

**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 0026/2026**

High Court of Matale
Case No. MT/HC/130/2019

Vs,

Walawwaththe Gedara Mahinda
Gunawansa *alias* Kiri Mama

Accused

And Now Between

Walawwaththe Gedara Mahinda
Gunawansa *alias* Kiri Mama

Accused-Appellant

Vs,

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

Respondent

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

Counsel: Mohan Weerakon, PC with Sandamali Pieris for the Accused-
 Appellant.

Akila Dalpatadu, SC for the State.

Argued on: 10.07.2026

Judgment on: 31.08.2026

Judgment

Amal Ranaraja. J,

1. The accused appellant hereinafter referred to as appellant has been indicted in the High Court of *Matale* in Case No. MT/HC/130/2019. The charges in the indictment are as follows;

01. On or around the 01st of March, 2014, within the jurisdiction of this Court in *Ovilikanda*, you, the above named accused, have committed an act of sexual harassment or molestation against one *Epita Gedara Madhavi Nisansala Ratnasuriya*, by kissing such person's face with your mouth; thereby you have committed an offence of sexual harassment punishable under Section 345 of the Penal Code as amended by the Amendment Act No. 22 of 1995 and No. 16 of 2006.

02. In the time, location and course of action of the above first charge, you, the above named accused, have committed an act of sexual harassment or molestation against one *Epita Gedara Madhavi Nisansala Ratnasuriya*, by kissing such person's breasts with your mouth; thereby you have committed an offence of sexual harassment punishable under Section 345 of the Penal Code of Sri Lanka as amended by the Amendment Act No. 22 of 1995 and No. 16 of 2006.
03. In the time, location and course of action of the above first charge, you, the above named accused, in order to gain some sexual gratification, have used a certain part of your body, on the certain body part of one *Epita Gedara Madhavi Nisansala Ratnasuriya*, a person under 16 years of age, by licking her female genitalia; 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 and No. 29 of 1998.
04. In the time, location and course of action of the above first charge, you, the above named accused, in order to gain some sexual gratification have used a certain part of your body, on the certain body part of one *Epita Gedara Madhavi Nisansala Ratnasuriya*, a person under 16 years of age, by inserting a finger into her female genitalia; 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 and No. 29 of 1998.
05. In the time, location and course of action of the above first charge, you, the above named accused, have committed rape against one *Epita Gedara Madhavi Nisansala Ratnasuriya*, 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 learned High Court Judge has found the appellant guilty of the second, fourth, and fifth charges, and also proceeded to acquit the appellant of the first and third charges. Upon the appellant being convicted of the second, fourth, and fifth charges, he has been sentenced as follows;

- i. Has imposed a fine of Rs. 5000.00, with a term of 6 months simple imprisonment in default, together with a term of 6 months rigorous imprisonment, in respect of the second charge
- ii. Has imposed a fine of Rs. 5000.00, with a term of 6 months simple imprisonment in default together with a term of 8 years rigorous imprisonment, in respect of the fourth charge
- iii. Has imposed a fine of Rs.5000.00 together with a term of 14 years rigorous imprisonment, in respect of the fifth charge.

The appellant has also been directed to pay a sum of Rs.500,000.00 as compensation to PW01 with a term of 24 months simple imprisonment, in default.

3. The learned High Court Judge has also directed that the substantial terms of imprisonment shall run consecutively.
4. The appellant aggrieved by the conviction, disputed judgement together with the sentencing order has preferred the instant appeal to this court

Case of the Prosecution

5. At the time referenced in the charges, PW01, a 13 year old girl, has been residing with her father and grandparents. The appellant, a neighbour, has been associating with PW01's father. Consequently, the appellant has regularly visited the residence to consume alcohol with PW01's father.
6. Additionally, the appellant has also visited the residence during afternoons after PW01 has returned from school, and sexually abused PW01 when she was alone in the house. On the day of the incident, PW01 has returned from the school and had been at the residence with her grandparents. Her grandparents have been in the kitchen cooking, while PW01 has been in a separate room of the house.
7. The appellant has then entered the room where PW01 was, taken her by her hand and lead her to a location near a door, by a veranda. There, the appellant has undressed PW01, kissed her breasts, inserted a finger into her vagina, and subsequently engaged in penile-vaginal penetration with PW01 without her consent.
8. The grandfather of PW01 has witnessed the incident upon his arrival at that part of the residence. He then has made accusations against the appellant who has subsequently escaped. Following this, a complaint has been made to the police and an investigation commenced. PW01 has been directed to undergo a medical examination, and the appellant has been arrested.
9. *Dr. D.L. Waidyaratne* consultant Judicial Medical Officer has examined PW01. The medicolegal report he prepared has been tendered as evidence and marked *ex02*.

Case of the Appellant

10. Appellant has maintained that he did not commit any of the acts described by PW01.

11. 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. The learned High Court Judge has not analysed the evidence.
- II. The judgement has been delivered without a proper assessment of evidence.
- III. PW01's evidence is vague and is not cogent.
- IV. Medical evidence does not support the charges.

12. The appellant has contended that the prosecution witnesses have failed to properly identify him. However, PW01 has testified that the appellant being a neighbour and a friend of her father, had frequently visited their residence to consume liquor with her father.

ප්‍ර: නිසංසලා ඔය මාමා හිටියෙන් උඩහ ගෙදර?

උ: ඔව්.

ප්‍ර: ඒ මාමා ඇරෙන න වෙන කවද ඒ ගෙදර හිටියේ?

උ: කවරුවත් හිටියේ නැහැ.

ප්‍ර: මාමා නිසංසලා කියන විදිහට බොන්න එහෙම නිතරම තමන්ගේ ගෙදර හන හින්දා නිසංසලා මාමාව දන්නවා නම දන්නේ නැතිවුනාට මාමාගේ?

උ: ඔව්.

ප්‍ර: මෙම නඩුවේ වූදින කවුද? ඒ කියන්නේ විත්තිකාරයා කවුද? පෙනවන්න බලන්න අත දිග්ගරලා?

උ: (සාක්ෂිකාරිය විසින් විත්තිකුඩුවේ සිටින විත්තිකරු දෙසය අත දිගු කර හඳුනා ගනී)

Vide Page 62 of the Brief

13. PW01 has had numerous opportunities to observe the appellant on those occasions and has been therefore, very familiar with his appearance. Consequently, PW01 has identified the appellant in open Court while he was in the dock.
14. Given PW01's sufficient description of the appellant as the offender, investigators have been able to directly attribute the accusation to the appellant, thus, obviating the need for an identification parade. Regarding the appellant's name, PW01 has consistently referred to him as 'kiri mama', indicating a lack of any apparent attempt by the investigators to fabricate or improperly influence evidence concerning his identification.
15. When describing the incidents stated in the charges in her testimony and to *Dr. Waidyaratne*, PW01 has provided the following;

ප්‍ර: මාමා එයාගේ වූ එක තමන්ගේ වූ එක ඇතුළට දැමීමා කියන්නේ?

උ: ඔව්.

ප්‍ර: දාලා මොකක් හරි ක්‍රියාවක් කලාද?

උ: කරදර කලා.

...

ප්‍ර: නිසංසලා කැමැත්තෙන්ද සිටියේ ඔය වෙලාවේ?

උ: නැහැ.

ප්‍ර: නිසංසලා එපා කිව්වාද?

උ: ඔව්.

...

ප්‍ර: ඉස්සරවෙලා කිව්වානේ ඇගිල්ල දැමීමා කිව්වා නේද ඒත් ඒ වෙලාවේමද චුනේ මොකක්ද ඒ සිද්ධිය?

උ: මෙයා ඇගිල්ල දානකොට යට ඔක්කොම රිදුනා.

ප්‍ර: කාගෙ ඇගිල්ලද?

උ: මාමාගේ

ප්‍ර: කොහෙට්ද දැමීමේ?

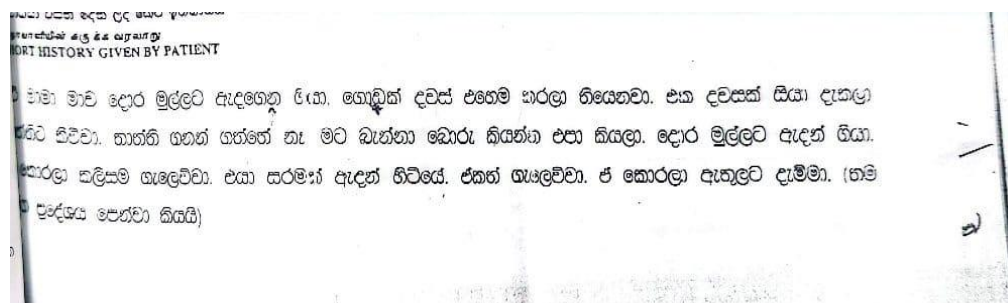
උ: වූ පැත්තට

...

ප්‍ර: කරදර කලා කිව්වා කරදර ජාති දෙකක් කලානේ නිසංසලාට ඒ වගේ තව මොනවද කලේ ඒ දවසේ?

උ: පපුව අත ගැලා.

Vide pages 78-81 of the Brief



Vide page 07 of the Brief

16. In these descriptions PW01 has remained consistent regarding the incident of penile-vaginal penetration involving the appellant. *Dr. Waidyaratne*, following the examination of PW01 has opined as follows; “features suggestive of chronic intra-labial penetration were present”.

17. Intra-labial penetration is legally and medically classified as rape. Legally, penetration does not require deep entry or damage to internal tissues, like the hymen, to constitute rape. Any non-consensual penetration of the vulva, even if it is just between the labia (outer lips of the vagina) or against the vaginal opening, it is recognised by Courts and medical forensic guidelines as consummated rape.

18. In the case of *Perera Vs. The Attorney General (2012) 1 SLR 69*, Ranjith Silva J, has held as follows,

*“In the book entitled **The Essentials of Forensic Medicine and Toxicology**, Dr. K.S. Narayana Reddy at page 308 states as follows:*

“The slightest penetration of the penis within the vulva, such as the minimal passage of glands between the labia or with or without the emission of semen or rupture of hymen constitutes

rape. There need not be a completed act of intercourse. Rape can be committed even when there is inability to produce a penile erection. Rape can occur without causing any injury and as such negative evidence does not exclude rape."

In the same book, the author at page 313, in regard to the rape of children opines,

"In young children there are few or no signs of general violence, for the child usually has no idea of what is happening and also incapable of resisting. The hymen is deeply situated, and as the vagina is very small it is impossible for the penetration of the adult organ to take place. Usually, the penis is placed within the vulva or between the thighs. As such the hymen is usually intact and there may be little redness and tenderness in the vulva."

It is my view that one should analyse the evidence in this case in the light of the above-mentioned expert medical opinion as the opinion expressed above is the opinion of almost all the text writers on forensic medicine and it has gained such notorious that any quote can take judicial notice of the same."

19. Hence, this opinion of *Dr. Waidyaratne* is consistent with the narrative of PW01, which indicates that the appellant had indulged in penile-vaginal penetration with her on the day in issue, and also on prior occasions.

20. PW01 has testified that the initial complaint regarding the incidents referenced in the charges was made to the police four days after these events occurred. Subsequently, an investigator also has testified that the first complaint had been made on October 5th, 2014. In these circumstances, it is apparent that the incidents involving the appellant must have occurred on or about October 1st, 2014. Therefore, the

prosecution must have been able to establish an approximate date on which the appellant committed the offences for which he has been convicted.

21. 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.

22. 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.

23. 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.

24. Given these circumstances, it is not necessary for the prosecution to establish an exact timeframe, in which the alleged offence was committed.

25. 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.”

26. 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.”

27. As for the alleged contradictions, they relate to peripheral factual details, rather than the central issues in dispute. Specifically, they concern whether PW01 attended school on the day of the incident, the time the appellant came to PW01's residence, namely whether he arrived while PW01 was having lunch, or only after lunch, and certain items the appellant had allegedly promised to buy or had already bought for PW01.

28. 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 incident itself. Minor discrepancies of timing and incidental circumstances are common in witness testimony, particularly where events are recalled from memory and described at different times. What matters is whether the witness is consistent on the main narrative and the material facts that establish the offence.

29. Accordingly, the contradictions identified are confined to collateral matters and do not create a reasonable doubt as to the prosecution's principal version of events. The contradictions are therefore not material

30. In the case of *Mahathun and Others Vs. The Attorney General* [2015] 1 SLR 74, H.N.J. Perera, J. (as he was then), has held:

"(1) When faced with contradictions in a witness testimonial, the Court must bear in mind the nature and significance of the contradictions, viewed in light of the whole of the evidence given by the witness.

(2) Too great a significance cannot be attached to minor discrepancies, or contradictions.

(3) What is important is whether the witness is telling the truth on the material matters concerned with the event.

(4) Where evidence is generally reliable much importance should not be attached to the minor discrepancies and technical errors.

(5) The Court of Appeal will not lightly disturb the findings of a trial judge with regard to the acceptance or rejection of testimony of a witness unless it is manifestly wrong."

31. Further, in the case of *Best Footwear (Pvt) Ltd., and Two Others Vs. Aboosally, Former Minister of Labour & Vocational Training and Others* (1997) 2 SLR 137, His Lordship Jayasuriya J held as follows;

"Witnesses should not be disbelieved on account of trivial discrepancies and omissions and the Court should look at the entirety and totality of the material placed before it in ascertaining whether the contradiction is weighty or trivial"

32. PW02, the grandfather of PW01, despite his 85 years and associated disabilities, has corroborated PW01's account by witnessing the appellant sexually abuse PW01. Though he has not been able to detail what he witnessed, such a limitation, however, does not retract from the central corroborative value of his evidence.

33. Further, the learned High Court Judge has not "predicted" anything. The learned High Court Judge has considered the evidence of all witnesses and arrived at his finding after careful evaluation of evidence. He has examined the evidence in their entirety, refusing to compartmentalize pieces of evidence in a vacuum. Having undertaken this holistic approach, the learned High Court Judge has applied the correct methodology and arrived at findings that are both cogent and sustainable.

34. The appellant has been convicted of very serious offences. The learned High Court Judge has carefully considered this fact. He has also thoroughly evaluated the matters presented in mitigation (factors that might lead to a lesser sentence), and the arguments advanced to have the sentence increased.

35. Consequently, the reasons provided before the punishment was imposed in the disputed sentencing order are clear logical and justified. Hence, the substantive terms of imprisonment shall commence from the date this judgement is read and explained to the appellant by the High Court Judge in *Matale*.

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

37. I make no order regarding costs.

Appeal dismissed.

38. The Registrar of this Court is directed to send this Judgement to the High Court of *Matale* for compliance.

Judge of the Court of Appeal

Dr. Sumudu Premachandra, J.

I agree

Judge of the Court of Appeal