

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

In the matter of an Appeal 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 and section 11 of the special provisions act No.19 of 1990.

Democratic Socialist Republic of Sri Lanka.

COMPLAINANT

Case No.CA/HCC/012/2025

H.C. Embilipitiya

Case No. HCE 109/2019

Vs.

Subasinghe Kattadige Mahesh
Subasinghe

ACCUSED

AND NOW BETWEEN

Subasinghe Kattadige Mahesh
Subasinghe

ACCUSED-APPELLANT

Vs.

Democratic Socialist Republic of Sri Lanka.

RESPONDENT

Before:

Amal Ranaraja J.

&

Dr. Sumudu Premachandra J.

Counsel: Neranjan Jayasinghe with Randunu Heellage, Pravindika Kularatne and Imangsi Senerath for the Accused-Appellants.

Janaka Bandara, D.S.G. for the State.

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

Written Submissions: By the Accused-Appellants filed on 30/04/2025.
By the Respondent not filed.

Argument On : 10/06/2026.

Judgement On : 24/07/2026.

Dr. Sumudu Premachandra J.

1] The Accused Appellant (Appellant) has been charged with 3 counts of sexual abuse that took place between 20/12/2009 and 19/12/2010 within the Jurisdiction of Embilipitiya High Court and the Accused did intentionally commit an act of severe sexual abuse by utilizing a part of his body namely his penis on a female child named Agampodidurage Iresha Kumari, who was under 16 years of age, committing an offense punishable under Section 365A(2)(e) of the Penal Code, as amended by Act No. 22 of 1995, Act No. 29 of 1998, and Act No. 16 of 2006.

2] Count 02 occurred during the same timeframe and location mentioned in Count 1, but on a separate, distinct occasion. The offense Repeats the same charge parameters as Count 1 for a secondary separate incident against the same Victim under the same Penal Code sections.

3] Count 03 occurred during the same timeframe and location, but on a third, separate occasion distinct from Counts 1 and 2. The Offense repeats the legal charges for a third separate incident against the same Victim under the same Penal Code sections.

4] After the contested trial, the Appellant was convicted for all 3 counts and he was sentenced as below;

Count 1: 10 years rigorous imprisonment , Rs 10,000 fine imposed, in default 12 months simple imprisonment.

Count 2: 10 years rigorous imprisonment, Rs 10,000 fine imposed, in default 12 months simple imprisonment.

Count 3: 10 years rigorous imprisonment, Rs 10,000 fine imposed, in default 12 months simple imprisonment.

10 years prison sentences for each count should be run concurrently.

In addition: Rs. 1,50,000 compensation should be paid to the victim.

Further: 10% from the fine imposed and 20% from the compensation imposed, should be deducted and deposit to the fund of Assistance to and Protection of Victims of Crime and Witnesses Act, No. 10 of 2023, in default 6 months each simple imprisonment imposed.

5] Being aggrieved to the said judgement and the sentence, the Appellant filed the instant Appeal. Grounds of Appeal are;

- i) Prosecution had failed to prove the date of offence and the other ingredients of the offence beyond reasonable doubt.
- ii) The evidence of the Prosecutrix fails the test of credibility.

iii) The evidence of the defence had been rejected on unreasonable grounds.

6] The Prosecution's version was that the Accused committed grave sexual abuse against a minor, 15 years old (P.W. 01), and the P.W. 01 testified that the Accused repeatedly subjected her to sexual acts at her maternal grandmother's and her own house, under threats of violence.

7] Her mother (P.W. 02) testified that she caught the Accused kissing her daughter outside the house on the night of 19/12/2010. Although family elders delayed reporting the crime to avoid social disrepute, the Police recorded the complaints on 23/03/2011. Further details came from the Judicial Medical Officer (P.W.8), who noted that while physical signs naturally faded over time, the Victim's recorded history consistently detailed the abuse. Additional evidence showed the Accused's family attempted to improperly influence the Victims to drop the case in exchange for monetary compensation.

8] The defense counter-argument was total denial of the charges that the allegations were entirely fabricated due to land disputes and the Accused's refusal to marry P.W.1. To impeach her credibility, the defense called the police witnesses to show that P.W.1 faced later legal troubles concerning a breach of marriage promise with another man. However, the High Court observed that the alleged romantic entanglements and legal disputes occurred long after the initial abuse.

9] The above grounds of appeal are interwoven; I now consider the merits of this Appeal together. In the oral submission, the Learned Counsel for the Appellant contended that the evidence does not support the inter crural sexual act, it shows that the Victim had been subjected to charge of rape which does not support by the medical evidence. The Victim had said that the Appellant inserted the penis to her vagina and she bled. He drew the attention of this court, that in page 238 of the brief that the Victim has clearly mentioned that the penis was inserted and sexual intercourse was performed (ඇතුල් කළා -page 238). She mentioned after the act she found blood in the lower part of the panty (පැන්ටියේ යට කොටසේ -page-200) and she bled (ලේ නිබ්බා- Page-196). But in her evidence she

mentioned that “පහුවදා උදේ තමයි ලේ තියෙනවා දැක්කේ. මම හිතුවේ ඒ මාසේ ලෙඩ වෙන න කියලා තමයි” (vide page 206 of the brief) . Thus, this cannot be taken as a major contradiction. The Learned Appellant Counsel further showed that the Victim had given contradictory versions with regard to the consent to the doctor who examined her. In the evidence recorded in page 209 shows that she did not consent to each and every act. In page 723, at the history of the Medicolegal Report. The defence contended that the learned trial judge has failed to evaluate the evidence of the Prosecution, the contradiction *inter se* and *per se*.

10] The Defence relied on **Tharaperiya Gamage Jayathilaka v 119 Attorney-General** [2008] 2 SLR 117. That is the case where the Accused came to the trial Court to defend a charge of rape. His line of defence is apparently to attack the charge of rape, and convicted for grave sexual abuse. The Court held since he was not given an opportunity to defend a charge under Section 365(2) b (2), the conviction was bad and rule of Natural Justice was not observed. This case is not applicable in the instant Appeal as the Accused was charged for grave sexual abuse and convicted for the same charges. Thus, no miscarriage had been done.

11] The victim has asserted මම එහෙම ලොකු මතකයක් නැහැ. එත් මාමා එයාගේ මුත්‍රාශය මගේ මුත්‍රාශයට ඒ කියන්නේ ඇගේ ගැවා වගේ එහෙම දෙයක් කළා. (page 203). This is clear evidence, and tallies with the medical report. It should be noted that the incident happened when the Victim was 11 years and over a period of 4 years and several sexual acts were performed. The first complain was lodged at the age of 15 years. The Victim gave evidence at the age of 26 years. Thus, witness cannot have a photographic memory of each act. It is natural that contradictions and omissions may occur due to accumulation of new experiences of life.

12] It should be noted that the Victim’s party and Accused’s party are close relatives and despite the sexual act caught red handed by Victim’s mother-PW2, then in anticipation of the settlement they delayed to complain to police. The testimony of the Prosecutrix, shows that she faced this incident at the age of 11 years and at the time of the initial police complaint on 23/03/2011, she was 15

years, while the Accused was 33 years old. Whether the Accused has intercrural sex with is proved by the evidence of P.W. 01 and P.W. 02 as an eye witness corroborated the version of the P.W. 01. The trial court can convict the Accused on evidence of P.W. 01 alone, if the learned trial judge believes the Victim as a truthful witness.

13] In **Kaluthandrige Ruwan Ajith alias Aja vs Attorney General**, Court of Appeal Case No. CA HCC 0438/2019, decided on 29/09/2025 His Lordship AMAL RANARAJA, J., with reference to section 134 of the Evidence Ordinance noted;

*“Section 134 of the Evidence Ordinance No.15 of 1895 emphasizes that the number of witnesses required to substantiate a claim or fact is not fixed or premeditated. The principle allows for flexibility in the presentation of evidence. **It acknowledges that the testimony of a single witness can be sufficient to establish the truth of a fact, depending on the credibility of that witness. The focus shifts from the quantity of evidence to its quality.** A credible witness can provide more compelling evidence than multiple witnesses who may lack reliability.”* [Emphasis is added]

14] When considering the issue of credibility, in **De Silva and Others v Attorney General**[2010] 2 Sri L.R. 169, Supreme Court has, in dealing with the issue of credibility of witnesses held:

*"Credibility is a question of fact, not of law. Appeal Court Judges repeatedly stress the importance of the trial judge's observations of the demeanour of witnesses in deciding questions of fact. **The acceptance or rejection of evidence of witnesses is therefore a question of fact for the trial Judge, since he or she is in the best position to hear and observe witnesses. [n such a situation the Appellate courts will be slow to interfere with the findings of the trial Judge unless such evidence could be shown to be totally inconsistent or perverse and lacking credibility.** Evidence must be weighed and never counted. In reviewing the*

veracity of a witness Appellate Courts employ certain rules and guidelines as they do not have the benefit of observing and questioning the witness first-hand." [Emphasis is added]

15] Further, in **Samaraweera v Attorney General** [1990] 1 Sri L.R. 256, Supreme Court adopted a pragmatic approach even in an instance where the witness was found to have uttered falsehood under oath. In assessing the truthfulness and reliability of such evidence it was held:

*" The maxim falsus in uno falsus in omnibus could not be applied in such circumstances Further all falsehood is not deliberate. Errors of memory, faulty observation or lack of skill in observation upon any point or points, exaggeration or mere embroidery or embellishment must be distinguished from deliberate falsehood before applying the maxim. Nor does the maxim apply to cases of testimony on the same point between different witnesses. In any event this maxim is not an absolute rule which has to be applied without exception in every case where a witness is shown to have given false evidence on a material point. When such evidence is given by a witness the question whether other portions of his evidence can be accepted as true may not be resolved in his favour unless there is some compelling reason for doing so. The credibility of witnesses can be treated as divisible and accepted against one and rejected against another. **The jury or judge must decide for themselves whether that part of the testimony which is found to be false taints the whole or whether the false can safely be separated from the true.**"* [Emphasis is added]

16] In **Bandaranike v Jagathsena** [1984] 2 Sri L.R. 397, it was held;

*"When versions of two witnesses do not agree **the trial judge has to consider whether the discrepancy is due to dishonesty or to defective memory or whether the witness' powers of observation were limited.** In weighing the evidence, the trial judge must take into consideration the demeanour of the witness in the witness box. Was she trying to the best of her ability to speak the truth?"* [Emphasis is added]

17] In **Best Footwear (Pvt) Ltd., and Two Others v. Aboosally, Former Minister of Labour & Vocational Training and Others**, [1997] 2 Sri L.R 137 His Lordship Jayasuriya, J: articulated in evaluation of evidence with regard to credibility;

*"In evaluating the evidence of a witness a court or tribunal is not entitled to reject testimony and arrive at an adverse finding in regard to testimonial trustworthiness and credibility on the mere proof of contradiction or the existence of a discrepancy. The deciding authority must weigh and evaluate the discrepancy and ascertain whether the discrepancy does go to the root of the matter and shake the basic version of the witness. If it does not, such discrepancies cannot be given too much importance ... Before arriving at an adverse finding in regard to testimonial trustworthiness the Judge must carefully give his mind to the contradictions marked and consider whether they are material or not and the witness should be given an opportunity of explaining those contradictions that matter ... **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 is trivial**"* [Emphasis is added]

18] When applying the above rules, considering the Prosecution's version in totality, there are no major discrepancies which attract to disbelieve the story of the Prosecution. It is seen that the affidavit which regard to the Accused to leave the island cannot be considered as a material contradiction and it shows that the Prosecutrix was given a promise to pay compensation.

19] The sexual abuse was subjected to over a period of 4 years. Thus, no particular or specific date can be taken. In **Tharaperiya Gamage Jayathilaka v 119 Attorney-General** (supra) His Lordship Sisira de Abrew, J., noted;

"If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with all or any one or more of such offences and

any number of such charges may be tried at one trial and in a trial before the High Court may be included in one and the same indictment; or may be charged with having committed one of the said offences without specifying which one.”

20] Last week, this very same court in **Wasala Muni Dewage Ajith Jayalal Gunawardhna vs Hon. Attorney General**, CA. Revision Application No: CA/CPA/04/2026, decided on 17/07/2026., considered with regard to the date of offence; unless the Accused put defence of Alibi, there cannot be material prejudice to the Accused. The Court held;

“When the indictment/charge sheet shows the date of the offence stating the date along with on or about (දින වහෝ ඊට ආසන්න දිනකදී) or from (date) to (date), period of “in between”, it is sufficient to prove that the offence had been committed on or about or in between the said dates. In our law, charge sheets or indictments stating an offense occurred "on or about" a specific date are legally valid and can be sustained in court. This phrasing is used in indictments/ charge sheets when the exact date is unknown or immaterial to the core elements of the crime, unless the Accused put Defence of Alibi, introduced by Section 126A of the Code of Criminal Procedure Act No. 15 of 1979 (as amended by Act No. 14 of 2005), where it applies not only to High Court trials but also to proceedings before Magistrate’s Courts, now govern by statutory law (Vide SC APPEAL NO: SC/APPEAL/61/2023 [Decided on 09/10/2024]). The date of offence is vital to in plea of Alibi cases enabling the Accused to prove that particular date of time, he was elsewhere, otherwise the failure to prove the exact date and time cannot be taken as a material or fatal discrepancy of a charge. In this case, there is no such defence.”

21] The learned counsel for the Accused-Appellant said the Accused made a dock statement and three witnesses to contest the allegations. The Defence position is that the Prosecutrix had entered into a relationship with another boy, and after the Accused advised her to stop the affair, she wanted to get married to the Accused instead. The defense contends that the sexual abuse allegations

are entirely false and were manufactured due to the resulting enmity between the Accused, the Prosecutrix, and her grandmother. They say that the learned trial judge has disregarded the Defence evidence in arriving at the conclusion. It is seen that from pages No. 441 to 444, the learned trial judge adequately considered the defence. As I noted above; it is the trial judge who considers the evaluation of evidence in totality not with isolation.

22] The evidence shows that the Accused repeatedly abused the Victim at her grandmother's house. Although the defense was that the accusations were fabricated due to a property dispute and a separate breach of promise of marriage dispute, the Prosecution's version that the testimony of the Victim (P.W. 01) and corroborating witness (P.W. 02) stands steadfast. Additionally, medical evidence from the JMO (P.W. 08) supports the conclusion that the sexual act could occur without leaving physical injuries.

23] The dock statement of the Accused is subject to inherent evidentiary infirmities because it is not made under oath and cannot be tested by cross-examination. In **Ehelepola v. Officer In Charge, Police Station, Kandy and Another**, [1998] 1 Sri L.R. 295, it was observed that where the dock statement constitutes the sole version put forward by the Accused, the trial court is obliged to examine it carefully in light of the Prosecution evidence. If, upon such scrutiny, the statement is found to be false or inherently improbable, the Accused may be held not to have discharged the evidential burden resting upon him in respect of any defence advanced. In this matter, I hold the learned trial judge sufficiently considered the dock statement and the evidence of witnesses against the Prosecution version.

24] Lastly, the Prosecution's burden of criminal trials is considered; what is beyond reasonable doubt in **Miller v. Minister of Pensions** (1947) 2 All E.R. 372. In that Lord Denning clarified:

"The evidence must reach the same degree of cogency as is required in a criminal case before an accused person is found guilty. That degree is well settled. It need not reach certainty, but it must carry high degree of

probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, "of course it is possible, but not in the least probable," the case is proved beyond reasonable doubt, but nothing short of that will suffice"

25] I hold, in total; the Prosecution had discharged this burden. Thus, this Appeal must not be succeeded.

26] However, I see that the Accused is a first offender and both the Victim and the Accused are now married to different parties. Thus, I am of the view, some reduction of custodial sentence should be granted.

27] Thus, 10 years imprisonment imposed for each count is reduced to 7 years and should be run concurrently from the date of conviction, that is 05/11/2024. Other parts of sentence are remained unchanged. Subject to the above variation of sentence, this Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

AMAL RANARAJA J.

I agree

JUDGE OF THE COURT OF APPEAL