

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

In the matter of an Appeal under and in terms of Article 154P (6) of the Constitution read with Section 11(1) of the High Court of the Provinces (Special Provisions) Act No.19 of 1990 and 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/0182/2025

High Court of Embilipitiya

Case No. HCE/37/2022

Vs.

Walabaduge Siriwardhana,
Dewale Gedera,
Higura,
Rancha Madama,
Colombage - Ara.

ACCUSED

AND NOW BETWEEN

Walabaduge Siriwardhana,
Dewale Gedera,
Higura,
Rancha Madama,
Colombage - Ara.
(Presently in the Welikada Prison).

ACCUSED-APPELLANT

Vs.

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

RESPONDENT

Before: **Amal Ranaraja J.**

&

Dr. Sumudu Premachandra J.

Counsel: Isuru Deshapriya for the Accused-Appellant.

Hiranjana Peiris, A.S.G. for the State.

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

Written Submissions: By the Accused-Appellant filed on 05/12/2025.
By the Respondent filed on 02/09/2026.

Argument On : 03/09/2026.

Judgement On : 09/10/2026.

Dr. Sumudu Premachandra J.

1] The Accused was indicted in the High Court of Embilipitiya by indictment dated 25/03/2022 for committing one count of grave sexual abuse punishable under section 365 B (2) (b) of the Penal Code.

2] The Prosecution relied principally on the evidence of the Victim, PW 01, together with the testimony of Witnesses PW 02 and PW 03, who became aware of the allegation after observing injuries in the Victim's genital area and questioning her. PW 02 stated the Victim's presence at the Accused's residence on the relevant date, while PW 06 and PW 08, including police officers who gave

evidence concerning the initial complaint, hospital notification, inspection of the Accused's premises, and the subsequent investigation and arrest.

3] Crucially, the Judicial Medical Officer testified that the Victim had physical signs consistent with Herpes Simplex Type II infection in the genital area, which the Prosecution relied upon as medical corroboration of her account.

4] On the other hand, the Defense challenged the Victim's credibility by identifying discrepancies between her initial police statement and her evidence in court, including whether she had screamed, whether neighbors had witnessed anything, the precise timing of events and certain omissions. The Defense also relied on the Accused's dock statement, the evidence of DW 01 and documentary exhibits D1, D2, X and Y. The alleged incident occurred on 03/09/2019, against the Victim PW 01. The Appellant maintains a Defense of complete innocence, arguing that the allegations are entirely fabricated due to a long-standing, heavy family grudge stemming from the Accused forcefully marrying his daughter (Defence Witness 02).

5] In assessing the evidence, the Lower Court applied the principles governing the proof of sexual offences and the statutory requirements. The Court considered the Victim's age, the circumstances in which her statement was initially made, and the nature of the alleged incident when evaluating the inconsistencies relied upon by the Defense. It held that the discrepancies were minor and did not affect the substance of her account, observing that omissions or variations concerning peripheral matters did not necessarily render the central testimony unreliable. The Court also considered the medical evidence, the corroborative testimony concerning the Victim's presence at the premises, and the police evidence concerning the scene and investigation and convicted the Accused.

6] In conclusion, the Accused-Appellant was convicted of grave sexual abuse and sentenced to 12 years of rigorous imprisonment, along with fines and compensation.

7] The Accused-Appellant states the following grounds of appeal;

1. Has the learned Trial Judge failed to correctly analyse and corroborate medical evidence with testimonies of the Prosecution Witnesses? (Scientific Impossibility of the Accused's Involvement)
2. Despite the availability of the light of a well-established principle to accept the belated complaint/evidence upon justifiable reasons, has the learned Trial Judge failed to analyse correctly doubtful circumstances related to the belatedness of the complaint of this matter?
3. Has the learned Trial Judge failed to evaluate the Prosecution evidence properly with caution when those evidences have hidden motives?
4. If a well-established principle that the dock statement of the Accused must have evaluated guidelines or has the learned Trial Judge failed to correctly evaluate the dock statement given by the Accused?

8] They say that the learned Trial Judge failed to properly analyse the medical and scientific evidence, specifically the STD report marked "Y" provided by a certified venereologist, which showed that the Accused did not have any sexually transmitted infection. Given that the 13-year-old Victim (PW 01) alleged contracting Herpes Simplex Type II from the Accused, medical testimony (PW 10) confirmed that it is highly improbable for a minor to contract this virus without sexual contact with an infected individual. This scientific inconsistency demonstrates a biological impossibility of transmission, directly contradicting the Victim's account and creating serious doubt regarding the Prosecution's case.

9] The learned Trial Judge has failed to evaluate the belatedness of the PW 01's statement.

10] While the Victim (PW 01) said she had a fear of being put on probation due to threats from the Accused as her reason for staying silent, she omitted this explanation in her initial statements to the police and the Judicial Medical Officer.

11] Furthermore, she made a selective disclosure to her maternal aunt (PW 12) on the very day of the alleged incident, contradicting her assertion that total fear prevented her from telling anyone, thereby undermining her testimonial creditworthiness. The Defence alleged that the Trial Judge erred in analysing the discrepancies in the police statement and court testimony of the Victim's maternal aunt (PW 12). In her police statement, PW 12 omitted mentioning the Victim's claim regarding fear of going into probation, yet later included it during her oral testimony. Additionally, the High Court Judge improperly relied on a characteristic presumption regarding "innocent mistakes of under aged girls and rural uneducated women" to dismiss these vital omissions and cross-examination contradictions, rather than recognizing how deeply they affect the Witness's overall credibility.

12] It is further alleged that the learned Trial Judge failed to evaluate the unreasonable nearly two-month silence of PW 12, an adult woman who knew of the alleged abuse but kept the matter hidden from the Victim's mother (PW 02) until external inquiries were made. Her explanation that the Victim instructed her to stay silent is highly improbable for a mature adult facing a grave allegation. When combined with key omissions and the Defence's position on ulterior motives, this prolonged and uncharacteristic silence casts significant, unresolved doubt over the veracity of the Prosecution's claims.

13] They Appellant further says that the learned Trial Judge failed to exercise proper caution in assessing the Prosecution evidence despite clear indications of a hidden motive to fabricate the case. The Defence established a long-running, heavy grudge between the Accused and the Victim's family, stemming from the Accused forcefully marrying their daughter. Although this ongoing family

dispute was raised early on by the Accused and surfaced during cross-examination, the trial court failed to properly analyse it as a valid motive for bringing false charges.

14] Finally, the Appellant said that the learned Trial Judge failed to correctly evaluate the Accused's dock statement in accordance with established legal guidelines, dismissing it as dispositional without proper corroboration. The Accused consistently maintained his innocence and alleged fabrication from his initial police statement through to his dock statement, which was corroborated by Defense Witness 02 (his daughter) regarding his whereabouts on the day of the alleged offense. Because a dock statement is unsworn and untested by cross-examination, the court erred in failing to weigh it fairly to see if it raised a reasonable doubt, which should have entitled the Accused to an acquittal.

15] The Appellant raised four main grounds of appeal challenging the conviction. In response, the Complainant-Respondent submits that all grounds of appeal lack merit and that the original conviction should be affirmed.

16] Addressing the medical evidence, the Respondent argues that an STD report marked "Y" showing no active Herpes Simplex Two infection does not exclude prior infection or transmission, as medical testimony (PW 10 and DW 03) confirmed the virus can remain latent or asymptomatic.

17] Regarding the two-month delay in filing a complaint, the Victim testified that the Accused threatened her that she be put to probation if the story is revealed.

18] With regard to the contradictions and omissions the Prosecution relied under the legal principle in **AG v. Sandanam Pitchai Mary Theresa** [2011] 2 S.L.R. 292, minor inconsistencies or delays due to fear in child sexual abuse cases are common and not fatal to the Prosecution's case.

19] Further, the Prosecution asserts that allegations of family enmity were unfounded speculation, and the trial judge rightly gave greater weight to the

credible testimony of Prosecution Witnesses over the Accused's unsupported dock statement.

20] I now consider the merits of this case. It revealed that the incident took place in daylight at 4.00pm, while the Victim's aunt was sweeping the compound of the Devalaya that belongs to the Accused. The Accused Appellant was a Kapurala. The Victim was called to come to the house of the Accused which is adjacent to the Devalaya (25 feet). When she refused to come inside, she was dragged to the kitchen of the house. The act lasted 5 minutes and it was done when both were in standing position.

21] The evaluation of the learned Trial Judge is that the girl was 13 years old and she could not resist the Accused when she was dragged by the Accused. When applying the test of probability, it is to be noted that the aunty Raajini was near by 25 feet away from the vicinity. The Victim said that she screamed, it would probably be heard by Aunty Raajini. After the incident she has run to her aunty, but did not reveal it immediately. However, on the way, she revealed, but she insisted not to tell anybody. It is highly improbable that aunty did not reveal the story to any adults on her request not to reveal. This matter would not come in to the light if the Victim was not affected with Herpes Simplex Virus Type 2.

22] In relation to Herpes Simplex Virus Type 2, **The British Medical Association ILLUSTRATED MEDICAL DICTIONARY** (A Dorling Kindersley Book), Page 281 illustrates as follows;

“herpes Any of a variety of conditions characterized by an eruption of small, usually painful, blisters on the skin. The term usually refers to an infection with the herpes simplex virus. Forms of this virus are responsible for cold sores and genital herpes (see herpes, genital), among other conditions. A closely related virus, varicella-zoster, is responsible for 2 other conditions in which skin blisters are a feature: chickenpox and herpes zoster (shingles).

herpes, genital A sexually transmitted infection caused by 1 form of the herpes simplex virus, known as HSV2. After an incubation period of about a week, the virus produces soreness, burning, itching, and small blisters in the genital area. The blisters burst to leave small, painful ulcers, which heal in 10–21 days. The lymph nodes in the groin may become enlarged and painful, and the person may develop headache and fever. **Genital herpes cannot be cured, but treatment can reduce the severity of symptoms.**

Antiviral drugs such as acyclovir make the ulcers less painful and also encourage healing. Other measures include taking analgesic drugs and bathing with a salt solution.

herpes simplex A common viral infection, characterized by small, fluid-filled blisters. Herpes simplex infections are contagious and usually spread by direct contact. The virus has 2 forms, HSV1 (herpes simplex virus, type 1) and HSV2 (herpes simplex virus, type 2). Most people are infected with HSV1 at some point in their lives, usually during childhood. The initial infection may be symptomless, or may cause a flu-like illness with mouth ulcers. Thereafter, the virus remains dormant in nerve cells in the facial area. In many people, the virus is periodically reactivated, causing cold sores. Rarely, the virus infects the fingers, causing a painful eruption called a herpetic whitlow. HSV1 may produce eczema herpeticum (an extensive rash of skin blisters) in a person with a preexisting skin disorder, such as eczema. Eczema herpeticum may require hospital admission. If the virus gets into an eye, it may cause conjunctivitis or a corneal ulcer. Rarely, HSV1 spreads to the brain, leading to encephalitis. The virus may cause a potentially fatal generalized infection in a person with an immunodeficiency disorder or in someone taking immunosuppressant drugs. HSV2 is the usual cause of sexually transmitted genital herpes (see herpes, genital). Treatment of herpes simplex depends on its type, site, and severity. Antiviral drugs, such as aciclovir, may be helpful, particularly if used early in an infection”

“herpes simplex virus type 1 A herpesvirus that causes cold sores and fever blisters in and around the mouth and less commonly, genital herpes. Abbreviated HSV-1. In rare cases, as when a patient’s immune system is severely compromised, this virus can cause infection of the brain (encephalitis). Also known as human herpesvirus 1 (HHV-1). Treatments include topical or oral antiviral medications. See also fever blister.

herpes simplex virus type 2 A herpes virus that causes genital herpes, which is characterized by sores in the genital area. Abbreviated HSV-2. HSV-2 may also be a cause of fever blisters around the mouth. In rare cases, as when a patient’s immune system is severely compromised, this virus can cause widespread infection of the body. Treatment involves use of topical or oral antiviral medication. Also known as human herpesvirus 2 (HHV-2). See also genital herpes.

genital herpes An infection by human herpes virus that is transmitted through intimate contact with the moist mucous linings of the genitals. This contact can involve the mouth, the vagina, or the genital skin. Following infection, the virus travels to nerve roots near the spinal cord and settles there permanently. When an infected person has a herpes outbreak, the virus travels down the nerve fibers to the site of the original infection; when it reaches the skin, redness and blisters occur. Commonly called herpes.”

24] UK [STI Clinic London \(https://www.sticlinic.co.uk/blog/hsv-1-vs-hsv-2-type-specific-blood-test](https://www.sticlinic.co.uk/blog/hsv-1-vs-hsv-2-type-specific-blood-test) -Accessed on 04/10/2026) explained it as;

“What is HSV-1?

Herpes simplex virus type 1 is commonly associated with oral herpes, often presenting as cold sores around the mouth. HSV-1 is widespread globally and can be transmitted through oral contact, including kissing. In some cases, HSV-1 can also affect the genital area, typically through oral-genital contact.

What is HSV-2?

Herpes simplex virus type 2 is more commonly associated with genital herpes and is primarily transmitted through sexual contact. Like HSV-1, it may cause no symptoms in many individuals, meaning a person can carry and transmit the virus without awareness.

*Both types can remain dormant in the body and may reactivate at intervals. Because both strains can affect overlapping sites, laboratory differentiation through a **type-specific herpes blood test** is a more reliable method of identification than symptom assessment alone.”*

25] Two medical doctors were called to give evidence at the trial. One was the Judicial Medical Officer and other one was the Doctor who retained the medical records of the Accused since the doctor who examined was not available since that Consultant Venereologist migrated to UK.

26] The Accused was produced under B Report No. 1821/19 of Embilipitiya Magistrate's Court to get a medical done. In that, the Accused denied the allegation. He was tested for Venereal Diseases by Consultant Venereologist Dr. Inoka Munasinghe and opined that *“There are no evidence of Sexually transmitted infections at Present”*. The Victim and the Accused were examined simultaneously at the Embilipitiya hospital and blood was drawn and if the Victim suffered Herpes Simplex Virus Type 2 disease since, Genital Herpes cannot be cured, the Accused should be positive for the Herpes Simplex Virus Type 2 disease. It is a dormant and antibodies will react the VDRL test and thus, it should be positive. This report was marked as “Y” and the learned Trial Judge disregarded it against the medical findings which amounted to a misdirection of fact.

27] The evidence of PW 10, JMO said that it is improbable that the Victim got the Herpes Simplex Virus Type 2 disease without performing a sexual act with an affected person (vide pages 266 to 277). If “Y” Report says that the Accused

is free from “*Sexually transmitted infections*”, that creates a reasonable doubt of the story of Prosecution.

28] It is further seen that till the symptoms become apparent, the Victim has not told the incident. Even, she has told Aunty Raajini, she has not revealed it to anyone being an adult. Would that be unusual? Thus, the complaint becomes belated. The Victim said that the Accused said not to tell anybody, if revealed she would be put to probation. But it is unclear how the Victim knows the function of probation and she be separated from the parents. However, in the police station, this fact was not mentioned and it was drawn as an omission which is a major omission rendering her evidence suspicious.

29] The act is explained in Item “B”, short History given by the patient of P2, Medico-Legal Report shows as follows;

“මම එයාගේ ගෙදර එළියේ පුටුවක වැඩිවෙලා ඉන්නකොට ඇතුළට යන්න කිව්වා. මම ගේ ඇතුළට ගියා. එයන් ටික වෙලාවකින් ගේ ඇතුළට ආවා. මාව ඇදගෙන කුස්සියට ගියා. එයා මගේ ඇඳුම් ගලවලා මට කරදර කළා. එයා මගේ වූ එක ඇතුළට දැම්මා. විනාඩි 7 විතර කළා. කාටවත් කියන්න එපා කිව්වා. එහෙම ඉන්නකොට සති තුනකින් විතර මගේ වූ පැත්තේ තුවාල දැම්මා. මම රෝහලට ආවා. මට වෙන කවුරුවත් කරදර කරලා නැහැ. මම කවුරුත් එක්ක යාලු වෙලක් නැහැ.”

30] In this it is clear that the Victim has not mentioned that the Accused said that if this was revealed she would be sent for probation. More importantly, the act was done by standing position and it was not mentioned to the JMO. Further, the Victim in the evidence said when she was in the portico, the Accused dragged her inside. But in this statement, the Victim has willingly gone inside (මම ගේ ඇතුළට ගියා. එයන් ටික වෙලාවකින් ගේ ඇතුළට ආවා). In the evidence, she said the Accused rubbed his penis on her vagina. But in this she has said he has penetrated the vagina. More importantly, she has said to the Doctor “එයා මගේ ඇඳුම් ගලවලා මට කරදර කළා.”. But in the evidence, the act was done in standing position, her panty was put half way down till knees by the accused and clothes were not removed as she said to the JMO.

31] Further, she had testified and also said to the JMO that she has never faced this type of incident and she does not have a boyfriend. (මම වෙන කවුරුවත් කරදර කරලා නැහැ. මම කවුරුත් එක්ක යාලු වෙලත් නැහැ.). However, V1, a photograph, which was taken by Defence Witness 02, admitted by the Victim, clearly shows that she was sleeping on a bed with another man. The Victim initially hid the incident that she had eloped with another man, then she admitted that she stayed 2 months with one Prasanna. It should be noted that the JMO expressed the growth of the Victim as “*well build and well-nourished teenaged girl... secondary sexual characteristics were well developed*” V1 photo confirms the Victim is well build and well nourished. Her appearance is more than an adult woman in VI. The learned Trial Judge had failed to appreciate that she has lied to court by hiding that she eloped with Prasanna. He simply said that these contradictions are minor and the Victim is under aged and is a rural girl. It should be noted that there are apex court judgements that a Child Witness cannot recall photographic memory, but every Witness must be treated equally under section 118 of the Evidence, and child is a competent Witness thus, equal treatment should be given if the story became unreliable. In this case, considering the totality of evidence the Accused created a reasonable doubt. The major ground is that he is excluded from STD. It creates a reasonable doubt.

32] In **Kalinga Padmatilake, alias Sergeant Elpitiya vs The Director General, Commission to Investigate Allegations of Bribery or Corruption**, SC Appeal No. 99/2007, DECIDED ON: 30/07/2009 reported in [2009] 2 SLR 151 and [2010] BLR 67, Her Ladyship CHANDRA EKANAYAKE, J. held;

*“it is **the paramount duty of the Court to consider entire evidence of a witness** brought on record in the examination-in-chief, cross-examination and re-examination. In other words, Courts must take an overall view of the evidence of each witness”* [Emphasis is added]

33] In that case it is noted what is proof of beyond reasonable doubt as;

“...proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The benefit of doubt to which the accused is entitled, is reasonable

doubt; **the doubt which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind.** Thus, test is whether rational thinking men will reasonably, honestly and conscientiously entertain the story of the Plaintiff...” [Emphasis is added]

34] In that case Her Ladyship further cited with approval;

“Sir John Woodroffe & Amir Ali had to say in their work on - “Law of Evidence- 18th Edition- Vol. 1 at pg. 471: -

“No hard and fast rule can be laid down about appreciation of evidence. It is after all a question of fact and each case has to be decided on the facts as they stand in that particular case. Where a witness makes two inconsistent statements in his evidence with regard to a material fact and circumstance, the testimony of such a witness becomes unreliable and unworthy of credence.”

“John Woodroffe & Amir Ali in their aforementioned book on Law of Evidence - (at page 325):

“For a doubt to stand in the way of conviction of guilt, it must be a real doubt and a reasonable doubt—a doubt which after full and fair consideration of the evidence, the judge really, on reasonable grounds, entertains.”

35] Moreover, His Lordship Yasantha Kodagoda PC J. in **Officer-in-Charge Special Crimes Division v. Mananage Sunil Dharmapala** SC Appeal No. 155/14 decided on 28/06/2021, clearly held what is reasonable doubt as;

“a ‘reasonable doubt’ means a doubt in respect of **which a valid reason can be attributed.** For a ‘doubt’ to be recognised as amounting to a ‘reasonable doubt’, the ground for the development of the **doubt must be objective and reason based. There should be a logical basis for the entertaining of the doubt.** That is the distinction between a ‘mere doubt’ and a ‘reasonable doubt’.” [Emphasis is added]

36] In this case, the Accused Appellant created with regard to the medical condition of the Victim and him. This is logical and can be treated as a reasonable doubt. The Accused is presumed to be innocent until guilt is proved. If the Accused creates a reasonable doubt, the Prosecution is not left with a remedy. Under section 202 of the Criminal Procedure Code, the Prosecution can call evidence in rebuttal. Section says;

“If any evidence is adduced on behalf of the accused the prosecuting counsel may with the leave of the Judge call witnesses in rebuttal”

37] In this matter, the Prosecution has failed to counter the reasonable doubt created by the Accused Appellant. I hold that the benefit of doubt must be given to the Accused. Overall, the evidence of the Victim is unsatisfactory. I hold that the conviction is untenable. Thus, I set aside the conviction and sentence, the Accused- Appellant is acquitted and discharged.

Appeal is allowed.

JUDGE OF THE COURT OF APPEAL

AMAL RANARAJA J.

I agree

JUDGE OF THE COURT OF APPEAL