

**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**

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

Complainant

Court of Appeal Case No:
CA/HCC/0128/2023

High Court of Vavuniya
Case No. HCV/2899/19

Vs,

Pararasasingham Kokulakrishnan

Accused

And Now Between

Pararasasingham Kokulakrishnan

Accused-Appellant

Vs,

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

Respondent

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

Counsel: Delan de Silva for the Accused-Appellant

Azard Navavi, ASG for the Respondent

Argued on: 24.08.2026

Judgment on: 18.09.2026

Judgment

Amal Ranaraja. J.,

1. The accused-appellant (hereinafter referred to as the “apellant”) has been indicted in the High Court of *Vavuniya* in Case No. HCV/2899/19. The charges in the indictment are as follows;

01. That between the dates of 1st January, 2015 and 31st December, 2015, within the jurisdiction of this Court, in Mankulam, you did commit rape against one *Kokila Krishnan Thamilini*, a female child, who is your daughter, under the age of 16 years, as described in Section 364(a)(1) of the Penal Code (as Amended) thereby you have committed an offence

punishable under Section 364(3) of the Penal Code of Sri Lanka (as Amended).

02. That between the dates of 1st January, 2015 and 31st December, 2015, within the jurisdiction of this Court, in Mankulam, on an occasion other than that of the above first charge, you did commit rape against one *Kokila Krishnan Thamilini*, a female child, who is your daughter, under the age of 16 years, as described in Section 364(a)(1) of the Penal Code (as Amended); thereby you have committed an offence punishable under Section 364(3) of the Penal Code of Sri Lanka (as Amended).

03. That between the dates of 1st January, 2015 and 31st December, 2015, within the jurisdiction of this Court, in Mankulam, on an occasion other than that of the above first and second charges, you did commit rape against one *Kokila Krishnan Thamilini*, a female child, who is your daughter, under the age of 16 years, as described in Section 364(a)(1) of the Penal Code (as Amended); thereby you have committed an offence punishable under Section 364(3) of the Penal Code of Sri Lanka (as Amended).

2. At the conclusion of the trial the appellant has been convicted of all charges and sentenced as follows;
 - i. 15 years rigorous imprisonment and a fine of Rs.5000.00, with a term of 1 month rigorous imprisonment in default, in respect of each charge.

The appellant has also been directed to pay a sum of Rs.100,000.00 as compensation to PW01, with a term of 3 months rigorous imprisonment in default

It has also been directed that the substantive terms of rigorous imprisonment shall run concurrently.

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

Case of the Prosecution

4. PW01 is the second child of the appellant. It is alleged that during the relevant period, the appellant has engaged in penile-vaginal penetration with PW01 against her will. This reportedly has occurred when PW01 has returned from school and no other family member was present in the house.
5. This alleged abuse has occurred repeatedly. When PW01 could no longer endure the situation, she has informed her mother, PW02. Subsequently, a complaint has been filed with the police and investigation begun.
6. As a part of the investigation, PW01 has been examined by *Dr. N.A.S.P. Wijerathna*, a consultant Judicial Medical Officer, and the resulting medicolegal report (marked P2) has been produced as evidence.

Case of the Appellant

7. The appellant has maintained that he did not engage in penile-vaginal penetration with PW01 as described.

Grounds of Appeal

8. When the matter was taken up for argument the learned counsel appearing on behalf of the appellant urged the following grounds of appeal;

- I. The learned High Court Judge convicted the accused based on the uncorroborated evidence of the first witness.
 - II. The learned High Court Judge has misinterpreted the medico-legal report when arriving at his order.
 - III. The learned High Court Judge has failed to appreciate that the prosecution has failed to establish the charges beyond a reasonable doubt.
9. The learned counsel for the appellant has maintained that the prosecution has not sufficiently discharged its burden of proof based on the fact that it neglected to present testimony from all identified witnesses, i.e., PW02 and PW03. It is the contention of the appellant that such omission has contributed to significant gaps in the evidence presented, raising a reasonable doubt as to the appellant's guilt.
10. Section 134 of the Evidence Ordinance No. 14 of 1895 reads as follows:
- “No particular number of witnesses shall in any case be required for the proof of any fact.”*
11. The primary implication of Section 134 of the Evidence Ordinance is the adoption of the principle that “evidence must not be counted but weighed”. This has several key consequences in the Sri Lankan legal system. A court can convict an accused or determine a case solely on the uncorroborated evidence of a single witness provided that the judge finds that witness to be cogent, credible, trustworthy and impressive.
12. The law does not require corroboration of witness's testimony as an essential condition for a conviction. The trial Judge has the discretion to rely on the testimony if satisfied with its veracity after careful

probing. The emphasis is shifted from a mere head count of witnesses to a careful judicial analysis and evaluation of the witness's demeanour, consistency, and overall trustworthiness of his testimony.

13. In *Sumanasena v Attorney General* [1999] 3 SLR 137, Jayasuriya J. has held as follows:

"Evidence must not be counted but weighed and the evidence of a single solitary witness if cogent and impressive could be acted upon by a Court of law."

14. In the present case, PW01 has testified, in detail, about the penile-vaginal intercourse, involving the appellant.

"Q: Thamizhini according to your evidence, you said that you were lying with face upwards in the entrance of the corridor and at that time, your father had asked you to remove the dress. What did your father do thereafter?"

A: He asked me to lie down and slept on me.

Q: On which direction was your father's face at that time?

A: He was facing my face.

Q: you said your father inserted his male organ. Did you see his male organ going into your female organ or did you feel it?

A: I felt it."

Vide Page 110 of the translated Brief

15. Furthermore, in her short history provided to Dr. Wijerathna, PW01 has stated as follows;

බ. රෝගියා විසින් ලද ප්‍රතිචාරය
B. SHORT HISTORY GIVEN BY PATIENT

The victim was sexually abused by her father on during August and September 2015. While the victim was at home the alleged assailant had had sexual inter course with her on multiple occasions. The victim had felt pain during the act. She had felt burning sensation of the genitalia during and after the act. The alleged assailant had threatened the victim not to reveal the incidents to a 3rd party.

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Hence, it is clear that PW01 has been clear and consistent in her narrative. The testimony of PW01 is cogent and creditworthy in that regard.

16. Following his examination of PW01, *Dr. Wijerathna* has observed that there was attenuation of the hymen as well as dilation of the vaginal orifice. He has then opined as follows;

“There is medical evidence of probable previous vaginal penetration.”

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Such observations and the conclusion stand as corroboration of PW01’s narrative with regard to the core details of the incident involving the appellant.

17. It is argued that a criminal charge must always state the precise time of the alleged offence. However, while the precise time should be included whenever possible, it is not absolutely necessary in every case. The true purpose of a charge is to provide the accused with adequate notice of the allegation so that a defence can be prepared and the trial remains fair.

18. Further, Section 165(1) of the Code of Criminal Procedure Act No. 15 of 1979 reads as follows;

“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 matter with which he is charged and to show that the offence is not prescribed.”

19. In many offences, the exact time may not be known and requiring it would encourage artificial precision and lead to technical dismissals. In many cases, such as repeated abuse over several months, a victim may be able to describe the events and context but not the exact time. If the law demanded a specific time, regardless of the circumstances, it would either force the prosecution to speculate or prevent legitimate cases from being tried at all. Therefore, what matters is not precision for its own sake, but whether the charge provides sufficient notice to ensure a fair trial.

20. Therefore, 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, or providing a time period between two specific dates, is legally valid.

21. However, the prosecution must establish the exact date or a precise timeframe in specific situations;

I. If time or age 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.

22. In the matter at hand, the precise timing of the alleged offence is not considered an essential component of the charge the appellant faces. 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;

“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.”

23. In her testimony, PW01 has identified the rough timeline of when the incidents occurred as follows;

“Q: You said the incident happened in the year 2016. Do you remember the year and the month?

A: No.

Q: If you had given in your complaint of this case stating that the incident happened in the year of 2015, is it correct?

A: Yes.”

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24. Accordingly, the exact date of the alleged offence not being established does not lend towards the contention that the prosecution has failed to establish the appellant's guilt, beyond a reasonable doubt.
25. Furthermore, the case at hand involves a young girl who experienced the incident at the age of 12 years and provided testimony seven years later. The complexities of recalling events from a young age pose challenges, including potential for inconsistencies and exaggeration.
26. To begin with, it is crucial to acknowledge the psychological aspects of memory. Children possess cognitive faculties that are still developing. Children experience difficulties in accurately recalling events, especially those that are traumatic or extraordinary. As years pass the details may become increasingly blurred, influenced by various factors, such as discussions with peers, media exposure, or even parental input. The likelihood of inconsistencies creeping into the testimony becomes significant as memories are not fixed but rather, can evolve over time. Hence, it is reasonable to expect a child's account of an event to contain inaccuracies, particularly several years later.
27. It is essential to consider the context in which these narratives are made. The child may not remember specific details or may exaggerate his/her narrative but may still convey the core truth of an incident. Courts must evaluate whether the inconsistencies affect the substance of the testimony, or if they pertain to peripheral details that do not alter the fundamental truth of what has transpired.
28. Placing undue emphasis on minor inconsistencies risks undermining the very essence of justice. It is vital for the judicial system to remain accessible and fair to vulnerable populations, such as children. If Courts were to dismiss the entire testimony of a child witness based on minor inconsistencies, it could deter future witnesses from coming forward.

29. While alleged inconsistencies and exaggeration in the testimony of PW01 warrant careful consideration, they should not automatically invalidate her account. Especially, when such discrepancies are not material to the core of her account.
30. In regard to the matter at hand, the discrepancies in PW01's testimony relate to the location within the house, in which the incident took place, i.e. in a temporary structure, or a corridor. This Court deems such discrepancies not to be fundamental to PW01's testimony as they only relate to peripheral details, and consequently, are not material. Moreover, PW01 has maintained consistency regarding the core incidents involving the appellant, specifically the penile-vaginal intercourse committed on PW01.
31. In the case of *R v B [2010] EWCA Crim 4* The Lord Chief Justice of England and Wales held as follows;

"We emphasise that in our collective experience the age of a witness is not determinative on his or her ability to give truthful and accurate evidence. Like adults some children will provide truthful and accurate testimony, and some will not. However, children are not miniature adults, but children, and to be treated and judged for what they are, not what they will, in years ahead, grow to be. Therefore, although due allowance must be made in the trial process for the fact that they are children with, for example, a shorter attention span than most adults, none of the characteristics of childhood, and none of the special measures which apply to the evidence of children carry with them the implicit stigma that children should be deemed in advance to be somehow less reliable than adults. The purpose of the trial process is to identify the evidence which is reliable and that which is not, whether it comes from an adult or a child."

32. Further, in the case of *AG v. Daradadagamage Chandraratne*, CA/85/2013, decided on 25.05.2018, S. Thurairaja PC, J, held as follows,

“Time and again Courts have discussed the acceptance of evidence of children of tender ages. Our Judges are not there to test the memory of the witness, they are expected to find the actual fact and the truth. Witnesses are human being, they are not memory machines nor robots to repeat the incident as it was. Further the natural behaviour of human beings is to forget incidents, especially sad memories. No one wants to re- visit painful moments and keep detailed memories with them. We are also mindful most of our courts, with due respect, are not child friendly. In this case a child giving evidence after 8 years and subjected to cross examination more than 3 years is sufficient to create certain contradictions in her testimony. It is human nature.”

33. Section 114(f) of the Evidence Ordinance No. 14 of 1895 provides as follows;

“The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business in their relation to the facts of the particular case.

Illustrations

The Court may presume-”

(f) that evidence which could be and is not produced would if produced, be unfavourable to the person who withholds it;”

34. This illustration deals with the presumption which arises from withholding evidence. If evidence could have been introduced but has

not been produced by a party, the natural presumption is that the evidence, if produced, would have been unfavourable to the party withholding it. Adverse inference from non-production of evidence is one of the strongest presumptions known to law, and the law allows it against the party who, by his tortuous acts, withholds the evidence by which the nature of his case would be manifested.

35. However, the Section does not in all cases, make it obligatory on the court to act on such a presumption because, a particular case may be such that, notwithstanding that there is intentional non-production, other circumstances may be present upon which such intentional non-production may be justifiable, on some reasonable grounds, or may be attributable to some justifiable cause. The illustration itself says that Court shall have regard to other facts in considering whether the maxim does or does not apply to any particular case. Where however, there is sufficient explanation for non-production there can be no adverse presumption.

36. In this case, PW02 has not been a witness to the incidents at hand, but as the mother of PW01 has been informed by PW01 about the incidents involving the appellant. Therefore, the testimony of PW02, would have simply served the purpose of corroborating or disproving PW01's narrative, as regards to her informing PW02 about the incidents involving the appellant, as opposed to providing a vital missing link in the prosecution's case. Hence, it does not entitle the Court to draw an adverse presumption on the basis of PW02 not being called to testify before the High Court.

37. Due to the matters discussed above, I am not inclined to interfere with the conviction, judgement and the sentencing order imposed on the appellant and proceed to affirm the same.

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

Appeal dismissed.

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

Judge of the Court of Appeal

Dr. Sumudu Premachandra, J.

I agree

Judge of the Court of Appeal