

**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.**

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

Court of Appeal
Case No. CA/HCC/0236/2024

Complainant

Vs.

High Court of Hambanthota
Case No. HC/30/2020

Edirichcharige Wimalasena *alias* Bale
Mama

Accused

AND NOW BETWEEN

Edirichcharige Wimalasena *alias* Bale
Mama

Accused-Appellant

Vs.

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

Complainant-Respondent

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

Counsel: Mohan Senevirathne with Nandana Malkumara and Sanuri
 Dissanayake for the Accused-Appellant.

Akila Dalpatadu, S.C. for the State.

Argued on: 25.09.2026

Judgment on: 12.10.2026

JUDGMENT

AMAL RANARAJA, J.

1. The Accused-Appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Hambanthota* in case number HC 30/2020.

The charges in the indictment are as follows:

Charge 01

That on or about November 22, 2008, at *Ambalanthota*, in the district of *Hambanthota*, within the jurisdiction of this Court, the appellant kidnapped a minor girl under the age of sixteen years, from lawful guardianship of one *Koku Hannadige Mapi Nona* and thereby committed an offence punishable under section 354 of the Penal Code.

Charge 02

That in the same course of transaction as above, the appellant committed the act of grave sexual abuse, by placing his penis on the

vagina of the victim, a minor girl under the age of sixteen years, for the purpose of sexual gratification, an offence punishable under section 365B(2)(b) of the Penal Code as amended by Act No. 22 of 1995, Act No. 29 of 1998 and Act No. 16 of 2006.

2. At the conclusion of the trial, the learned High Court Judge has convicted the appellant of the charges and sentenced him as follows:

- i. Two years rigorous imprisonment and a fine of Rs. 5000.00, with a term of six months rigorous imprisonment in default, in respect of the first charge.
- ii. Ten years rigorous imprisonment and a fine of Rs. 10000.00, with a term of one year rigorous imprisonment in default, in respect of the second charge.
- iii. The appellant has been directed to pay a sum of Rs. 50000.00 as compensation to PW01, with a term of two years rigorous imprisonment in default.
- iv. It has been further directed that the substantive terms of two years and ten years rigorous imprisonment shall run concurrently.

3. The appellant aggrieved by the conviction, disputed judgment together with the sentencing order has preferred the instant appeal to this Court.

Case of the prosecution

4. On the day of the incident, at 19.30 hours, PW01 has left her house to her aunt's residence, which was located about 100 yards away, to watch television.

5. On her way to her aunt's, the appellant who had been in the vicinity, had allegedly grabbed PW01, taken her under a large mango tree and has committed grave sexual abuse as described in the second charge.
6. Following the incident, PW01 has reached her aunt's residence and returned to her house after watching television for a short period of time.
7. Upon returning, PW01 has disclosed the incident involving the appellant to her sister, after which PW02, the mother of PW01, had come to know of the event.
8. Consequently, a police complaint has been lodged on the following day, an investigation commenced and PW01 has been referred for a medico-legal examination.
9. PW06, *Dr. D. D. Samaraweera*, the Judicial Medical Officer of the *General Hospital* in *Hambanthota*, has examined PW01 and prepared a medico-legal which has been subsequently produced as evidence marked *3702*.

Case of the appellant

10. The appellant has maintained that he was not involved in the said incident and that he has been falsely implicated due to a financial dispute between the parties.

Grounds of appeal

11. When the matter was taken up for argument, the learned Counsel for the appellant urged the following grounds of appeal:
 - i. Did the learned High Court Judge fail to appreciate whether the prosecution had failed to prove the identity of the accused beyond reasonable doubt?

- ii. Did the learned High Court Judge fail to appreciate whether the prosecution had failed to prove the exact nature of the act of grave sexual abuse committed on the accused beyond reasonable doubt?
- iii. Did the learned High Court Judge fail to appreciate whether the prosecution had failed to prove, who was the lawful guardian of the PW01 during the time of incident beyond reasonable doubt?
- iv. Is there a judgment in terms of section 283 of the Code of Criminal Procedure Act No. 15 of 1978?

12. First and foremost, identifying a perpetrator is crucial for delivering justice. When a crime is committed, it is vital to hold the responsible individual accountable for his actions. This not only serves to rectify the wrong that has been done to the aggrieved party, but also reinforces society's moral and legal norms.

13. A swift identification can lead to an arrest, prosecution and possible conviction, thereby restoring a sense of order. Furthermore, when a victim sees justice served, it can lead to emotional healing, fostering a sense of security and trust in the legal system.

14. To effectively identify a perpetrator, various methods are utilized. Law enforcement agencies employ a combination of traditional investigative techniques and advanced technological tools. Eyewitness accounts, forensic evidence and surveillance footage are integral in placing together the events of a crime. Eyewitness identification can provide critical leads. Forensic science including DNA analysis and fingerprint matching have revolutionized the way perpetrators are identified, enabling law enforcement to link suspects to crime scenes with remarkable accuracy. Additionally, advancements in technology such as facial recognition software and data analysis have enhanced the ability to identify suspects swiftly and efficiently.

15. In this case, the law enforcement authorities have continued to use the conventional approach of eyewitness identification to link the appellant to the offences charged. PW02, the mother of PW01 has testified as follows:

ප්‍ර: සාක්ෂිකාරිය ඔය ගමේ පදිංචි වෙලා ඉන්නෙ කොච්චර කල් ඉඳලද?

උ: දැන් අවුරුදු 25ක් 30ක් විතර වෙනව.

ප්‍ර: විත්තිකරුගෙ ගෙදර තියෙන්නෙ සාක්ෂිකරුගෙ නිවස අසලද?

උ: ඔව්. අපේ ගෙවල්වලට ගොඩක් ඇතින් ටිකක් ගෙදර තියෙන්නෙ.

ප්‍ර: ඇතින් කියන්නෙ කොච්චර විතර දුරින්ද?

උ: ගෙවල් හතරක් පහක් වගේ පයින්න ඕන.

ප්‍ර: සාක්ෂිකාරිය මේ විත්තිකරුගේ නිවෙසේ අය බිරිඳ සමග හිතවත්කම් තිබුණද?

උ: ඔව්.

ප්‍ර: කතා බහ කරනවද?

උ: ඔව්.

ප්‍ර: නිවසේ යනව එනවද?

උ: ඔව්.

[vide page 108 of the Appeal Brief]

16. That is the family of PW01 has lived in the particular village for approximately twenty-five to thirty years and the house where the appellant together with this family lived has been located about 5 houses away from PW01's family home.

17. Members of PW01's family have also visited the appellant's house regularly, which has made PW01's family familiar with the appellant and the members of that household.

18. The appellant who was familiar to PW01, has held her for approximately half an hour, at the time of the incident referred to in the charges. Despite PW01's attempts to free herself, she has been unsuccessful. A struggle, a verbal exchange has occurred in very close quarters, which has enabled PW01 to identify the appellant even under less than ideal lighting conditions.

19. Furthermore, PW01 has readily identified the appellant as the perpetrator of the offences committed against her.

ප්‍ර: ගෙදර ඇවිල්ලා සිද්ධිය සම්බන්ධයෙන් කාටහරි කිව්වද?

උ: අක්කටහරි අම්මටහරි තමයි මම කිව්වා.

ප්‍ර: හරියටම කියන්න ජයමානි මුලින්ම කිව්වෙ කාටද කියලා?

උ: අක්කට තමයි කිව්වේ.

[vide page 64 of the Appeal Brief]

ප්‍ර: සාක්ෂිකාරිය කිව්වා තමුන්ව ඇදගෙන යනවා නම් තමුන් ඒකට මොකක්ද කලේ, තමුන් කියන විදියට තමුන්ගෙ වයස අවුරුදු 15ක් 16ක් වෙනවා නේ?

උ: ඔව්.

ප්‍ර: අවුරුදු 15-16ක දරුවෙක් ඇදගෙන යන කොට මොකක්ද කලේ?

උ: මම මොකුත් කලේ නැහැ. එයයි තමයි උත්සාහ කලේ කරන්න මට.

ප්‍ර: තමුන් බලෙන් ඇදගෙන ගියා කිව්වා නේද?

උ: ඇදගෙන ගියා.

ප්‍ර: තමුන් බලෙන් ඇදගෙන ගියා කිව්වා නේ. බලෙන් ඇදගෙන යන කොට තමුන් බේරෙන්න මොකද්ද කලේ?

උ: මට මතක නැහැ. ටික ටිකයි මතක තියෙන්නේ.

ප්‍ර: තමුන් මතක නැහැ, මතක නැහැ කියලා කියන්නේ එවැනි සිද්ධියක් වෙච්ච නැති හින්දා කියල මම තමුන්ට යෝජනා කරනවා?

උ: සිද්ධියක් නෙවෙයි. මට සිද්ධිය වුනා. ඉස්කෝ 9 වසරෙදි සිද්ධිය වුනේ. නැත්නම් ඉතින් පොලිසි ගානේ යන්නෙ නැහැ නේ. පොලිසියේ ඇන්ටර් ආලා තියෙන්නේ. බොරු නං කියන්නෙ නැහැ. බොරු නං කියලා නැහැ මම.

ප්‍ර: දැන් තමුන් කිව්වා පැය 1/2ක් විතර වෙලාවක් ඔය සිද්ධිය වුනේ කියලා? තමුන් කිව්වා තමුන් බේරිලා යන්න උත්සාහ කලා කියලා?

උ: ඔව්.

ප්‍ර: තමුන්ට පැය 1/2ක් තිස්සේ බලෙන් රඳවා ගත්තා කියලද කියන්නේ?

උ: බලෙන් තමයි රඳව ගත්තේ.

ප්‍ර: පැය 1/2ක් තිස්සේ තමුන්ව බලෙන් රඳවා ගත්ත නම්, තමුන් බේරිලා යන්න උත්සාහ කලේ නැත්ද?

උ: බේරිලා යන්න උත්සාහ කලා. බේරිලා යන්න උත්සාහ කරලා තමයි මම කොහොමහරි බේරිලා ගියේ නැත්දලාගෙ ගෙදරට ආපහු.

ප්‍ර: පැය 1/2ක් තිස්සේ වූදි තමුන්ව බලෙන් රඳවා ගෙන හිටියේ?

උ: එයයි මම බය කලා. කැ ගහන්න එපයි කියලා තමයි මට කිව්වේ.

[vide pages 69 and 70 of the Appeal Brief]

ප්‍ර: ඊටපස්සේ ගිහිල්ලා දුව ආවද ආපහු?

උ: ඇවිල්ලා නංගිට කිව්වා මට මෙන්න මෙහෙම දෙයක් බාලේ අයිශා කෙරුවයි කියලා.

ප්‍ර: නංගිට කියලා කියන්නේ ඒත් තමුන්ගේ දුවෙකුටද කිව්වේ?

උ: ඔව්. මට කිව්වේ නෑ නංගිට කියලා තියෙන්නේ. නංගි තමයි මට කිව්වේ.

ප්‍ර: නංගිට මොකක්ද කියලා තිබුණේ?

උ: මේ වගේ දෙයක් බාල අයිශා මට කෙරුවයි කියලා කිව්වා. එයයි තමයි මට ඇවිල්ලා කිව්වේ අම්මේ මෙයයිට මෙහෙම දෙයක් කරලයි. බාලේ අයිශලයි ගෙදරට ගිහිල්ල කියන්නෙයි කියලා.

ප්‍ර: ඊටපස්සේ තමුන් ඕක දුවගෙන් ඇහුවද?

උ: ඇහුවම මට කිව්වා මෙහෙමෙයි කිඳලා.

ප්‍ර: එතකොට ඔය බාලේ අයිශා කියන පුද්ගලයා අද උසාවියේ ඉන්නවද?

උ: ඔව්.

ප්‍ර: කොහේද ඉන්නේ?

උ: අතන ඉන්නේ. (වූදිතව පෙන්වා සිටී.)

[vide pages 98 and 99 of the Appeal Brief]

20. Therefore, the contention that the prosecution has failed to prove the appellant's identification must be dismissed.

21. As regards to the act referred to in the second charge, PW01 has testified as follows:

ප්‍ර: ජයමානි කිවුවා නේද බාල මාමාගේ වූ කරන එක ජයමානිගේ පිටිපස්සෙන් දැමීම කියල?

උ: ඔව්.

ප්‍ර: දාලා විනාඩි 05, 10ක් මොකක් හරි කලා කිවුවා නේද මොනවද කලේ?

උ: දාන්න උත්සාහ කලා.

ප්‍ර: කොහොමද දැම්මේ?

උ: මට පහත් වෙන්නත් කියල කිවුවා ස්වාමිනි.

ප්‍ර: එහෙම කරන කොට කොහොමද ජයමානිට දැනුනේ?

උ: රිදුනෙ නම් නැහැ ස්වාමිණි, පස්ස පැත්තෙන් දාන කොට වැදුනා ස්වාමිනි.

ප්‍ර: කොහේද වැදුනේ?

උ: පිටිපස්සෙන් ඉස්සරහට වැදුනෙ ස්වාමිනි.

(සාක්ෂිකාරිය පිටුපසට අත තබා ඉදිරිපසටද අත තබා පෙන්වා පිටුපසින් ඉස්සරහට වැදුන බව අතින් පෙන්වා සිටියි)

ප්‍ර: සාක්ෂිකාරිය පෙන්වුවා නේද අත තියල තැනක්? එතැනට මොකක්ද කියන්නේ?

උ: එයාගේ වූ කරන එක තමයි මගේ එකට දැම්මේ.

ප්‍ර: අත තියල පෙන්වන්න?

උ: මෙතන

(සාක්ෂිකාරිය ඉදිරිපසින් අත තබා ලිංගික ප්‍රදේශය පෙන්වා සිටියි)

ප්‍ර: එහෙම කරන කොට වෙනත් දෙයක් බාල මාමා කලාද වෙනත් කොහේ හරි ඇල්ලුවද?

උ: මට ඒවා සේරම මතක නැහැ ස්වාමිනි, ටික ටිකයි මතක.

[vide pages 61 and 62 of the Appeal Brief]

22. That is, at that point, the appellant by placing his penis below the buttocks of PW01, also positioned it on the vagina of PW01 as described in the second charge.

23. The learned Counsel for the appellant has also contended that PW02, the mother of PW01, cannot in law, be considered the lawful guardian of

PW01 for the purposes of the first charge. The explanation in section 352 of the Penal Code Act No. 02 of 1883 (as amended) defines a 'lawful guardian' as follows:

The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

24. PW01, who was a minor at the time in question, has been under the care of her mother, PW02. As the mother, PW02 in turn has borne a moral responsibility for PW01's care.
25. Now concerning the mother's duty of care, this concept refers to a broad set of responsibilities for a parent, such as a mother, have towards her child. This duty typically encompasses ensuring the child's overall wellbeing across various dimensions. It includes providing for basic necessities such as adequate shelter, nutritious food, appropriate clothing and access to necessary medical attention. Beyond these physical provisions, the duty of care extends to offering emotional support, guidance and education as well as protecting the child from harm and neglect.
26. In these circumstances, failing to recognize PW02, the mother of PW01, as the person lawfully entrusted with the care of PW01 in this matter would lead to an absurd outcome. Consequently, the appellant's contention that the mother of PW01 cannot be considered the lawful guardian, must fail.
27. Furthermore, the appellant has contended that, by postponing the appellant's sentencing, the learned High Court Judge has failed to comply with provisions in section 283(2) of the Code of Criminal

Procedure Act No. 15 of 1979 (as amended). Therefore, the disputed judgment was bad in law.

28. The journal entry dated August 01, 2018, reveals that the learned High Court Judge has postponed the appellant's sentencing. This decision has been made because the appellant's counsel has applied for time to submit facts in mitigation of the sentence. Therefore, such postponement has not been done by the learned High Court Judge on his own and therefore, it has also not resulted in a failure of justice.

29. Section 436 of the Code of Criminal Procedure Act No. 15 of 1979 states as follows:

"Subject to the provisions hereinbefore contained any judgment passed by a court of competent jurisdiction shall not be reversed or altered on appeal or revision on account –

(a) of any error, omission, or irregularity in the complaint, summons, warrant, charge, judgment, summing up, or other proceedings before or during trial or in any inquiry or other proceedings under this Code; or

(b) of the want of any sanction required by section 135,

unless such error, omission, irregularity, or want has occasioned a failure of justice."

30. Due to the matters discussed above, I am not inclined to interfere with the conviction, disputed judgment and the sentencing order and proceed to affirm the same. I dismiss the appeal.

Appeal dismissed.

I make no order regarding costs.

31. The Registrar of this Court is directed to send this judgment to the *High Court in Hambanthota* for compliance.

Judge of the Court of Appeal

DR. SUMUDU PREMACHANDRA, J.

I agree.

Judge of the Court of Appeal