

**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

**Court of Appeal Case No:
CA/HCC/0310/2025**

High Court of Hambantota
Case No. HC/54/2020

Vs,

Witharana Gamage Nilanga Ranil Kumara
alias Heen Mama

Accused

And Now Between

Witharana Gamage Nilanga Ranil Kumara
alias Heen Mama

Accused-Appellant

Vs,

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

Respondent

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

Counsel: Shanaka Ranasinghe, PC with Anushika Ranasinghe and N. Mihidukulasuriya instructed by Sandamali Peiris for the Accused-Appellant

Kalana Kotelawala, SC for the State.

Argued on: 24.07.2026

Judgment on: 15.09.2026

Judgment

Amal Ranaraja. J,

1. The accused-appellant (hereinafter referred to as the “appellant”) has been indicted in the High Court of *Hambantota* in Case No.HC/54/2020. The charges in the indictment are as follows;

01. On or around the 04th of July 2015, within the jurisdiction of this Court, in *Suriyawewa*, you, have committed rape against one *Loku Wahumpurage Jeewanthi Kumarathunga*, a minor, under the age of 16; hence, committed an offence punishable under Section 364(2)(e) of the Penal Code of Sri Lanka as amended by Penal Code (Amendment) Act No. 22 of 1995.

02. On or around the 04th of July 2015, within the jurisdiction of this Court, in *Suriyawewa*, you, in order to gain some sexual gratification have used a certain part of your body, on one *Loku Wahumpurage Jeewanthi Kumarathunga*, a person under 16 years of age, i.e. by placing your male genitalia near her female genitalia; hence, committed “Grave Sexual Abuse”, an offence punishable under Section 365B (2)(b) of the Penal Code of Sri Lanka as amended by Penal Code (Amendment) Act No.22 of 1995 and No. 29 of 1998.

2. At the conclusion of the trial, the appellant has been convicted of the first and acquitted of the second charge and sentenced as follows;

- i. 11 years rigorous imprisonment and fined a sum of Rs. 10,000.00 with a term of 6 months rigorous imprisonment in default.

The appellant has also been directed to pay a sum of Rs.400,000.00 as compensation to PW01 with a term of 1 year simple imprisonment in default.

Case of the Prosecution

3. On the day of the incident, PW01 and her grandmother have decided to go to PW01’s uncle’s place to spend the night. While on their way, PW01 has realised that she had forgotten the clothes that were necessary to attend Sunday school the next day. PW01 has then returned home to fetch these clothes. At that time, the appellant has entered the house and had penile-vaginal intercourse with PW01 against her will.

Case of the Appellant

4. The appellant has contended that he went to the residence of PW01 at her invitation. He has denied having penile-vaginal intercourse with PW01 in that instance.

Grounds of Appeal

5. When the matter was taken up for argument, the learned counsel appearing on behalf of the appellant, urged the following grounds of appeal.
 - I. Has the learned High Court Judge failed to consider that the evidence of the prosecutrix had not been corroborated by independent evidence, and analyse as to whether it was safe to convict the accused on her sole testimony?
 - II. Could the conviction be sustained due to the failure of the learned High Court Judge to neither reject nor accept the dock statement and thereby conclude that the dock statement has not caused a reasonable doubt in the prosecution case?
 - III. Did the learned High Court Judge misdirect himself by arriving at the conclusion that the prosecutrix, who was 12 years of age at the time of the incident, will not engage in an act of self-satisfaction in the absence of any evidence or without having the opportunity to observe the demeanour of the prosecutrix whilst giving evidence?
 - IV. Has the learned High Court Judge failed to consider that the prosecution failed to prove the case beyond reasonable doubt?

- V. Did the learned High Court Judge misdirect himself by failing to consider that the prosecution did not place before Court, the evidence of PW03 and PW04, to whom the prosecutrix is alleged to have divulged the incident and whether the said failure caused reasonable doubt in the prosecution case?
6. The case under consideration involves a young girl (PW01), who was merely 12 years old at the time of the incident and had provided testimony six years later. The complexities of recalling events from a young age pose challenges, including potential for inconsistencies and exaggeration.
7. 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.
8. 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.
9. Furthermore, 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.

10. 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.
11. The discrepancies in PW01's testimony relate to several points. They are, the location in the house where the appellant accosted PW01, the reported duration of the incident, the specific room in which the incident occurred, and the manner in which PW01 resisted prior to the incident.
12. This Court deems such discrepancies not to be fundamental to PW01's testimony and consequently not material. Moreover, PW01 has maintained consistency regarding the core incident involving the appellant, specifically the penile-vaginal intercourse committed on PW01.
13. In the case of *R v B [2010] EWCA Crim 4* The Lord Chief Justice of England and Wales, has 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."

14. Further, in the case of *AG v. Daradadagamage Chandraratne*, CA/85/2013, decided on 25.05.2018, S. Thuraiaraja PC, J, has 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."

15. The Superior Courts in Sri Lanka have held that inter-labial penetration, meaning contact with, or slight entry between the labia, without full internal insertion, or the rapture of the hymen, is sufficient to satisfy the penetration required for the offence of rape. Complete insertion or tearing of the hymen is not required to prove that penetration occurred

16. In the case of *Perera Vs. The Attorney General* (2012) 1 SLR 69, *Ranjith Silva J*, has held as follows,

"In the book entitled The Essentials of Forensic Medicine and Toxicology, Dr. K.S. Narayana Reddy at page 308 states as follows:

"The slightest penetration of the penis within the vulva, such as the minimal passage of glands between the labia or with or without the emission of semen or rupture of hymen constitutes rape. There need not be a completed act of intercourse. Rape can be committed even when there is inability to produce a penile erection. Rape can occur without causing any injury and as such negative evidence does not exclude rape."

...

It is my view that one should analyse the evidence in this case in the light of the above-mentioned expert medical opinion as the opinion expressed above is the opinion of almost all the text writers on forensic medicine and it has gained such notorious that any quote can take judicial notice of the same."

17. PW01, prior to being examined by Dr. A.S. Senevirathne, Consultant Judicial Medical Officer has, in her history, stated as follows

මි. රෝගියා විසින් දෙන ලද කෙටි ඉතිහාසය
ஆ. நோயாளியின் கருக்க வரலாறு
B.SHORT HISTORY GIVEN BY PATIENT

Victim girl went to her grandfather's home around 5.30 pm on 04/07/2015. At that time nobody was in the house. Boy called Nilanga came and taken her into a room. He laid her over the bed. He raised her skirt. He removed her underpants. He took out his chuwa and put it over her..... chuwa. He did up and down movements. Her uncle came and tapped the door. Nilanga hide inside grandfather's room but caught by uncle. No previous history of similar incidences. No boy friend.

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i.e. That the appellant placed his penis on her vagina and made up and down movements thereafter, indicating that the appellant had penetrated her. Upon examining PW01, *Dr. Senevirathne* has prepared a medico-legal report. This report has been produced as evidence marked *පැ 01*. Following the examination, *Dr. Senevirathne* has opined as follows;

"There were features suggestive of intercourse possibly inter labial"

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18. The statement of PW01 to *Dr. Senevirathne*, as referred to above indicates that she has remained consistent with respect to the core incident involving the appellant. Furthermore, *Dr. Senevirathne's* opinion corroborates the same.

19. Further, the learned High Court Judge in pages 13 and 14 of his judgement has stated as follows;

මෙම නඩුවේ වූදින විත්ති කුඩුවේ සිට කරන ලද ප්‍රකාශය කෙරෙහි අවධානය යොමු කිරීමේදී ඔහු මෙම නඩුවේ විත්තික දැරිය සහ ඔහු අතර, ආදර සම්බන්ධතාවයක් පැවතුනා යන කරුණ සහ ඔහු මෙවැනි අපරාධයක් සිදු නොකළා යන කරුණ මුල සිටම ගෙන ඇති බව විත්තිය වෙනුවෙන් අසන ලද හරස් ප්‍රශ්න කෙරෙහි අවධානය යොමු කිරීමේදී පැහැදිලිව පෙනී යයි. එසේ වුවද මෙම නඩුවේ විත්තික දැරිය වූදිනට එරෙහිව අසත්‍ය සාක්ෂියක් ලබාදුන්නා යැයි ඔහු කරන ප්‍රකාශය සහ අසත්‍ය සාක්ෂියක් ලබාදීමට පදනම් වූ කාරණා වශයෙන් ඔහු විසින් කර ඇති ප්‍රකාශය මෙම අධිකරණයට කිසිදු අයුරකින් පිළිගත නොහැක. මෙම අපරාධය සිදු වන විට මෙම දැරිය වයස අවුරුදු 12 ක කුඩා දැරියකි. එවැනි දැරියක් හට මෙවැනි ලිංගික ක්‍රියාවක් සම්බන්ධයෙන් ඇයට එවැනි සිදුවීමක් ඉන් පෙර සිදු නොවූනේ නම් මෙවැනි පැහැදිලි ආකාරයේ සහ සවිස්තරව එකී ක්‍රියාව සම්බන්ධයෙන් සාක්ෂියක් ලබාදීමට කිසිදු හැකියාවක් නොමැත. මන්ද එවැනි කුඩා වයසක පසුවන

දැරියක් හට එවැනි ක්‍රියාවක් සම්බන්ධයෙන් පැහැදිලි කිරීමට ඇයට අත්දැකීමක් ලැබී නොමැති නම් හැකියාවක් හෝ දැනීමක් නොමැති බැවිනි. ඒ අනුව තමන්ගේ අසල්වාසී ඥාතියෙකු වන මෙම නඩුවේ වූදිනට එරෙහිව මෙවැනි ඉතා බරපතල චෝදනාවක් එල්ල කිරීමට තරම් වූ ප්‍රබල හේතුවක් මෙම අධිකරණය ඉදිරියේ අනාවරණය වී නොමැත. ඒ අනුව, ඥාතීන්ගේ බලපෑම් මත සාක්ෂිකාරිය අසත්‍ය පැමිණිල්ලක් පොලිසියට කරන ලදැයි යන කරුණ මෙම අධිකරණයට පිළිගත නොහැක. ඒ අනුව වූදින විසින් විත්ති කුඩුවේ සිට කරන ලද ප්‍රකාශය තුළින් පැමිණිල්ලේ නඩුවේ සාධාරණ සැකයක් මතු වී නොමැති බවට තීරණය කරමි.

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i.e. That the evidence presented by the appellant fails to raise a reasonable doubt regarding the prosecution's case. As a result, the learned High Court Judge has in effect, discredited the appellant's narrative and disregarded the same. Therefore, the argument asserting that the learned High Court Judge has not rejected the appellant's evidence cannot be upheld.

20. In the domain of law, the concept of probability plays a crucial role in determining the outcome of trials. The test of probability assesses how likely an event is to occur or a claim to be true, based on available evidence.

21. 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.

...

If the contradiction is not of that character the Court ought to accept the evidence of witnesses whose Evidence is otherwise cogent having regard to the Test of Probability and Improbability and having regard to his demeanour and deportment manifested by witnesses. Trivial contradictions which do not touch the core of a party's case should not be given much significance, specially when the probabilities factor echoes in favour of the version narrated by an applicant."

22. PW01 has testified that when she was initially accosted by the appellant, she screamed for help however, the appellant has then gagged her with his fist, which has prevented her from continuing to scream.

Given these circumstances, it is probable that PW01 would not have been screaming at the moment PW02, *Wewala Gamage Nuwan Lakmal*, an uncle of PW01, arrived at the scene of the incident.

“ප්‍ර: දැන් ඊට පස්සෙ මොකද්ද වුනේ?”

උ: ඊට පස්සේ ඒ පුරුෂය මගේ ස්ත්‍රී එකට දැමීමට පස්සේ මම කෑ ගැහුවා.

ඒත් මට යන්න දුන්නේ නැහැ. ඊට පස්සේ කාටවත් කියන්න එපා කිව්වා.

ප්‍ර: හීන් මාමා කොහොමද යන්න දුන්නේ නැත්තේ?

උ: මගේ කට වහගෙන හිටියා. කෑ ගහන්න එපා කියලා කිව්වා.

...

ප්‍ර: ඇයි ජීවත්තිට මුකුත් අහන්න වුනේ නැත්තේ?

උ: මගේ කට වැහුවා.

ප්‍ර: කාගේ කටද වැහුවේ?

උ: මගේ.

...

උ: ඊට පස්සේ මාව කාමරේට එක්කගෙන ගියා.

ප්‍ර: මොන කාමරයටද එක්කගෙන ගියේ?

උ: ඇතුළේ තියෙන මැද කාමරයට.

ප්‍ර: එහෙම ජීවත්ති එක්කරගෙන යනකොට ජීවත්ති මොනවද කළේ?

උ: මම ඇඬුවා මට යන්න බැ කියලා. මම කැගැහුවා කවුරුත් හිටියේ නැ.

Vide Pages 50-66 of the Case Brief during Evidence-in-Chief

“ප්‍ර: තමුන් ඒ වෙලාවේ කැ ගහන්න උත්සාහ කළේ නැන්ද?

උ: කැ ගැහුවා. කට වැහුවා.

...

ප්‍ර: තමුන් ඒ වෙලාවේ කැ ගැහුවා කිවුවා නේද?

උ: කැ ගැහුවා ඒත් කවුරුත් හිටියේ නැහැ.

...

ප්‍ර: තමුන්ගේ කට දිගටම අතින් වහගෙන හිටියාද?

උ: කට වහලා මාව ඇදගෙන ගියා.”

Vide Pages 85-88 of the Case Brief Cross Examination

23. The appellant has also contended although PW01 had an opportunity to divulge the incident involving the appellant to PW02 at the initial instance, i.e. when PW02 arrived at the location the incident occurred,

that she has not done so. Consequently, PW01 has not been spontaneous in disclosing the incident.

24. It appears that PW02, who is PW01's uncle, had slapped PW01 immediately after confronting her about the incident involving the appellant. After slapping PW01, PW02 has directed her to go to the house, in which her grandmother was at that time, immediately. All this has happened very quickly and PW01 has had no opportunity to explain the situation to PW02.

25. Given these circumstances, it is understandable why PW01 did not disclose the incident involving the appellant to PW02 at that moment. However, PW01 upon arriving at the house in which her grandmother was in, has divulged the incident involving the appellant to her relatives present therein.

26. Consequent to such disclosure, a police complaint has been lodged the very next day. In those circumstances, the contention that PW01 has not been spontaneous in disclosing the incident involving the appellant must fail.

27. 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."

28. 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.

29. 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.

30. 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."

31. Consequently, the learned High Court Judge was correct in considering the testimony of PW01 and acting upon it.

32. It appears that the first formal complaint about the incident involving the appellant has been lodged with the investigators on the very next day, as PW09 (Officer in Charge of the Suriyawewa Police Station, Inspector of Police *Jayasinghe*) has stated. This timing supports PW01's narrative that she reported the incident to her grandmother and an aunt at the earliest opportunity.

33. Given this sequence of events the prosecution's decision not to call PW03 and PW04 could be readily understood, as their testimony would have been cumulative, merely repeating facts already confirmed by PW01's prompt disclosure and the subsequent complaint.

34. 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.

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

Appeal dismissed.

36. The term of rigorous imprisonment shall commence from the date this judgement is conveyed to the appellant in the High Court of *Hambantota*.

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

Judge of the Court of Appeal

Dr. Sumudu Premachandra, J.

I agree

Judge of the Court of Appeal