

**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.**

The Democratic Socialist Republic of Sri
Lanka

Complainant

**Court of Appeal Case No:
CA/HCC 0222/2024**

High Court of Monaragala
Case No. HC/136/2019

Vs,

Disanayake Mudiyanse Wijekwardene

Accused

And Now Between

Disanayake Mudiyanse Wijekwardene

Accused-Appellant

Vs,

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

Complainant-Respondent

Before: **Amal Ranaraja, J.**

Dr. Sumudu Premachandra, J.

Counsel: Kasun Liyanage along with Thilakkana Indunil and Ranjan
De Silva for the Accused-Appellant

Janaka Bandara, DSG for the State.

Argued on: 15.07.2026

Judgment on: 04.09.2026

Judgment

Amal Ranaraja, J.

1. The accused-appellant (hereinafter referred to as the appellant) has been indicted in High Court of Monaragala in Case No. HC/136/2019. The charges in the indictment are as follows;

01. Between the 16th of November 2010 and the 15th of November 2011, within the jurisdiction of this Court, in *Buddhama*, you have committed rape against one *Disanayake Mudiyanseelage Vindya Umayangani*, a minor, under the age of 16; thereby you have committed an offence punishable under Section 364(2)(e) of the Penal Code of Sri Lanka as amended by Penal Code (Amendment) Act No. 22 of 1995.

02. Between the 16th of November 2010 and the 15th of November 2011, within the jurisdiction of this Court, in *Buddhama*, at a time other than that of the above first charge, you have committed rape against one *Disanayake Mudiyanseelage Vindya Umayangani*, a minor, under the age of 16; thereby you have committed an offence punishable under Section 364(2)(e) of the Penal Code of Sri Lanka as amended by Penal Code (Amendment) Act No. 22 of 1995.

03. Between the 16th of November 2010 and the 15th of November 2011, within the jurisdiction of this Court, in *Buddhama*, at a time other than that of the above first and second charges, you have committed rape against one *Disanayake Mudiyanseelage Vindya Umayangani*, a minor, under the age of 16; thereby you have committed an offence punishable under Section 364(2)(e) of the Penal Code of Sri Lanka as amended by Penal Code (Amendment) Act No. 22 of 1995.

2. At the conclusion of the trial the appellant has been convicted of the first charge and acquitted of the second and third charges. The learned High Court Judge, upon conviction of the first charge, has imposed the following sentence on the appellant;

- i. 12 years rigorous imprisonment and a fine of Rs.25,000.00 with a term of 6 months rigorous imprisonment, in default of payment of the same.

The appellant has also been directed to pay a sum of Rs. 200,000.00 as compensation to PW01, with a term of 1 year simple imprisonment, in default of payment of the same.

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

Case of the Prosecution

4. PW01, a 14 year old girl at that time, has been living with her mother and sister in *Buddhama*, an area located in the Uva province of Sri Lanka. Her maternal grandmother has also assisted PW01 and her siblings with their daily routines. PW01 has attended *Buddhama Maha Vidyalaya* as a year 8 student and walked to school each day.
5. During the period in question, the appellant has repeatedly waited for PW01 as she returned from school. He has then taken her to a forest area and engaged in penile-vaginal intercourse with her against her will. PW01 has informed her grandmother about the sexual abuse she experienced from the appellant, who is her uncle. However, the grandmother has not taken any action.
6. Subsequently, PW01 has allegedly revealed these incidents involving the appellant to a teacher in her school. Following this revelation, a complaint has been lodged with police and an investigation has begun. As a part of the investigation, PW01 has been examined by *Dr. K.S. Dahanayake*, a Judicial Medical Officer. The associated medicolegal report has been presented as evidence and marked *පැ02*.

Case of the Appellant

7. The appellant has denied sexually abusing PW01 and has asserted that he has been falsely implicated in the offences outlined in the charges.

Grounds of Appeal

8. When the matter was taken up for argument the learned counsel for the appellant urged the following grounds of appeal;
 - I. The prosecution has failed to prove the date or time of offence beyond a reasonable doubt.
 - II. The learned High Court Judge has failed to consider that the evidence of the prosecutrix was so unreliable that it could not establish the charges against the appellant beyond a reasonable doubt.
9. In her testimony, the appellant has stated that the incidents detailed in the charges occurred in 2011. She has further affirmed that the investigators recorded her statement on November 16th, 2011. It is thus evident that the relevant incidents have taken place in 2011, on dates prior to November 16th, 2011. Therefore, PW01 has provided a general timeframe for these incidents although she has been unable to specify their precise dates as described in the charges.
10. It is not generally essential for the prosecution to establish the exact date stated in a charge. The law usually allows a reasonable margin of variants, provided the core elements of the charge are proven, and the defence is not prejudiced. For most offences, (e.g.; assault, theft and sexual offences) the exact date is not an essential ingredient of the offence. The prosecution is only required to prove that the offence occurred generally within the time and before the charges were filed. If the exact date is unknown, stating “on or about” a specific date is legally valid.
11. However, the prosecution must establish the exact date or a precise timeframe in specific situations;

- i. If time is a material ingredient of the offence.
- ii. If the defence raises a complete alibi for the exact time alleged, the prosecution cannot arbitrarily shift the timeline to convict.

12. In the case of *Maarukku Kankanamalage Anura Kumarasiri Vs. The Attorney General CA/0036/2020*, decided on 11.06.2024, Sampath B. Abeykoon J held as follows,

“Section 165(1) of the Code of Criminal Procedure Act No.15 of 1979, which provides guidance on particulars as to time, place and the person that should be mentioned in a charge reads as follows;

165(1). *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 manner with which he is charged and to show that the offence is not prescribed.*

...

The above mentioned relevant statutory provisions clearly stipulate the purpose of mentioning the date of an offence and other particulars is to give sufficient notice to any accused person as to the charge against him and for the purposes of showing the offence has not been prescribed. Any omission or error in giving the required particulars in a charge becomes material only if such error or omission has caused the accused to be misled as to the charge or charges preferred against him.”

13. Further in the case of *R. Vs. Dossi 12 Cr. App. R., 158*, it was 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 as committed at all, it was committed on the day other than that specified.”

14. In the matter at hand, the precise timing of the alleged offence is not considered an essential component of the charge the appellant faces. Furthermore, the appellant has not raised an alibi. Given these circumstances, it is not necessary for the prosecution to establish an exact timeframe, in which the alleged offence was committed.
15. The testimony of victims is a cornerstone of legal proceedings especially in cases involving offences against minors. When these individuals return to testify after a long period of time, the discrepancies in their narratives can be substantial. Understanding these discrepancies requires an exploration of various factors that influence memory, perception, and personal development overtime.
16. One prominent factor contributing to discrepancies in testimony is the natural evolution of memory. Memory is not a static entity. It is subject to distortion and change. As individuals grow, their cognitive capabilities and emotional understanding refine. Consequently, when a minor victim later testifies as a young adult/adult, their narrative may shift or expand to incorporate new perspectives, leading to inconsistencies with their earlier narratives.
17. Additionally, external influences can shape a victim’s recollection of events. Social and environmental influences can further complicate a minor’s testimony. As they reach young adulthood, changes in perspective and social context can lead to reassessment of their

experiences. For instance, external pressures from family, peers, or even an accused can affect how they perceive and describe their past. The desire to conform to social narratives or to protect loved ones may lead to alterations in their narratives.

18. Moreover, research indicates that trauma can have profound effects on memory, often resulting in fragmented recollections or difficulty in articulating experiences accurately. Young victims cope with their trauma, by altering their memories, consciously or unconsciously, as a means of self-preservation. As adults they may confront their past with a different lens, influencing the consistency and details of their recollections.
19. In the matter at hand, PW01 has testified in the High Court ten years after the incident described in the charges, at the age of 23. These circumstances should be considered alongside the previously discussed matters. Therefore, they provide insight into the discrepancies highlighted in PW01's testimony.
20. As for the alleged inconsistencies, they relate to peripheral factual details rather than the central issues in dispute. Specifically, they concern the layout of the scene of the incident, the color of the clothes PW01 was wearing, the sequence of events prior to the incident material to the charges, and the manner in which the incident involving the appellant was reported to the police.
21. In my view, these inconsistencies do not undermine the core of the prosecution's case. They do not go to the essential elements that must be proved, nor do they materially affect the credibility of the key account of the incidents itself. What matters is whether the witness is consistent on the main narrative and the material facts that establish the offences.

22. Further, even though PW01 has informed her grandmother of the abuse perpetrated the appellant, the grandmother has disregarded PW01's complaint without inquiry. Such fact clarifies the delay in the prosecutrix initial disclosure of the alleged incidents.

23. PW01 has testified that the appellant had penile-vaginal intercourse against her will.

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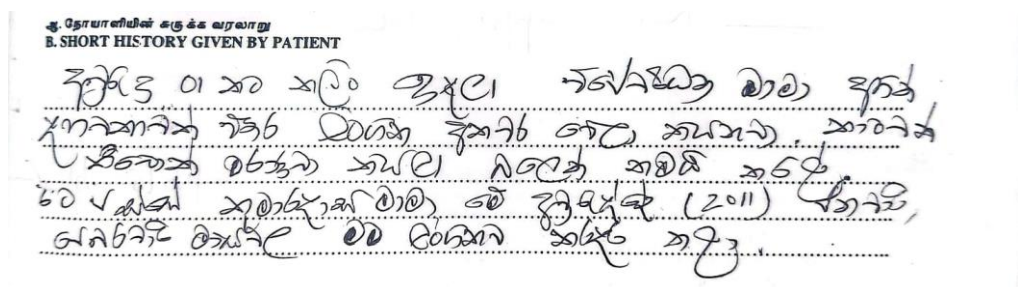
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24. Also, prior to being examined by Dr. Dahanayake, the witness (PW01) has detailed the incidents involving the appellant to the doctor as follows;



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25. Accordingly, PW01 has been consistent with her narrative involving the appellant.

26. Dr. Dahanayake following the examination of PW01 has opined as follows;

used by—		
(අ) මොටු ආදිය—අංක		
(a) Blunt Weapon—Nos.		
(ආ) තියුණ කැපෙන ආයුධ		
(b) Sharp cutting instrument		
කැපීම්—අංක		
Cut—Nos.		
දැනීම්—අංක		
Stab—Nos.		
(ඇ) ගිනි අවි—අංක		
(c) Firearms—Nos.		
(ඈ) පිළිස්සීම්—අංක		
(d) Burns—Nos.		
(ඉ) කැපීම්—අංක		
(e) Bite marks—Nos.		

Comments:—

evidence of
Repeated
hymeral
penetration was
present.

Not
applicable

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The opinion of Dr. Dahanayake being as stated above, corroborates the narrative of PW01.

27. In those circumstances, I am not inclined to interfere with the conviction, disputed judgement and the sentencing order, and proceed to affirm the same.

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

Appeal dismissed.

29. The Registrar of this Court is directed to send this Judgement to the High Court of Monaragala for compliance.

Judge of the Court of Appeal

Dr. Sumudu Premachandra, J.

I agree

Judge of the Court of Appeal