

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

In the matter of an appeal under and in terms of Section 331(1) of the Code of Criminal Procedure Act No.15 of 1979 read with Article 138 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The Democratic Socialist Republic of Sri Lanka.

COMPLAINANT

**Court of Appeal
Case No.CA/HCC/0290/2025
High Court of Hambantota
Case No. HCC/83/2021**

Vs.

Ranabahuge Nilanka alias Ranabanuge
Nilanga
No.B/12,
Pruthugala Village,
Badhagiriya,
Hambantota.

ACCUSED

AND NOW BETWEEN

Ranabahuge Nilanka alias Ranabanuge
Nilanga
No.B/12,
Pruthugala Village,
Badhagiriya,
Hambantota.

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT - RESPONDENT

Before: **Amal Ranaraja J.**

&

Dr. Sumudu Premachandra J.

Counsel: Dhanusha Rahubadda for the Accused-Appellant.

Anoopa De Silva, DSG for the State.

Accused-Appellant is produced via zoom platform by the Prison Authorities.

Written Submissions: By the Accused-Appellant filed on 20/07/2026.
By the Complainant-Respondent filed on 22/07/2026.

Argument On : 24/07/2026.

Judgement On : 11/09/2026.

Dr. Sumudu Premachandra J.

1] The Accused-Appellant was indicted in the High Court of Hambanthota for having committed the offences of Incestuous Statutory Rape of his biological daughter on three distinct occasions between the period of 01/10/2018 to 31/10/2018 which are punishable in terms of Section 364 (3) of the Penal Code.

2] After a contested trial, on 16/07/2025, the Accused was convicted under Count 1 pursuant to Section 364 (3) of the Penal Code for raping his biological daughter. He was acquitted and discharged from count 2 and 3.

3] After hearing aggravating and mitigating factors from both parties, the trial court sentenced the Accused to 15 years of rigorous imprisonment. In addition, the court ordered a fine of LKR 10,000/-, and Rs. 400,000/- for the Victim as compensation in default an additional 6 months of rigorous imprisonment to be served for each default.

4] Being aggrieved to the said conviction and sentence, the Accused Appellant appeals to this court on the following grounds of appeal;

- Failure of the Prosecution to establish the Date/Time Period of the offence.
- Honourable High Court Judge Failed to recognise the improbability in the testimony of PW 01.
- Important aspects of PW 01's evidence were elicited with Leading Questions.
- Whether the Learned High Court Judge fairly analysed the Dock Statement of the Accused.

5] The evidence demonstrated that the victim was abused by her father on three separate occasions at their home in Badhagiriya while her younger brother slept nearby. At these occasions, mother of the Victim has stayed elsewhere in Suriyawewa. After lapse of time, the Victim disclosed incidents to her step-sister, formal complaints were lodged, leading to police investigations and the Accused's arrest. Medical testimony from the JMO (PW 08) noted that while there were no external physical injuries, reported for supporting her account, the JMO concluded that the Prosecutrix's version could not be ruled out. Conversely, the accused provided an unsworn dock statement in which he made general denials without directly refuting the specific abuse allegations, which the Respondent submitted was insufficient to challenge the conviction. He said his wife eloped with another man and on her instruction these allegations were made.

6] The learned Counsel for the Appellant argued that the acts occurred on a single shared bed while the victim's brother slept alongside, which is highly improbable further, key eyewitnesses specifically the mother and brother were omitted from testifying at trial. It is to be noted, the 2nd and 3rd sexual acts were not explained in detail by the Victim and the Appellant was acquitted and discharged from the same.

7] The appeal highlights four main grounds regarding evidentiary failures in the conviction. First, the Prosecution failed to establish the date or time frame of the offence, which the trial judge incorrectly attributed to memory lapse despite the Prosecution never questioning the Victim about dates. Second, the Victim's narrative alleging sexual intercourse and shouting took place on a shared bed without waking the brother next to them is inherently improbable. Third, crucial statutory elements of rape, including penetration, were impermissibly elicited through leading questions by the Prosecutor rather than given as an independent testimony. Lastly, the trial court failed to evaluate the unexplained eight-month delay in reporting the incident to the police alongside the Victim's conflicting justifications.

8] The Appellant argued that the evidences of Prosecution have not been closely scrutinized by the trial judge and he was convicted on the uncorroborated sole testimony of a Prosecutrix, which is unsafe when tainted by infirmities or improbability. Furthermore, Appellant says if the dock statement raises a reasonable doubt, the Prosecution must affirmatively disprove it, failing which the Accused is entitled to an acquittal. On these grounds, the appellant requests that the conviction be set aside for full acquittal or, alternatively, that the sentence be reduced.

9] The Prosecution mainly rested on testimonies from the Prosecutrix (PW 01), her step-sister (PW 03), investigating officer WSI Amitha (PW 04), and the Judicial Medical Officer (PW 08). The Accused made a dock statement.

10] I now consider the grounds of appeal. Firstly, the Appellant says that the Prosecution failed to prove the date of offence. Our judicial pronouncement held that date is immaterial unless it is an essential part of the alleged offence. In **R v Dossi 13** Cr.App.R.158 the Court held that;

“That a date specified in an indictment is not a material matter unless it is essential part of the alleged offence, the defendant may be convicted although the jury finds 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 good practice to do so. Provided that there was a prejudice, where it is clear on the evidence that if the offence was committed on the day other than that specified.”

11] It is to be noted that section 166 of the Code of Criminal Procedure Act states any error in the charge should not be regarded unless the Accused was misled by it. The section says;

“Any error in stating either the offence or the particulars required to be stated in the charge and any omission to state the offence or those particulars shall not be regarded at any stage of the case as material, unless the accused was misled by such error or omission.”

12] There is no submission made that the Accused was misled by not giving a specific date. Instead, the Accused had admitted the date of the offence along with the age of the Prosecutrix. An admission was recorded as;

“ඒ අනුව 2018.10.31 දින සිද්ධිය වන විට පැ.සා 01 ගේ වයස අවුරුදු 16 ට වඩා අඩු තැනැත්තියක් බව විත්තියෙන් පිළිගනී”

13] This was recorded under section 420 of the Criminal Procedure and under 58 of the Evidence Ordinance, an admitted fact need not be proved. Thus, this ground of appeal invariably fails.

14] Moreover, in **Director General of Commission to Investigate Allegation of Bribery or Corruption v. Punchi Banda and another** CA (PHC) APN No. 142/2014 decided on 12/09/2017 the held that there is no mandatory provision in law that a particular date should be mentioned as;

“There is no provision in law which makes it mandatory for the prosecution to specify a particular date as a date of offence in a charge. In other wards it is legally permissible for the prosecution to have a time period, instead of specified date, as the time of offence in a charge. Of course, such information provided by the prosecution must be reasonably sufficient to give notice of the matter to the accused.”

15] In this case the date of the offence is mentioned as the time period from 01/10/2018 to 31/10/2018. In the Medico-Legal Report, the history given by the patient clearly shows that it happened in early October 2018 which tallies with the time period. The Accused was with the Prosecutrix and has not taken a defence of Alibi under 126A of the Criminal Procedure Code.

16] In **M.G.Premadasa v. The Attorney General** CA 261/2009 decided on 26/05/2014, the Court held that;

“On the question of vagueness of the incident regarding the date of the incident and the reference made therein to the period, we cannot see any prejudice being caused to the accused party, on the aspect since it was not an incident but the alleged acts had been committed on several dates, which shows repetition and continuation of acts.”

17] In the instant case, I cannot see any prejudice occurred to the Accused. Same incident took place twice after the first. The learned Counsel for the Appellant stressed that the story that PW 01 was raped while her brother was in the same bed is highly improbable. The PW 01, asserted in the evidence that the bed was large and three can easily be accommodated. The incident took place in the night around 9pm and brother was faster asleep. PW 01 said that

she tried to shout, but father, the Accused squeezed her mouth. These facts cannot be improbable. I note that the contradictions which were marked have not been properly proved and minor do not go into the root of the case.

18] In marking contradictions, rule is that the question sought to be marked should be put to the witness whether he/ she stated to police as in the police statement and in the evidence witness says different. If the witness denies that he never told to the police in such a manner, that portion of evidence can be tentatively marked as V1 or otherwise. Thereafter, when the police officer who recorded the witness's statement was giving evidence, the particular contradiction should be put to him and verify whether the contradiction marked has been recorded as it is in the statement. Though contradictions can be marked, omissions cannot be marked. Omissions should be drawn to the trial judge; be recorded there as an omission. It is a duty of the trial judge to peruse the Information Book once an omission is drawn and verify whether that omission is real, when it is marked as soon as possible. The trial judge should make a note that he perused the Information Book and that there is an omission as drawn by the Defence (Vide **Muthu Banda vs Queen**- 73 NLR 8). The learned trial judge in his judgement mentioned that contradictions have not been proved in the required form of law as stated above.

19] The question whether the story is improbable should be decided by the trial judge. In **Wickramasuriya v. Dedoleena and Others** [1996] 2 Sri L.R. 291, His Lordship Ninian Jayasuriya J ruled that the reliability of a witness must be tested using objective, established criteria: tests of probability and improbability, consistency and inconsistency, interestedness and disinterestedness, and spontaneity and belatedness. If a story defies common sense or human nature, it is improbable and must be rejected.

20] In **THE KING v. SATHASIVAM et al.** 46 NLR 468, the court explicitly held that there is no presumption of innocence in favor of a Prosecution witness can be drawn that the witness is telling truth always. In

that sense, that Trial Judge must treat a witness's statements with neutral legal skepticism, and cannot presume witnesses are telling the truth simply because they are called by the State or wear a uniform. Their credibility, therefore, should be tested by applying above tests.

21] In relation to credibility of witness in **Dharmasiri vs. Republic of Sri Lanka**, [2010] 2 SLR 241, the court held it is a matter for the trial judge;

"Credibility of a witness is mainly a matter for the trial Judge. Court of appeal will not lightly disturb the findings of trial Judge with regard to the credibility of a witness unless such findings are manifestly wrong. This is because the trial Judge has the advantage of seeing the demeanour and deportment of the witness..."

22] In the case of **AG vs. Sanadanam Pitchy Mary Theresa** [2011] 2 SLR 292, Her Ladyship Justice Shiranee Thilakwardene cited the following regarding the credibility, with approval;

"A key test of credibility is whether the witness is an interested or disinterested witness Rajaratnam J. in Tudor Perera v. AG (SC 23/ 75 D.C. Colombo Bribery 190/B – Minutes of S.C. Dated 1/ 11/ 1975) observed that when considering the evidence of an interested witness who may desire to conceal the truth, such evidence must be scrutinized with some care. The independent witness will normally be referred to an interested witness in case of conflict. Matters of motive, prejudice, partiality, accuracy, incentive, and reliability have all to be weighed (Vide, Halsbury Laws of England 4th Edition para 29)."

23] In deciding the test of "Improbability", the trial judge should consider the evidence attract inherent Improbability that is the version of events narrated by PW01 defies human nature, common sense, or the standard course of natural events. Story becomes improbable if it consists material contradiction which direct conflicts between PW 01's statements in court and prior statements (such

as police statements, depositions, or history given to the doctor who examined). Moreover, the evidence bears Medical or Physical Discrepancies; that is situations where the oral testimony of PW 01 is completely contradicted by objective scientific, medical, or forensic evidence. Further, story may be improbable that omissions; Crucial facts that were omitted in the initial stages of the case but were introduced later by PW01 as an afterthought to improve the case. These factors are not patent in the PW 01's evidence in this case. Thus, the story cannot be held as improbable.

24] I now consider the belatedness of the statement. PW 01 was examined by the doctor on 04/06/2019. The incident happened somewhere around October 2018. Thus, the story revealed after 8 months. In the case of **Sumanasena v. Attorney General** [1999] 3 Sri LR 137, His Lordship Jayasuriya Jn referred to what was said by Justice T.S. Fernando in **Queen v. Pauline De Croos** 71 NLR 169 at p. 180 “...Just because the witness is a belated witness the Court ought not to reject his testimony on that score alone and that a Court must inquire into the reason for the delay and if the reason for the delay is plausible and justifiable the Court could act on the evidence of a belated witness. ...”

25] The victim said that because she was shy or ashamed that she did not reveal the incident. Further she said that she had a fear of her father. The victim was 13 years of age under the custody of the Accused who was 39 years of age. There was no responsible person at home, thus, the explanation for delay can be accepted. In the evidence she asserted for the delay which is fairly acceptable;

- “උ සතියකට විතර පස්සේ.
 ඉ හිරුණිට යෝජනා කරනවා පොලිස් පැමිණිල්ල සිදු කරලා තියෙන්නේ අදාළ සිද්ධියෙන් විශාල කාලයකට පසුව කියලා?
 උ හරියටම මතක නැහැ.
 ඉ තමාට සිද්ධිය වෙලා මාස 07 කට පසුව තමයි පැමිණිල්ල කරලා තියෙන්නේ කියලා විත්තියෙන් යෝජනා කරනවා?
 උ හරියටම මතක නැහැ මට කාලය.

- ප්‍ර හිරුණිට තමාට වුණ සිද්ධිය සම්බන්ධයෙන් මුලින්ම මවට නොකිව්ව හේතුව මොකක්ද?
 උ අම්මා ගෙදර හිටියේ නැහැ.
 ප්‍ර අම්මා කොහේද හිටියේ?
 උ සුරියවැවේ ඥාති ගෙදරක.
 ප්‍ර අම්මා ගෙදරින් යන්න හේතුව මොකක්ද?
 උ දන්නේ නැහැ.
 ප්‍ර තමා පොලිස් ස්ථානයට ප්‍රකාශයක් ලබාදී තියෙනවා”2019 පෙබරවාරි මාසේ දිනයක අම්මා ගෙදර ආවා, මම මේ ගැන අම්මට කිව්වේ නැහැ තාත්තාට තියෙන බයට. වෙන කාටවත් කිව්වේ නැහැ” කියලා සඳහන් වෙනවා නම් ඒක නිවැරදිද?
 උ ඔව්.[Emphasis added]

26] The Medical Report does not support the penetration. The Doctor who examined PW 01 says her hymen is intact. In that report, the medico legal opinion was “*Hymenal penetration can be excluded, inter labial/inter crural penetration can not be excluded*”. I now consider whether the penetration, *actus reus* of rape has been proved.

27] Under Section 363 of the Penal Code of Sri Lanka, the legal definition of sexual intercourse required for rape states that “*penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape*”. Thus, the definition of rape under Section 363 of the Penal Code of Sri Lanka is defined as ‘forced sexual intercourse/penetration by a man of a woman without her consent’ excluding forced penetration of instruments such as by fingering or anal sex. The law is restricted to penile penetration of the vagina and does not incorporate any oral or anal penetration or penetration by objects without consent as rape. Any other act not amounting to ‘rape’ falls under the offence of grave sexual abuse under section 365B of the Penal Code. Thus, the rape and grave sexual abuse are not cognate offences.

28] However, to constitute a charge of rape, any degree of entry suffices. The law does not require full penetration or the rupture of the hymen. Medical and legal opinions dictate that “*penetration, even minimal, constitutes sexual intercourse necessary to prove rape according to Sri Lankan law.*”. Thus, inter-labial contact is enough to constitute a charge of rape. This means that an entry of the male

organ between the labia majora or labia minora constitutes sufficient penetration to legally establish the act of sexual intercourse. If this act occurs without the woman's valid consent, it fulfills the requirements for a consummated charge of rape. Thus, full Peno-vaginal penetration, the rupture of the hymen, or the emission of semen (reaching orgasm or ejaculation) are not required to establish the offense.

29] Our case laws dictate that placing the penis between the labia majora or labia minora satisfies the *actus reus* of the crime. A penile erection and ejaculation are not even strictly necessary to prove the offense, provided the external genitalia (vulva/labia) were entered to any slight degree. In this regard in **Mohamed Aboobakar Ibrahim v. Hon. Attorney General, CA 191/2002** decided on 12/08/2016, His Lordship M.M. A Gaffoor, J., had this to say;

“In a case of rape one has to prove penetration. Penetration can be minimum and placing the penis between the labia majora or labia minora would be sufficient. Thus, to constitute the offence of rape even a penile erection is not necessary. (Vide books on forensic Pathology written by 'Narayan Renddy, Keet Simpson, Chandrasiri Nirialle etc.)”

30] In the cross examination, a suicidal question was put the PW01 and it proves the penetration, the *actus reus* of the charge of rape as;

“ප්‍ර. හිරුණිගේ පියා විසින් පියාගේ පුරුෂ ලිංගය හිරුණිගේ ශරීරයේ ස්ත්‍රී ලිංගයේ අභ්‍යන්තරයටම දැමීමක් සිදු කළාද ?

උ. ඔව්.”

(Page 57 of judges' brief)

31] Though, medical report did not support, this evidence shows that there was an inter labial penetration.

32] I now consider the leading question had been put to PW 01 denied a fair trial. The rules governing leading questions are laid out under Sections 141 (Section 141 of the Evidence Ordinance says “Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question”) and 142 (it says; “Leading questions must not, **if objected to by the adverse party**, be asked in an examination-in-chief or in a re-examination, except with the permission of the Court”) of the Evidence Ordinance (No. 14 of 1895).

33] The core legal principle is that if leading questions are asked during an examination-in-chief or re-examination and the adverse party fails to object, the irregularity is generally deemed waived, allowing the answers to remain on the trial record. Under Section 142, leading questions must not be asked in an examination-in-chief or in a re-examination “if objected to by the adverse party,” unless the Court grants explicit permission. It is a waiver by failing to raise a contemporaneous objection, the Defense or Prosecution waives its right to strike the question or answer from the record. Thus, the evidence becomes legally admissible. This court will rarely entertain a subsequent complaint about the format of a question if the trial counsel remained silent when the purported leading question was asked. Thus, this objection cannot be taken as a valid ground.

34] I now consider the effect of the dock statement. In **Queen v. Buddharakkitha Thero** 63 NLR 433 the court held that:

“The right of an accused person to make an unsworn statement from the dock is recognised in our law (King v. Vellayan[10 (1918) 20 N. L. R. 251-at 266.].) That right would be of no value unless such a statement is treated as evidence on behalf of the accused subject however to the infirmity which attaches to statements that are unsworn and have not been tested by cross-examination”.

35] Further, in **Queen v. Kularatne** 71 NLR 529 the court held that:

“We are in respectful agreement and are of the view that such a statement must be looked upon as evidence subject to the infirmity that the accused had deliberately refrained from giving sworn testimony, and the jury must be so informed. But the jury must also be directed that;

a) If they believe the unsworn statement, it must be acted upon.

b) If it raised a reasonable doubt in their minds about the case for the prosecution, the defense must succeed,

c) That it should not be used against another accused.”

36] In **Sarath vs Attorney General** [2006] 3 SLR 96, His Lordship Eric Basnayake J., held;

“One must bear in mind that when a dock statement is considered anywhere in the judgment, the judge who heard the evidence is aware of the prosecution case and would always consider the dock statement while considering the prosecution story. One cannot consider the dock statement in isolation.”

37] It is seen in the judgement; the learned trial judge considered the dock statement against the prosecution version. In the dock statement, he has mentioned that the biological mother who eloped with a paramour had returned to him after amputation of legs of the paramour due to a motor traffic accident. The mother and brother were not called as witnesses by the Prosecution. I note the material witnesses were called, thus, there were no miscarriage of justice.

38] Further, in **Manatunga Mudiyanseelage Nishantha Manatunga vs The Attorney General**, C.A. Case No: CA 184/2014, decided on 01/11/2019, Her Ladyship K.K. WICKREMASINGHE, J held;

“It is trite law that the appellate Court will not interfere with the findings of the Trial Judge who in fact has a better opportunity of observing the

demeanour and deportment of witnesses, unless it is proved that the Trial Judge was misdirected.”

39] The facts amply show that the story of the Prosecution is probable. It is to be noted if this story was not really did not happen would the Victim give evidence against her own father knowing the results and repercussions that he be incarcerated for a long period of time.

40] In view of the aforesaid reasons, I do not see any merits in this appeal. Thus, the appeal is dismissed, no cost. Since the minimum mandatory sentence is given, the reduction of the sentence cannot be granted. Thus, the conviction and the sentence are affirmed. However, the sentence shall run from the date of conviction, i.e. 16/07/2025. Further, fine and compensation shall remain unchanged.

JUDGE OF THE COURT OF APPEAL

AMAL RANARAJA J.

I agree

JUDGE OF THE COURT OF APPEAL