

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

**In the matter of an appeal in terms of
Article 154 (P)(6) read with Article 138
of the Constitution of the Democratic
Socialist Republic of Sri Lanka.**

Democratic Socialist Republic of Sri
Lanka

Complainant

CA HCC 136/24

High Court of Ratnapura

Case No. HCR 15/2020

Vs.

Dikwella Vidanalage Balasuriya

Accused

AND NOW BETWEEN

Dikwella Vidanalage Balasuriya

Accused-Appellant

Vs.

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

Respondent

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

Counsel: P.B. Herath for the Accused-Appellant.

 Shanaka Wijesinghe, A.S.G., for the State.

Argued on: 30.04.2026

Judgment on: 21.05.2026

Judgment

Amal Ranaraja, J.

1. The accused-appellant (hereinafter referred to as appellant) has been indicted in the High Court of *Ratnapura* in High Court Case No. HCR 15/20.

2. The charge in the indictment is as follows;

01. That on or around the 07th of January, 2015, within the jurisdiction of this Court, in *Milavitiya*, you in order to gain some sexual gratification have used a certain part of your body, particularly your male genitals, by rubbing it against the female genitals of one *Wickramaarachchilage Shamila Premakumari*, a person under 16 years of age; 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.

3. 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 3 months simple imprisonment in default of its payment. Furthermore, a term of 10 years rigorous imprisonment has also been imposed.

The appellant has been further directed to pay a sum of Rs.150,000.00 as compensation to PW01 with a term of 6 months rigorous imprisonment in default of its payment.

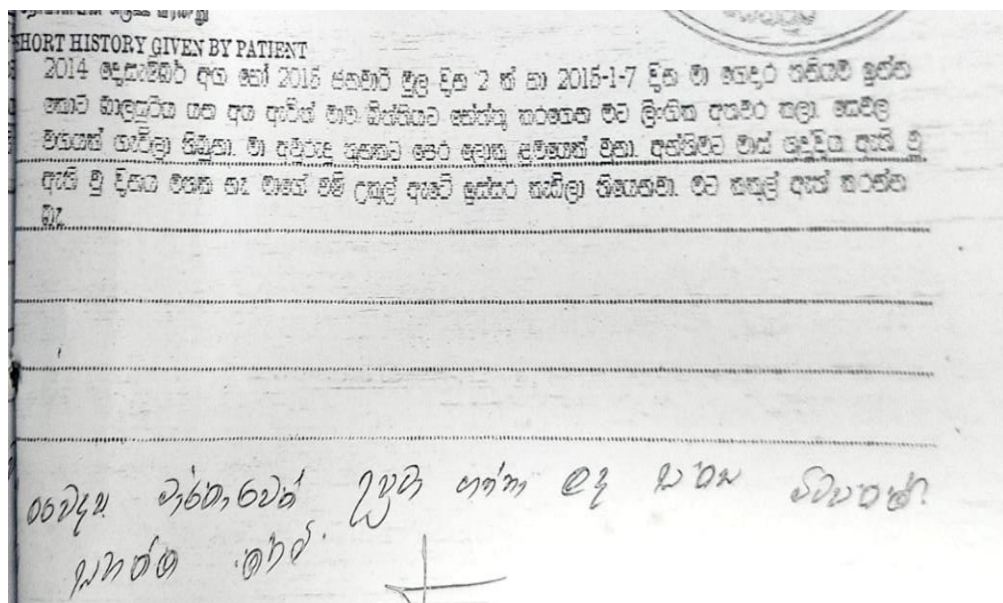
Case of the Prosecution

4. During the time in issue PW01, her mother and her younger sister (PW08) have been living in a rented house in the *Milavitiya* area. PW01's parents had separated and her father has not been living with them. The mother had supported the children financially by working at a workshop situated across the road from their residence. The appellant has also lived in the area and has regularly visited PW01's residence.
5. On the date of the alleged incident, PW01 and her younger sister have been at home while their mother was at work. At approximately 15.00 hours that day, the appellant has visited PW01's residence. He has handed over some sweets to the younger girl and asked her to go and play in the garden. She has complied. Thereafter, the appellant has taken PW01 to the kitchen, made her stand parallel to the tin sheet partitioning the kitchen from the front area of the house, placed his penis close to PW01's vagina and committed a sexual act on her.
6. Days later, the younger sister of PW01 has informed their mother about an incident (the incident in issue) she had witnessed between PW01 and the appellant. This has occurred on the date referred to by PW01 specifically when the younger girl entered the kitchen for water. The

mother has subsequently questioned PW01 and filed a police complaint. An investigation has followed and PW01 brought before *Dr. Dissanayake* an Assistant Judicial Medical Officer (PW06) for a medical examination. The medico-legal report prepared by *Dr. Dissanayake* has been produced as evidence marked *පැ 02*.

Case of the Appellant

7. The appellant has maintained that disputes with PW02, the mother of PW01, created an animosity which has subsequently led to his false implication.
8. PW01, the patient, has stated to *Dr. Dissanayake* that on the date of the incident the appellant came to her residence placed her parallel to a wall and sexually abused her.



9. Evaluation of evidence through the test of consistency is a foundational logical method used to assess the reliability of testimony by determining whether different pieces of evidence agree with one another or if a single source is self-contradictory.

10. Internal consistency evaluates whether a single source such as a witness's testimony contains contradictions within itself. If a story changes over time or contradicts itself, its internal consistency is low. Courts rely on consistency to weigh witness credibility. Inconsistencies may not always invalidate testimony but can lead to reduced weight or a finding of unreliable evidence.
11. In this instance PW01's testimony regarding the alleged incident of sexual abuse perpetrated by the appellant against the witness has been consistently maintained. This consistency is evident both in her direct testimony and the patient's history provided to *Dr. Dissanayake* (PW06).
12. Furthermore, during cross-examination PW01's account of the incident involving the appellant has not been discredited. Therefore, considering these circumstances PW01's relevant testimony is deemed consistent and reliable.
13. Contradiction *§ 01* relates to the duration the appellant spent engaging in a sexual act with PW01. PW01 has testified that this activity lasted approximately 5 minutes. In contrast, her statement to the police has indicated a duration of 10-15 minutes. This discrepancy concerns only the time elapsed during the sexual act, not a reference to different acts.
14. A material contradiction in testimony is a significant irreconcilable discrepancy between a witness's current Court testimony, and a previous statement of his, e.g. to the police, which directly affects the case's core facts, such as the identity of the accused or the incident at hand. It is used to discredit a witness and implies the statements are mutually exclusive, both cannot be true. The contradiction must relate to a vital aspect of the case, not to a minor, trivial detail.

15. In the case of *Bandara Vs. The State (2001) 2 SLR 63*, Kulathilake J, has held,

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

16. As explained, the contradiction marked *Ɔ 01* does not affect the incident described by the witness (PW01). Consequently, it pertains to a peripheral fact of the case rather than a core one. Therefore, this contradiction does not discredit PW01.

17. PW08, the sister of PW01, has testified that she saw the appellant and PW01 in the kitchen of the house she shared with PW01 and their mother. This sighting has occurred when PW08 had entered the kitchen to drink water at the time of the incident mentioned by PW01.

18. In her testimony PW08 has further stated that PW01 was standing parallel to a wall covering her body with a garment she had removed and her back to the appellant, who was clothed at that time.

19. PW08 had been seven years old when she witnessed the incident she has later testified about. She has provided evidence in Court seven years after the incident had taken place. As a witness of such a young age, her memory regarding the intricate details of the incident could be considered fallible. The parts of the brain responsible for forming and retrieving memories do still mature during childhood. This means that a child’s ability to store and recall detailed information might not be as sophisticated as an adult’s.

20. Also, children often tend to remember the main points of an event accurately, but many struggle with peripheral details like exact sequences of actions. For anyone a significant time gap between

witnessing an event and recalling it can lead to a memory decay, while details fade or become less precise.

21. Further, memory is a reconstructive process, each time a memory is retrieved, it can be slightly reinterpreted or updated on the current knowledge or new information, which can lead to alterations especially for older memories.
22. Therefore, while a child witness might consistently recall a central, impactful fact, its memory for the finer, connected details of the incident could be more prone to inaccuracies or omissions due to these developmental and time related factors. However, PW08 has remained consistent in her testimony that she saw PW01 and the appellant in the kitchen of her residence at the time of the incident described by PW01.
23. PW01 has also explained in detail in her testimony why she did not disclose the incident involving the appellant to anyone. The reason she has provided is compelling.
24. The appellant has asserted that animosity with the mother of PW01 resulted in his false implication however, this claim has not been put to PW01, PW02 and PW08 during cross examination. No explanation has been provided for this omission leading the learned High Court Judge to correctly conclude that the appellant's defence was an after-thought.
25. In the case of *Sivathanan vs. Attorney General [2021] 2 SLR 290*, Kodagoda, J., has stated,

*"It would therefore be seen that **suggestions** to prosecution witnesses are very important, and inter-alia serve as an opportunity for the defence to place before prosecution witnesses the position of the defence. It enables the Court to take early cognizance of the position of the defence and also enable prosecution witnesses to respond to the*

defence position. That the defence placed before Court their position at the first available opportunity also enables it to satisfy the 'test of spontaneity'. Therefore, it is of importance that the defence uses this opportunity to specifically and in unambiguous terms indicate both to the Court and to prosecution witnesses, the position of the defence. Should the defence not make use of this opportunity and take up a particular position for the first time during the case for the defence, that position will suffer from the weakness of 'belatedness'."

26. Accordingly, I am not inclined to interfere with the conviction, disputed judgement and the sentencing order. I proceed to affirm the same and dismiss the appeal

27. I make no order regarding costs

Appeal dismissed

28. The registrar of this Court is instructed to send this Judgement together with original case record to the High Court in *Ratnapura* for compliance.

Judge of the Court of Appeal

B. Sasi Mahendran, J.

I agree

Judge of the Court of Appeal