

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

**In the matter of an application for an
appeal under and in terms of Article
131(1) of the Criminal Procedure Code
of the Democratic Socialist Republic
of Sri Lanka.**

Democratic Socialist Republic of Sri
Lanka

Complainant

**Court of Appeal Case No:
CA/HCC 272/2025**

Vs,

High Court of *Chilaw*
Case No. HC 166/19

Warnakulasooriya Ranjith Suranga
Fernando

Accused

And Now Between

Warnakulasooriya Ranjith Suranga
Fernando

Accused-Appellant

Vs,

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

Respondent

Before: **Amal Ranaraja, J.**

Dr. Sumudu Premachandra, J.

Counsel: P.B. Herath for the Accused-Appellant

Disna Warnakula, D.S.G. for the State.

Argued on: 22.07.2026

Judgment on: 09.09.2026

Judgment

Amal Ranaraja. J,

1. The accused-appellant (hereinafter referred to as the 'appellant'), has been indicted in the High Court of *Chilaw*, in Case No. HC/166/2019. The charges in the indictment are as follows;

01. On a day between the time period of 13th January, 2014 and 21st January, 2014, within the jurisdiction of this Court, in *Yogiyana*, you have conducted an incestuous relationship prohibited under Section 364A (1) of the Penal Code as amended by Penal Code (Amendment) Act No.22 of 1995 by committing the offence of rape on your daughter, namely, *Warnakulasuriya Chachini Nimalka Fernando*, who was a person under the age of 16. Thereby you have committed an

offence punishable under Section 364(3) of the Penal Code as amended by Penal Code (Amendment) Act No.22 of 1995.

02. On a day between the time period of 13th January 2014 and 21st January 2014, at a time other than that of the above first charge, within the jurisdiction of this Court, in *Yogiyana*, you have conducted an incestuous relationship prohibited under Section 364A (1) of the Penal Code as amended by Penal Code (Amendment) Act No.22 of 1995 by committing the offence of rape on your daughter, namely, *Warnakulasuriya Chachini Nimalka Fernando*, who was a person under the age of 16. Thereby you have committed an offence punishable under Section 364(3) of the Penal Code as amended by Penal Code (Amendment) Act No.22 of 1995.

2. At the conclusion of the trial, the appellant has been convicted of the two charges and sentenced as follows;

- i. 10 years rigorous imprisonment each, in respect of the first and second charges. Also has been imposed fines of Rs. 50,000.00 each with a term of 2 months simple imprisonment in default in respect of the first and the second charges.

The appellant has also been directed to pay a sum of Rs.300,000.00, as compensation to PW01 with a term of 24 months simple imprisonment in default.

3. It has been also directed that the substantial terms of imprisonment and the terms of imprisonment in default shall run concurrently.

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

Case of the Prosecution

5. At the time of the alleged incidents, PW01, who had been a nine year old has resided with her father, stepmother, and her stepbrother, who was two years old. On the specific dates when the incidents are alleged to have occurred, PW01's stepmother, who was pregnant with her second child, had been admitted to a hospital for delivery.
6. It is alleged that on two separate nights during this period, the appellant, identified as PW01's father, has entered the location where PW01 was sleeping. These encounters have reportedly culminated in penile-vaginal intercourse with PW01 on both occasions.
7. Subsequently, PW01 has disclosed these incidents to an acquaintance. This individual has then informed PW01's stepmother of the allegations. Following this a formal complaint has been lodged with the police leading to the commencement of an investigation.
8. PW01 has also undergone a medico-legal examination. The resulting medico-legal report has been produced as evidence marked as *ex02*.

Case of the Appellant

9. The appellant has maintained that his mother was present at his residence on the nights his wife was hospitalized. He has explicitly denied having engaged in any of the activities specified in the charges.
10. Furthermore, he has asserted that the prevailing circumstances during those specific nights, which included his mother's presence, made it impossible for him to have had the opportunity to indulge in such activities.

Evaluation of the Ground of Appeal

11. The appellant has contended that the testimony of PW01 exhibits material inconsistencies, specifically concerning the manner in which the alleged offences were committed, the threats issued, and the subsequent aftermath.
12. The house where PW01 lived at the particular time has consisted of a sitting area, with a bedroom partitioned from it and a kitchen. The bedroom has contained a bed, and the occupants have slept on this bed, as well as on mats in the sitting area. It is also apparent that PW01 has also slept in both the bedroom and the sitting area at various times.
13. Regarding the incidents described in the charges, PW01 has not been consistent about their location, she has at times stated that the first incident occurred in the bedroom and at other times in the sitting area.
14. The intricacies of human memory have long been a subject of study, particularly when it comes to the reliability of testimonies provided by individuals who have experienced traumatic events. In the aftermath of an incident, where a 9 year old victim testifies six years later, one may observe minor discrepancies in her recollection of events.
15. Memory operates as a complex cognitive process that is influenced by various factors overtime. It is crucial to understand how the intricacies of memory formation and retrieval can lead to minor discrepancies in testimonies. One primary reason for these inconsistencies is the natural deterioration of memory over time.
16. As years pass, details of specific events may fade, leading individuals to unconsciously fill in gaps with information acquired from external sources or their own imaginations. Thus, can result in testimonies that

contain elements that feel true to the individual, but may not accurately reflect the original event.

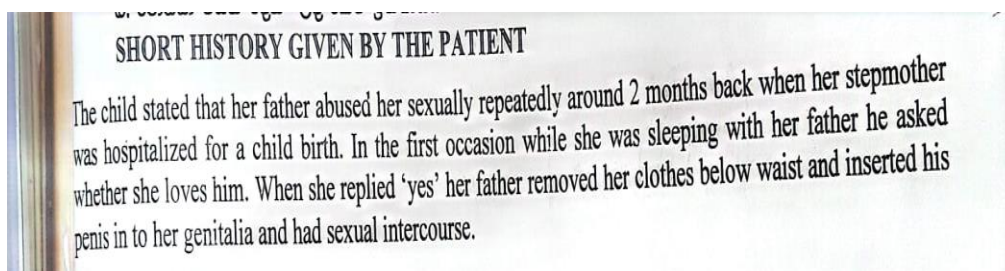
17. Additionally, the psychological impact of trauma plays a significant role in memory distortion. When individuals recount their experiences, their focus may shift to main themes or emotions, rather than precise details. Consequently, key aspects of the incident can be misremembered resulting in minor discrepancies when compared to other accounts or established facts.
18. Also, external factors such as the influence of family, or media can shape the way an individual remembers an incident. The victim, i.e. PW01, as a child at the time of the incidents, may have been subjected to discussions surrounding the incidents that could alter their recollection.
19. Despite the potential for discrepancies, it is vital to approach the victim's testimony with compassion and understanding. The minor discrepancies should not be seen as indicators of dishonesty or a lack of credibility. Instead, they highlight the complexities of human memory, particularly in the context of trauma.
20. In the case of *D. Tikiribanda Vs. The Attorney-General C.A. Case No. 64/2003* decided on 06-10-2009, Ranjith Silva J has held as follows,

"Mostly the victims of sexual harassment prefer not to talk about the harrowing experience and would like to forget about the incident as soon as possible (withdrawal symptom). The offenders should not be allowed to capitalize or take mean advantage of these natural inherent weaknesses of small children."

21. In the case of *AG v. Daradadagamage Chandraratne, CA/85/2013*, decided on 25.05.2018, S. Thuraiaraja PC, J held as follows,

“As we discussed above the child was 11 years 10 months and 11 days at the time of the incident, she gave evidence after 8 years and subjected to cross examination for a period more than 3 years. 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.”

22. Further, the discrepancies concerning the location within the house where the incidents described by PW01 occurred do not undermine the essence of PW01’s narrative. Given that the house contained two distinct areas used by its residents for sleeping, it is probable that the incidents mentioned by PW01 did occur at either of the locations, without other household members noticing them.
23. As stated above, PW01 has testified that the appellant engaged in penile-vaginal intercourse with her. In her brief history provided to Dr.D.K. Wijewardena, consultant Judicial Medical Officer, PW01 has stated as follows;



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24. In the book, *The Law of Evidence Volume II (Book 2)*, by E.R.S.R. Coomaraswamy, at page 627, it has been stated as follows;

*“...proof of a complaint in a sexual case or a previous act of identification is not corroborative of the evidence of the witness, even though **by showing consistency it can to some extent strengthen his credibility.**” (Emphasis added)*

25. In the case of *Gratien vs. The Attorney General* [2015] 1 SLR 99, H.N.J. Perera, J (as he was then) has held,

“The history given to the Judicial Medical Officer by the prosecutrix is consistent with the evidence given by her at the trial. He has stated that the observations made by him are compatible with the history given by the prosecutrix. The evidence of the prosecutrix in my view does satisfy the test of probability”

26. PW01 has informed *Dr.Wijewardena* that the appellant engaged in penile-vaginal intercourse with her on multiple occasions. This statement to *Dr.Wijewardena* is consistent with other accounts, indicating that PW01 has maintained a uniform narrative regarding the incidents involving the appellant.
27. Following the examination of the patient, i.e. PW01, *Dr.Wijewardena* has concluded that medical evidence has indicated repeated partial penetration of the hymen. This finding corroborates PW01’s narrative.
28. In such circumstances I am not inclined to interfere with the conviction, disputed judgement together with the sentencing order, and proceed to affirm the same.

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

Appeal dismissed

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

Judge of the Court of Appeal

Dr. Sumudu Premachandra, J.

I agree

Judge of the Court of Appeal