attempted to take PW01 to his own room.

13. In such a situation it becomes questionable whether the appellant would have committed the alleged offence at the scene it was supposed to have occurred. The circumstances also raise another question; why did the appellant not take PW01 to his own room if he actually committed an offence against PW01? Such an action would not have also exposed the appellant, instead creating a ready-made situation for the alleged offence to be committed in complete secrecy.

14. Accordingly, these circumstances referred to in the testimony of PW01 do not align with how an individual would typically behave when committing an offence of the nature the appellant is accused of in secrecy, thereby challenging the credibility of the accusation.

15. Also, PW01 has testified that the monk who later informed his father (PW01's father) learned about the alleged incident from PW01 the day after it occurred. This monk has then informed PW01's father, leading to a police complaint. This entire sequence of events, from the incident to the police complaint, reportedly has taken place within three or four days. Following the police complaint an investigation has commenced. As a part of this investigation, PW01 has undergone a medical examination conducted by *Dr. G.R.H.C. Gamlath*, a medico-legal officer at the *Embilipitiya District General Hospital* (PW07).

16. Prior to the medical examination, PW01 has provided a brief account of the incident to *Dr. Gamlath*. In his statement, PW01 has indicated that the alleged incident involving the appellant had occurred approximately two weeks prior to the date of examination. This stands in contrast to PW01's court testimony which suggested the incident happened only a few days before the police complaint was made (within the three to four day timeline mentioned above).

17. In court, PW01 has also testified about a separate incident where another monk allegedly attempted to sexually abuse PW01 before the appellant's alleged actions. However, PW01 has not disclosed any information about this earlier attempted abuse to *Dr. Gamlath* prior to the medical examination.

18. It is argued that these inconsistencies are significant. That they relate to crucial aspects of the case, i.e. the timing of the alleged offence, and the occurrence of a prior, similar, attempted incident. Also, that such details can be material to understanding the sequence of events and the overall context of the allegations.

19. As previously established, two student monks have been awake in the room with PW01 during the alleged incident between the appellant and PW01. One of these individuals, *Samananda Thero* (PW03), has been listed as a prosecution witness. However, for an undisclosed reason, the prosecution has refrained from calling this witness. Had *Samananda Thero's* evidence been presented, it would have addressed and clarified the discrepancies in PW01's testimony. The prosecution's failure to do so leaves PW01's testimony internally inconsistent and improbable.

20. In the case of *The King v Seneviratne 1936 NLR 38,* Lord Roche has stated,

> *"Witnesses essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution, whether in the result the effect of their testimony is for or against the case for the prosecution".*

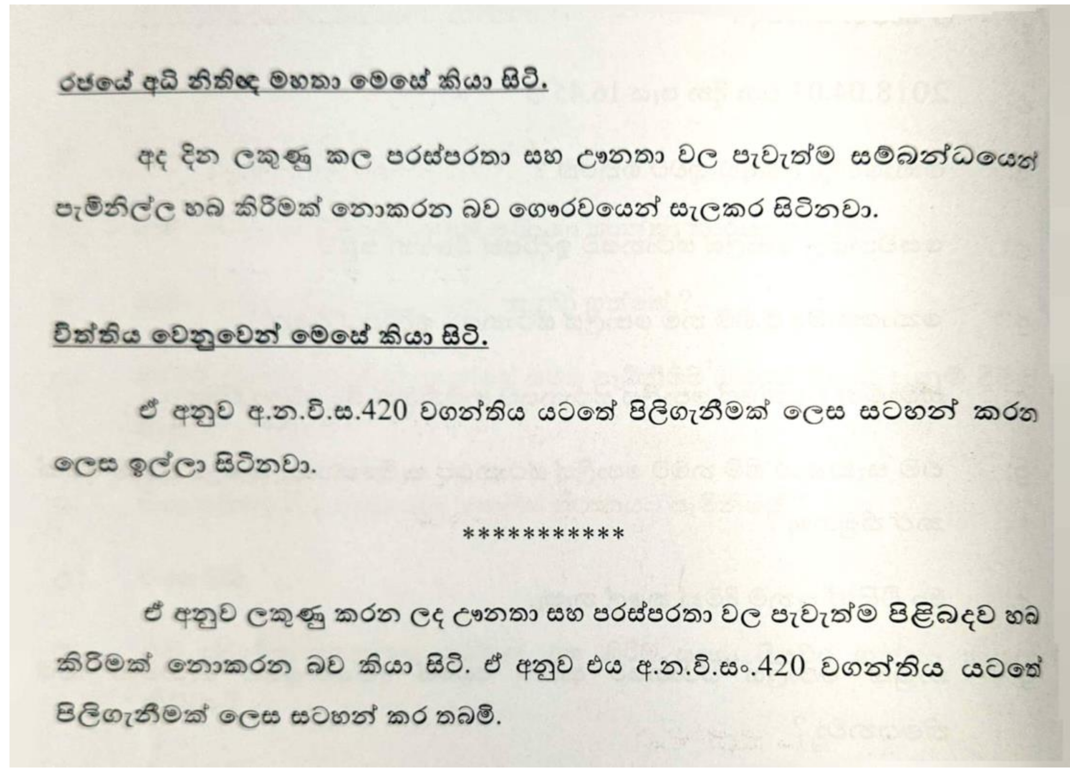
21. Further, an adverse presumption under Section 114(f) of the Evidence Ordinance could be drawn against the prosecution, as the evidence of PW03 which was absolutely necessary to corroborate the testimony of PW01 has been withheld by such party.

22. In the case of *Kumara De Silva and two Others v Attorney General 2010 SLR (2) 169*, Sarath De Abrew J has stated,

> *"Question of an adverse presumption under Section 114 (f) arises only where a witness whose evidence is necessary to unfold the narrative is wilfully withheld by the prosecution and the failure to call such witness constitutes a vital missing link in the prosecution case."*

23. During the cross examination of PW02, i.e. the father of PW01, four contradictions have been identified by the appellant and marked *වි 01 to වි*

04. However, the learned High Court Judge has disregarded these contractions, stating they had not been proved by the appellant. This finding by the learned High Court Judge is incorrect, because the prosecution itself has admitted these contradictions in PW02's evidence in accordance with the provisions of Section 420 of the Code of Criminal Procedure Act No. 15 of 1979. This is noted in the proceedings dated September 23, 2021.



<u>රජයේ අධි නීතිඥ මහතා මෙසේ කියා සිටී.</u>

අද දින ලකුණු කල පරස්පරතා සහ ඌනතා වල පැවැත්ම සම්බන්ධයෙන් පැමිනිල්ල හබ කිරිමක් නොකරන බව ගෞරවයෙන් සැලකර සිටිනවා.

<u>විත්තිය වෙනුවෙන් මෙසේ කියා සිටී.</u>

ඒ අනුව අ.න.වි.ස.420 වගන්තිය යටතේ පිලිගැනීමක් ලෙස සටහන් කරන ලෙස ඉල්ලා සිටිනවා.

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ඒ අනුව ලකුණු කරන ලද ඌනතා සහ පරස්පරතා වල පැවැත්ම පිළිබදව හබ කිරිමක් නොකරන බව කියා සිටී. ඒ අනුව එය අ.න.වි.සං.420 වගන්තිය යටතේ පිලිගැනීමක් ලෙස සටහන් කර තබමි.

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Following, the High Court Judge's aforementioned misdirection, the contradictions have been subsequently addressed in a superficial manner and have not been accorded the requisite significance.

24. In the circumstances the learned High Court Judge has failed to properly evaluate the contractions in the evidence of PW02 in favour of the appellant, which has led to a wrongful finding. This also indicates that the learned High Court Judge has misdirected himself in that regard.

25. The defence has called the appellant and two other individuals to give evidence. In his testimony, the appellant has vehemently denied the allegations presented. DW03, *Ven. Kiribbanwewa Jinasiri Thero*, has also testified on behalf of the defence. He had been a pupil monk at the relevant *Pirivena* at the same time as PW01, making them contemporaries. DW03's testimony corroborates the appellant's account. Furthermore, DW03 has revealed specific circumstances where PW01 has allegedly suggested that they falsely implicate the appellant. According to DW03, PW01's motivation for this suggestion stemmed from PW01's unhappiness and desire to leave the *Pirivena* at that particular time.

උ. තාත්තා පන්සලේ නැවතිලා හිටියා නේ. ඒ හිටපු හින්දා එයාටත් ගෙදර යන්න ඕන කිය කිය හිටියා. ඊට පස්සේ මෙයාට මෙහාට යන්න විදියක් තිබුණේ නැහැ.

ප්‍ර. කාටද යන්න විදියක් නැත්තේ ?

උ. ආරියඥාන හාමුදුරුවන්ට.

ප්‍ර. ඒ මොකටද?

උ. නිවාඩුවට විතරයිනෙ යවන්නේ.

ප්‍ර. නිවාඩුවට විතරයි යන්නේ ඒ නැතිව යන්න විදියක් තිබුණේ නැහැ.

උ. ඔව්.

ප්‍ර. ඊට පස්සේ මොකද කලේ ?

උ. එයා කිවුවා අපිට ගෙදර යන්න දෙන්නේ නැති නිසා ලොකු හාමුදුරුවෝ කරදර කරනවා කියලා ඒ මාර්ගයෙන් යමු ගෙදර යමු කියලා.

ප්‍ර. ලොකු හාමුදුරුවෝ කරදර කරනවා කියලා කාටද කියන්න හැදුවේ ?

උ. ආරියඥාන හාමුදුරුවන්ගේ තාත්තට.

ප්‍ර. කව්රු කව්රුද කිව්වේ ?

උ. එයා විතරයි.

ප්‍ර. හාමුදුරුවෝ කරදර කරනවා කියලා තාත්තට කියමු කියලා කාත් එක්කද කිව්වේ ?

උ. තව තුන් දෙනෙක් හිටියා මමයි සුජාත කියල එක්කෙනෙකුයි සමානන්දටයි ඊ කිව්වේ. පාඩම් කරනකොට විභාග කටයුතු තිබුණා ඒ දවස්ටිකේ. පාඩම් කරද්දි කිව්වේ.

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ප්‍ර. ඔබ වහන්සේ කියන ආකාරයට ඔය හේතුව නිසා තමයි ආරියඥාන හාමුදුරුවන්ට ගෙදර යන්න වුණෙ ි?

උ. නැහැ අර හාමුදුරුවන්ගෙන් කරදර වෙනවා කියලා අපිත් එක්ක කතා වුනා මෙහෙම බොරුවක් කියල අපි ගෙදර යා ගමු කියලා. ඊට පස්සේ තාත්තට කිව්වා. ගිහිල්ලා තාත්තට කව්වට පස්සේ තමයි තාත්තා ගිහින් පොලිසියට කියලා තිබුණේ. ඊට පස්සේ තමයි පොලිසියෙන් ඇවිල්ලා හාමුදුරුවන්ව එක්කන් ගියේ.

ප්‍ර. ලොකු හාමුදුරුවන්ගෙන් කරදර වෙනවා කියලා ගෙදර යන්න උත්සාහ කරපු කතාව බොරුවක් කියලනෙ ඔබවහන්සේ කියන්නේ ?

උ. බොරුවක් නෙවෙයි ඇත්තක්.

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ප්‍ර. එතකොට ඥානවංශ හාමුදුරුවන්ගෙන් කරදරයි කියලා ආරියඥාන හාමුදුරුවන්ගේ තාත්තට කියමු කියලා කිව්වේ කොයි වෙලාවෙද ?

උ. පාඩම් කරන වෙලාවේ.

ප්‍ර. එතකොට ඒ ඇත්තක්ද කිව්වේ ?

උ. බොරුවක්.

ප්‍ර. කවුද අසත්‍යයක් කියන්න යෝජනා කලේ කවුද ?

උ. ආරියඥාන පොඩි හාමුදුරුවෝ තමයි බෙරු කියලා මේ හාමුදුරුවෝ එලවමු කියලා කිව්වේ .

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ප්‍ර. එතකොට ඔය සාකච්චාවේදී කාරක සභාවේදී ජයන්ත සම්බන්ධයෙන් ගත්ත පියවර මොකක්ද ?

උ. ජයන්තට උවමනා දේකට ඇරෙන්න පන්සලට එන්න තහනම් කරා. ඒත් හාමුදුරුවෝ ඇවිල්ලා හම්බවෙන්න ඇරෙන්න පන්සලට එන්න තහනම් කලා.

ප්‍ර. ඊට පස්සේ මොකද වුනේ ?

උ. ඊට පස්සේ අපේ අපේ අඟහරුවාදා පොලක් තියෙනවා පොලට ඇවිල්ල හාමුදුරුවෝ එක්කත් අපිට බැන්නා. හාමුදුරුවන්ට ඉන්න දෙන්නේ නැහැ හාමුදුරුවෝ එලවනවා කියලා. අපි ඇහුවා කොහොමද එළවන්නේ කියලා. බලපල්ලකො එලවන හැටි කියල කිව්වා.

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26. In evaluating the defence evidence, the learned High Court Judge has merely narrated the versions of the defence witnesses. The Judge has rejected their testimony without cogent reasons, relying instead on flimsy justifications. This assertion is supported by the following passages from the disputed judgement;

"කෙසේ නමුත් මෙම හිමිනම පැ.සා.01ත් සමඟ එකම කාමරයක වැඩ වාසය කළ අයකු නොවේ. ඒ අනුව මෙවැනි සිද්ධියක් සිදු වූවාද නැද්ද යන්න

සම්බන්ධයෙන් සෘජු දැනීමක් එම අයට ඇති බවක් පෙනෙන්නෙට නැති අතර එම අයට කරදරයක් නොවුනද වෙනත් අයට කරදර වූවාද නැද්ද යන්න සම්බන්ධව දැනීමක් ඔහුට නැත. තවද එම අය සාක්ෂි දෙමින් පැ.සා.01ට නිවසට යාමට වුවමනාවක් තිබූ බවත්, ඒ හේතුව මත පන්සලේ ලොකු හාමුදුරුවෝ කරදර කරන බවට අසත්‍යක් පැවසීමට අනෙකුත් හාමුදුරුවන් පොළොඹවමින් නිවසට යාමේ වුවමනාවෙන් සිට ඇති බවට පෙන්වා දීමට උත්සාහ කළත් පැ.සා.01 සිවුරු හැර දමා නිවසට යාමේ වුවමනාවක් තිබී ඇති බවක් තහවුරු නැත.''

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27. In the case of *Ariyadasa G.K.V v The Queen 68 NLR 66,* T.S. Fernando J has stated,

> *"If the jury believed the appellant, he was, of course, entitled to be acquitted. He was, in our opinion, also entitled to be acquitted even if his evidence, though not believed, was such that it caused the jury to entertain a reasonable doubt in regard to his guilt."*

28. Further, in the case of *James Silva Vs. The Republic of Sri Lanka (1980) 2 SLR 167*, Rodrigo J has stated,

> *"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 compartmentalising and, ask himself whether as a prudent man, in the circumstances of the particular case, he believes the accused guilty of the charge or not guilty."*

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

30. I proceed to acquit the appellant of the charge. I make no order regarding costs.

Appeal allowed.

31. The Registrar of this Court is directed to send a copy of this judgement to the High Court in Embilipitiya for compliance.

Judge of the Court of Appeal

B. Sasi Mahendran, J.

I agree

Judge of the Court of Appeal