

**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**

Democratic Socialist Republic of
Sri Lanka

Complainant

CA HCC 250/24

High Court of Chilaw

Case No. HC/94/19

Vs.

Gurusinghe Devage Somasiri *alias*
Somasiri Mama

Accused

AND NOW BETWEEN

Gurusinghe Devage Somasiri *alias*
Somasiri Mama

Accused-Appellant

Vs.

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

Respondent

Before: **B. Sasi Mahendran, J.**
 Amal Ranaraja, J.

Counsel: Venuka Cooray, Kifsiya Banu and Hilma Munas with
 Rikasha Rasik instructed by Cooray & Cooray Associates for
 the Accused-Appellant

Anoopa De Silva, DSG, for the Respondent.

Argued on: 26.05.2026

Judgment on: 11.06.2026

Judgment

Amal Ranaraja, J.

1. The accused-appellant (hereinafter referred to as ‘appellant’) has been indicted in the High Court of *Chilaw* in case No. HC 94/19. The charge in the indictment is as follows;

01. That on or around the 18th of September, 2014, within the jurisdiction of this Court, in *Lihiriyagama*, you in order to gain some sexual gratification have used a certain part of your body, on the certain body part of one *Hewawitharanalage Dulakshi Sandareka*, a person under 16 years of age, by placing your male genitalia on her female genitalia; thereby you have committed an offence of “Grave Sexual Abuse” punishable under Section 365B (2)(b) of the Penal Code of Sri Lanka as amended by Penal Code (Amendment) Act No.22 of

1995, Penal Code (Amendment) Act No.29 of 1998 and Penal Code (Amendment) Act No.16 of 2006.

2. At the conclusion of the trial, the learned High Court Judge has convicted the appellant of the charge and sentenced him as follows;
 - i. Sentenced to 8 years rigorous imprisonment, also fined Rs. 50,000.00 with a term of 6 months simple imprisonment in default of the payment of the same.
 - ii. The appellant has also been directed to pay a sum of Rs. 300,000.00 as compensation to PW01, with a term of 12 months simple imprisonment in default of the payment of the same.

Further, it has been directed that the terms of imprisonment shall run consecutively.

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

Case of the Prosecution

4. On the day of the alleged incident, PW01 has been alone at her house, engaged in the task of sweeping the sitting room area. During this time, the appellant has reportedly gained entry into the house. The appellant has then escorted PW01 from the sitting room to a separate room within the premises. While in this room, the appellant has allegedly positioned one of his legs against the wall, subsequently placed PW01 onto that elevated leg and then proceeded to abuse PW01 as detailed in the charge.

Case of the Appellant

5. The appellant has maintained that PW01 pilfered provisions from his house. Following this, he has confronted PW01's elders regarding the alleged incident, which then has led to a verbal dispute. The appellant has further contended that he was subsequently, falsely implicated, resulting in a formal complaint being made to the police.
6. In the legal sense, 'probability' evaluates evidence by weighing it against specific thresholds of certainty. It relies on how logically, consistently and reliably the evidence supports competing versions of an event. In the case of the inherent probability of a narrative, a court assesses whether the disputed facts conform to reason and common human experience. If the narrative contradicts established physical laws or common sense, its probability drops significantly
7. In the case of *Wickramasuriya v Dedoleena and Others* [1996] 2 SLR 95, F.N.D. Jayasuriya J, has held,

"A judge, in applying the test of Probability and Improbability, relies heavily on his knowledge of men and matters and the patterns of conduct observed by human beings both ingenious as well as those who are less talented and fortunate."

8. In *The Law of Evidence Vol. II (Book 2) Page 1052*, E.R.S.R. Coomaraswamy refers to the observation of Justice Mackenna which reads as follows;

"When I have done my best to separate the truth from the false by these more or less objective tests, I say which story seems to me the more probable, the plaintiffs or the defendant's, and if I

cannot say which, I decide the case, as the law requires me to do in the defendant's favour"

9. Further, in the case of *Kamal Addaraarachchi v State [2000] 3 SLR 393*, Yapa J, has held,

In our view there is no other way to apply the test of probability and improbability except by considering the yardstick of accepted and expected behaviour of women in society. In other words, it is the application of the test of normal human conduct."

10. PW01 has testified as follows;

ප්‍ර:- ප්‍රධාන දොරෙන් ඇතුළු වෙච්ච ගමන් කොහෙද තියෙන්නේ දුලක්ෂි ගෙදර.
ගෙදර මොන කාමරේද හම්බ වෙන්නේ ප්‍රධාන දොරෙන් ඇතුළු වෙච්ච ගමන්ම?

උ:- වම් පැත්තේ කාමරේ.

ප්‍ර:- එතකොට සාලය කොහෙද තියෙන්නේ?

උ:- සාලයෙන් යන්න පුළුවන් කාමර දෙකකට.

ප්‍ර:- සාලයෙන් කාමර දෙකකට යන්න පුළුවන්?

උ:- එහෙමයි.

ප්‍ර:- එතකොට දුලක්ෂිව සෝමසිරි මාමා අරගෙන ගියයි කියන කාමරේ කොයි කාමරේද?

උ:- වම් පැත්තේ කාමරේ.

ප්‍ර:- ඒ කියන්නේ ප්‍රධාන දොරෙන් ඇතුළු වුනාම වම් පැත්තට තියෙන කාමරේ?

උ:- එහෙමයි

ප්‍ර:- ඒ ගිහිල්ලා දුලක්ෂි කිව්වා බිත්තිය ගාවදි සෝමසිරි මාමාගේ කකුලට දුලක්ෂිව ගන්නා කියලා?

උ:- එහෙමයි

ප්‍ර:- මොකක්ද ඒකෙන් දුලක්ෂි අදහස් කරේ පොඩ්ඩක් පැහැදිලි කරන්න?

උ:- එයාගේ කකුල බිත්තියට තියලා මාව එයාගේ කකුල උඩින් තියා ගන්නා.

ප්‍ර:- ඒ වෙලාවේ සෝමසිරි මාමා මොන විදියටද හිටියේ?

උ:- තේරුනේ නැහැ.

ප්‍ර:- මම ඇහුවේ දැන් ඔය දුලක්ෂි ඉස්සෙල්ලා කිව්වනේ කකුල උඩට ගන්නා කියලා දුලක්ෂිව?

උ:- එහෙමයි.

ප්‍ර:- ඒ වෙලාවේ සෝමසිරි මාමා හිටපු ඉරියව්ව මොකක්ද? ඒ කියන්නේ හිටගෙනද හිටියේ, වාඩිවෙලාද හිටියේ, මොන විදියකටද හිටියේ කොහොමද හිටියේ?

උ:- හිටගෙන තමයි හිටියේ

ප්‍ර:- හිටගෙන?

උ:- හිටගෙන හිටියේ. කකුල බිත්තියට තියලා තමයි කකුල උඩින් මාව තියාගෙන හිටියේ.

ප්‍ර:- එහෙම තියාගෙන සෝමසිරි මාමා මොකක්ද කළේ?

උ:- පිළිතුරක් නැත

ප්‍ර:- දැන් දුලක්ෂිව සෝමසිරි මාමාගේ කකුලට ගන්නයි කියනවානේ?

උ:- එහෙමයි

ප්‍ර:- ඊට පස්සේ සෝමසිරි මාමා මොනවහරි කළාද?

උ:- එහෙමයි

ප්‍ර:- මොකක්ද කළේ?

උ:- මම ඇදන් හිටපු යට ඇඳුම පාත් කරලා එයාගෙ වූ කරන එක මගේ වූ කරන එකට තියලා මොනවද කළා

ප්‍ර:- ඒ වෙලාවේ දුලක්ෂි ඇදගෙන හිටිය ඇඳුම් මොනවද කියලා මතකද?

උ:- සායකුයි, ටී ඡර්ටි එකකුයි

ප්‍ර:- යටට මොනවත් ඇඳගෙන හිටියද දුලක්ෂි?

උ: එහෙමයි

ප්‍ර:- මොනවද ඇඳගෙන හිටියේ?

උ:- ටී ඡර්ටි එකක්

ප්‍ර:- මම ඇහුවේ දුලක්ෂිගෙන් ටී ඡර්ටි එකටයි සායටයි යටින් ඇඳුමක් ඇඳගෙන හිටියද කියලා?

උ:- එහෙමයි

ප්‍ර:- මොකක්ද ඇඳගෙන හිටපු යට ඇඳුම?

උ:- කලිසමක්

ප්‍ර:- එතකොට දුලක්ෂි කලින් කියපු විදියට සෝමසිරි මාමා කලිසම පාත් කලා එහෙමද?

උ:- එහෙමයි

ප්‍ර:- ඒ කරලා මොකක්ද කළේ?

උ:- එයාගේ වූ කරන එක මගේ වූ කරන එකට නියලා මොකක්ද කලා

ප්‍ර:- ඒ වෙලාවේ සෝමසිරි මාමා මොනවද ඇඳගෙන හිටියේ කියලා මතකයිද?

උ:- සරමක්

ප්‍ර:- දුලක්ෂිගේ කලිසම පාත් කලයින් පස්සේ සෝමසිරි මාමා එයාගේ ඇඳුම්වලට මොකද කළේ කියලා මතකද?

උ: එයාගේ සරම උස් කර ගත්තා

ප්‍ර:- ඔය වෙලාවේ මේ සිදුවීම වෙන වෙලාවේ දුලක්ෂි මොන විදියටද හිටියේ? මොන ඉරියව්වෙන්ද හිටියේ?

උ:- පිළිතුරක් නැත

ප්‍ර:- ප්‍රශ්නය තේරුනේ නැද්ද?

උ:- නැහැ

ප්‍ර:- දැන් මම කලින් ඇහුවා සෝමසිරි මාමාගේ ඉරියව්ව ගැන. එතකොට ඒකට දුලක්ෂි උත්තරයක් දුන්නා. දැන් මම අහන්නේ දුලක්ෂි මොන විදියටද හිටියේ. මොන ඉරියව්වටද හිටියේ?

උ:- එයාගේ කකුල උඩ කකුල් දෙක දෙපැත්තට දෙක දාලා.

ප්‍ර:- ඒ වෙලාවේ දුලක්ෂිගේ මුණ මොන පැත්තට හැරිලද තිබුණේ?

උ:- සෝමසිරි මාමාගේ මුණ පැත්තට හැරිලා

ප්‍ර:- ඒ කියන්නෙ එතකොට සෝමසිරි මාමාගේ මුණ මොන පැත්තටද හැරිලා තිබුණේ?

උ:- ඉස්සරහ පැත්තට හැරිලා තිබුණේ

ප්‍ර:- එහෙම නම් දුලක්ෂිගේ මුණ මොන පැත්තටද හැරිලා තිබුණේ?

උ:- සෝමසිරි මාමාගේ පැත්තට

Vide Pages 76 – 79 of Case Brief

11. The description lacks specific detail regarding PW01’s exact placement on the leg whether it was below the knee, or on the thigh of the appellant.

12. Considering the male anatomy, it is not clear how the appellant could have reached/placed his penis on PW01’s female genitalia when she was positioned on one of the appellant’s legs, with her own legs placed on either side. Also, in such circumstances the female genitalia would have been positioned parallel to the appellant’s leg. There would likely be no sufficient space between the bodies for the appellant to achieve penile placement on the female genitalia. The close alignment in such position would inherently restrict the necessary angle and access.

Furthermore, PW01 has stated that the appellant lowered her underpants, and a whitish substance was later found on them. This raises a question about the practicality of lowering the underpants

effectively in such a compressed position, as there would typically not be enough space between the crotch area and the leg to manoeuvre them downwards.

13. PW06, *Dr. Wijewardene's* medical examination of PW01 has not found direct physical signs of penetration sex. However, the doctor has also stated that "labial penetration" could not be ruled out. The medico-legal report marked *ε702* also acknowledges that this type of act might not always leave visible medical evidence. This means that from a medical standpoint, the doctor has not said that the act definitely did not happen.
14. Though the doctor has not medically ruled out the possibility of the act, he has not considered whether, the act could have actually happened, in the specific way PW01 has described it. In other words, the doctor has not looked at the practical details of PW01's narrative, to see if it was even physically likely or possible for the appellant to have done what was alleged under those circumstances. The focus of the doctor's testimony has been on physical findings, not on the step-by-step likelihood of the event as described by PW01.
15. Given the preceding discussions, PW01's narrative lacks reliability due to its inherent improbability. The narrative is improbable or highly unlikely to be true based on common sense, logical expectations or established facts. The significant discrepancies observed directly undermine the fundamental aspects of her testimony. Consequently, the account is not cogent and should not be relied upon.
16. In those circumstances, I am inclined to interfere with the conviction and proceed to set aside the same together with the disputed judgement and the sentencing order.

17. I further proceed to acquit the appellant of the charge.

Appeal allowed.

18. I make no order regarding costs.

19. The Registrar of this Court is directed to send a copy of this Judgement to the High Court in *Chilaw* for compliance.

Judge of the Court of Appeal

B. Sasi Mahendran, J.

I agree

Judge of the Court of Appeal