

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

**In terms of Article 138(1) of the  
Constitution read together with Section  
11(1) of the High Court of the Provinces  
(Special Provinces) Act No.9 of 1990 with  
Section 331 of the Code of Criminal  
Procedure Act No. 15 of 1979.**

The Democratic Socialist Republic of Sri  
Lanka

**Complainant**

**CA HCC 0214/24**

High Court of Colombo  
Case No. HC/2503/21

Vs.

Batuwita Arachchilage Tharindu  
Dananjaya *alias* Batuwita Arachchilage  
Tharindu Dananjana *alias* Pethum Ayya

**Accused**

**AND NOW BETWEEN**

Batuwita Arachchilage Tharindu  
Dananjaya *alias* Batuwita Arachchilage  
Tharindu Dananjana *alias* Pethum Ayya

**Accused-Appellant**

**Vs,**

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

**Respondent**

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

**Counsel:** Punarji Karunasekara for the Accused-Appellant.

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

**Argued on:**     09.03.2026

**Judgment on:** **31.03.2026**

### **Judgment**

**Amal Ranaraja. J,**

1. The accused-appellant (herein after referred to as the appellant) has been indicted in the High Court of Colombo in High Court Case No. HC 2503/21. The charge in the indictment is as follows

01. That between the dates of 01<sup>st</sup> October, 2017 and 19<sup>th</sup> December, 2017, within the jurisdiction of this Court, in *Borella*, you in order to gain some sexual gratification, have used a part of your body, namely your finger on the body of one *Hettiarachchige Sasanga Dilhani*, a person under 16 years of age, by inserting it into her female genitalia. 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. To eight years rigorous imprisonment also imposed a fine of Rs. 25,000/-, with a term of six months simple imprisonment in default. The appellant has been directed to pay a sum of Rs. 150,000/- as compensation to PW01, with a term of 1 year simple imprisonment in default.

It has also been directed that the terms of simple imprisonment, imposed in default of the payment of the fine and compensation to run consecutively.

### **Case of the Prosecution**

3. The house where PW01 lived with her family and the appellant's house have been situated next to each other. The appellant has lived in his house with his wife, mother-in-law and their child. PW01 has routinely visited the appellant's house to watch television. On the day in question also, PW01 has gone to the appellant's house for this purpose. After watching television, she has attempted to rest on a bed in that house. While PW01 was laying on the bed, the appellant has allegedly approached the bed and fondled her vagina inserting a finger into it. The mother-in-law of the appellant has been sleeping on the ground next to the bed. Given these circumstances, PW01 had been unsure if the mother-in-law had witnessed the appellant's actions. PW01 has not disclosed the incident to her parents fearing physical punishment.
4. On a subsequent day, while PW01, the mother of PW01 i.e. PW04, the appellant's mother-in-law i.e. PW03, and the appellant's child were enroute to a dispensary, PW03 has disclosed to PW01's mother, the incident she had witnessed involving the appellant and PW01.

5. Following this revelation, PW01's mother has questioned PW01, who then has provided details about the incident that occurred between herself and the appellant.
6. Consequently, a formal complaint has been lodged with the police. An investigation commenced and PW01 has been examined by a consultant judicial medical officer. The medico-legal report generated from the examination has been subsequently produced as evidence and marked *ex 02*.

### **Case of the Appellant**

7. The appellant has maintained that the property occupied by the family of PW01 was initially transferred to his mother by its original owner. Subsequently, his mother had legally transferred ownership of the property to the appellant. Upon becoming the rightful owner, the appellant issued notice to the family of PW01 requesting them to vacate the premises. However, the family of PW01 has failed to comply with this notice, which has consequently led to a significant animosity developing between the parties. The appellant has asserted that this animosity is the direct cause of his false implication in the current matter.
8. The Learned Counsel for the appellant has contended that the circumstances under which the appellant's mother-in-law allegedly informed the mother of PW01 about the incident involving the appellant were improbable. To elaborate on this contention, the learned counsel has brought the Court's attention to several discrepancies;
  - i. Identity of the patient – It being alleged that PW04 was informed about the incident when she, along with others, was enroute to a dispensary, that a discrepancy exists

regarding who the actual patient was on that day, specifically whether it was PW01 or the appellant's mother-in-law (PW03).

- ii. Removal of lactating infant – The child of the appellant who was allegedly a lactating baby was reportedly taken along with those referred to above, to the dispensary, without its mother.
- iii. PW01's reason for non-disclosure – It is alleged that discrepancy is noted in the reason provided by PW01 for not immediately bringing the incident involving the appellant and herself to the notice of the parents.

9. PW04, the mother of PW01 has testified explaining the circumstances under which the incident involving the appellant and PW01 was brought to her attention by the appellant's mother-in-law (PW03). Following this PW04 has questioned PW01 about the incident, then informed her husband. Subsequently a complaint has been lodged with the police.

10. The evidence presented by the prosecution in this regard is consistent and corroborated by PW01 and the official witness, namely the investigating officer. In these circumstances the contention that it was improbable for the appellant's mother-in-law to inform PW01's mother about the incident must therefore fail.

11. Further, the contradictions marked *§ 01* and *§ 02* primarily relate to two aspects.

- i. Whether PW03, the mother-in-law of the appellant observed the incident between the appellant and PW01.

- ii. The specific manner in which the incident proceeded, particularly regarding the position of PW01's head in proximity to the appellant's genitals.

12. PW01 has explained that she did not observe PW03, watching the incident involving her and the appellant. She has become aware of this fact when PW03 later informed PW01's mother about what she had witnessed. PW01's actions subsequent to the incident are consistent with her unawareness that PW03 witnessed the incident.

13. Regarding the second point, the precise placement of PW01's head at the time the appellant committed the offence on PW01 is not material to the core facts of the alleged act of the appellant.

14. Therefore, in these circumstances, the contradictions marked *§ 01* and *§ 02* do not undermine the essential credibility of PW01's testimony and cannot be considered material discrepancies. Accordingly, PW01's testimony remains credible and has not been disputed by those contradictions.

15. Regarding the probability of the incident occurring in the room where appellant's mother-in-law (PW03) was present, PW03 herself has related the incident she witnessed to PW04, the mother of PW01. PW03 had been asleep in the room but has woken when the incident was happening.

16. The circumstance of PW03 being asleep could potentially have motivated the appellant's actions. Also, an individual's actions cannot be generalised based on probabilistic behaviour. Each person's thought process and motivations are unique and what inspires one individual to act in a certain way may not inspire another.

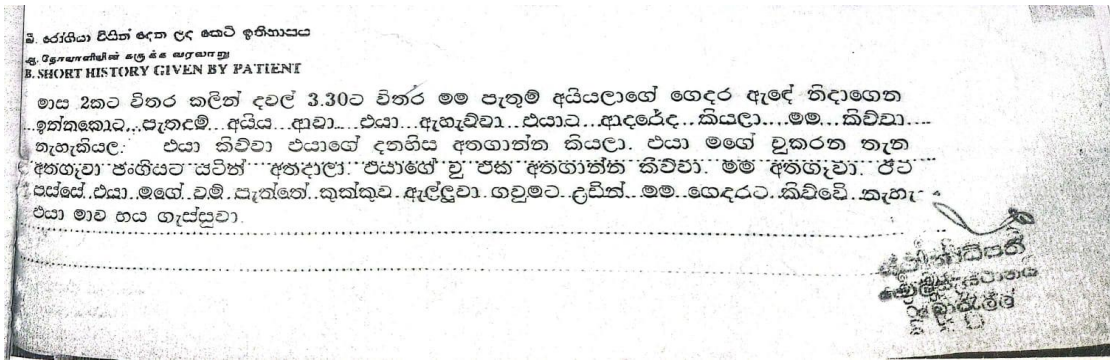
17. Furthermore, there is no evidence indicating any animosity between the appellant and PW03. In such circumstances it is highly improbable for PW03 to falsely implicate her son-in-law, i.e. the appellant in an offence, especially when doing so would lead to issues of his marriage to her daughter. This is because the outcome would be detrimental to the welfare of her daughter and grandchild.

18. PW01 who was born in 2006 had been only 11 years old when the alleged incident occurred. As a child of school going age, she has been entirely dependent on her parents. She has typically exercised caution to avoid annoying or displeasing them, which could have led to physical punishment. Given these circumstances PW01 has decided against disclosing the incident involving the appellant to her parents, primarily out of fear of being punished herself. This explains the delay in divulging the incident to them.

19. In the case of *Ajith Samarakoon Vs The Republic 2004 2 SLR 220*, Jayasuriya J has stated,

*“Just because the statement of a witness is belated the Court is not entitled to reject such testimony. In applying the Test of Spontaneity the Test of Contemporaneity and the Test of Promptness the Court ought to scrupulously proceed to examine the reasons for the delay. If the reasons for the delay adduced by the witness are justifiable and probable the trial Judge is entitled to act on the evidence of a witness who had made a belated statement.”*

20. Prior to the examination by *Dr. S.P.A. Hewage*, consultant judicial medical officer and forensic anthropologist, PW01, the patient has provided the following brief history;



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21. *Dr. Hewage* in his testimony has explained his understanding of the patient's history as follows;

ප්‍ර: සාක්ෂිකරු හරස් ප්‍රශ්න වලදී ඇහුවා කෙටි ඉතිහාසයේ ඇගේ ලිංගික ප්‍රදේශය අතගැලා කියලා සඳහන් කරලා තිබුනද ඇඟිල්ලේ කොටසක් ඇතුල් කලා කියලා සඳහන් කරලා නැහැ කියලා? හරස් ප්‍රශ්න වලදී ඇහුවානේ?

උ: මට ප්‍රකාශයක් කලේ නැහැ අවයවය ඇතුළට ඇඟිල්ලේ කොටසක් ඇතුල් කලා කියලා. නමුත් ඒ ප්‍රදේශය අතගන්නවා කියනවා ඒ ප්‍රදේශයට ඇඟිල්ල යනවා කියන එකම තමයි සවමීනී.

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22. Therefore, *Dr. Hewage* has understood from PW01 that the appellant had inserted a finger into her vagina. Hence PW01 has consistently recounted the incident involving the appellant and herself.

23. Given these circumstances, the contention that the learned High Court Judge had failed to adequately evaluate the improbability of the appellant's alleged actions has no merit.

24. The appellant has also maintained that the property central to the dispute between the parties was located at D/2/10 Serpentine Road, Colombo 08. A complaint concerning this property dispute has been lodged with the *Borella* Police on August 11, 2016. The corresponding receipt has been produced as evidence marked *වී 03*.

25. Evidence indicates that this dispute between the parties (or PW01's parents and the appellant) was subsequently settled. This resolution has occurred soon after the police investigated the complaint. Therefore, even if a property dispute existed it had been resolved by the time of the incident referred to in the charge. This absence of an ongoing dispute suggests that there was no motivation for PW01 to falsely implicate the appellant. The Learned High Court Judge has considered this established fact together with others when holistically evaluating the evidence from both parties. Consequently, the Learned High Court Judge has decided to disregard the appellants narrative. The reason for this decision is sound and not perverse.

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

27. I dismiss the appeal and make no order regarding costs.

*Appeal dismissed*

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

**Judge of the Court of Appeal**

**B. Sasi Mahendran, J.**

I agree

**Judge of the Court of Appeal**