

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

**In the matter of an Appeal in terms of
Section 331(1) of the Code of Criminal
Procedure Act No. 15 of 1979 and in
terms of High Court of Provinces
(Special Provisions) Section 19 of
1990.**

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

Complainant

Court of Appeal No.

CA/HCC 58/2025

H.C. Colombo

Case No. 3849/2022

Vs.

Abeywardhana Liyanarachchige
Prabhath Udayanga

Accused

AND NOW BETWEEN

Abeywardhana Liyanarachchige
Prabhath Udayanga

Accused-Appellant

Vs,

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

Respondent

Before: **Amal Ranaraja, J.**

Dr. Sumudu Premachandra, J.

Counsel: Palitha Fernando, PC with Wijaya Gunawardana and
Dilki Sandaruwini Senarathne for the Accused-
Appellant

Hiranjan Peiris, ASG for the Respondent

Argued on: 14.09.2026

Judgment on: 05.10.2026

Judgment

Amal Ranaraja, J.,

1. The accused-appellant (hereinafter referred to as the ‘appellant’) has been indicted in the High Court of Colombo in case no. HC 3849/22. The charges in the indictment are as follows;

01. On or around the 11th of October, 2012, within the jurisdiction of this Court, in *Aduruppu Weediya, Colombo*, you have committed rape against one *Fathima Munasa Mubharak*, a minor under the age of 16; thereby you have committed an offence punishable under Section 364 (2) read with Section 364(2)(e) of the Penal Code of Sri Lanka as amended by the Penal Code (Amendment) Act No. 22 of 1995.

02. On a date between the 12th of October, 2012 and 11th of February, 2013, within the jurisdiction of this Court, in *Aduruppu Weediya, Colombo*, you have committed rape against one *Fathima Munasa Mubharak*, a minor under the age of 16; thereby you have committed an offence punishable under Section 364 (2) read with Section 364(2)(e) of the Penal Code of Sri Lanka as amended by the Penal Code (Amendment) Act No. 22 of 1995.

03. At the same time and location as the above second charge, but, at a separate occasion than that of the above second charge, you have committed rape against one *Fathima Munasa Mubharak*, a minor under the age of 16; thereby you have committed an offence punishable under Section 364 (2) read with Section 364(2)(e) of the Penal Code of Sri Lanka as amended by the Penal Code (Amendment) Act No. 22 of 1995.

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. 15 years rigorous imprisonment each, in respect of the first, second and third charges. Also, has imposed a fine of Rs.10,000.00, with a term of 6 months rigorous imprisonment each in default, in respect of the first, second, and third charges.

Further, the appellant has also been directed to pay a sum of Rs.250,000.00 to PW01 as compensation with a term of 2 years rigorous imprisonment in default.

It has been directed that the substantive terms of rigorous imprisonment shall run concurrently.

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

Case of the Prosecution

4. PW01 has been born on March 15th, 1997. Her father has passed away when she was 11 years old and she has lived in a house in the *Aduruppu Weediya* area with her mother and sister at the time in issue.
5. Following an incident of cheating, PW01 and her mother have lodged a complaint at the Mount Lavinia Police Station. The appellant, a police officer attached to the station at that time, has recorded the complaint. During this interaction, an acquaintance has developed between PW01 and the appellant, which has later evolved into a romantic relationship. The appellant has visited PW01's residence on several occasions and engaged in sexual intercourse with her at times.
6. However, when the appellant's family had objected to a marriage with PW01, the appellant has allegedly distanced himself from her. Despite PW01's attempts to contact the appellant, she has been unsuccessful. As a result, PW01 has lodged a complaint against the appellant and an investigation commenced.
7. *Dr. K.S. Dahanayake, MD (Forensic Medicine)*, has examined PW01. The medico-legal report has been produced as evidence and marked *ඒ01*. The register of births bearing number 5009, and relevant to PW01's birth registration, has also been produced as evidence and marked *ඒ02*.

Case of the Appellant

8. Although the appellant has admitted to being in a romantic relationship with PW01, he has denied engaging in sexual intercourse with her.

Grounds of appeal

9. When the matter was taken up for argument the learned counsel appearing on behalf of the appellant raised the following grounds of appeal;
 - I. The learned Trial Judge has failed to evaluate the case for the prosecution and the evidence of the case adequately.
 - II. The contradictions of the witness for the prosecution and the contradictions between the two prosecution witnesses have not been considered adequately, causing much prejudice to the accused Appellant.
 - III. The subsequent conduct of the prosecutrix has been unreasonably held against the accused.
 - IV. The learned Trial Judge has misdirected himself on the medical evidence.
 - V. The strong evidence of motive for false implication has been totally disregarded, causing much prejudice to the accused-appellant.
 - VI. Due consideration has not been given to the dock statement of the accused, which is valid evidence.
 - VII. Due to one or more of the above reasons, the accused appellant has been denied a fair trial, a constitutionally

guaranteed right to every person charged with a criminal offence.

10. PW01 has testified as follows;

ප්‍ර: දැන් මහත්මිය කිව්වා යම්කිසි අවස්ථාවකදී මුල් වතාවට ආදුරුප්පුවිදිය නිවසේදී විත්තිකාරයන් එක්ක ලිංගික සම්බන්ධතා පැවත් වූවා කියලා. ඒ මොන අවුරුද්දේද මොන මාසයේද කියලා කියන්න පුළුවන්ද?

උ: එතකොටත් අපි හිටියේ ආදුරුප්පුවිදිය ගෙදරට ගිහිල්ලා කොහොමත් දෙසැම්බර් මාසයේ.

ප්‍ර: මොන අවුරුද්දේද දෙසැම්බර් මාසයේද?

උ: 2012. 2013 වෙනකොට එකයාර් එක නැවතීලා තිබුනේ. 2012

(ජ.කේ.එම්.පට්ටාච්චිගේ)
මහාධිකරණ විනිසුරු,
කොළඹ මහාධිකරණ අංක - 04,

ප්‍ර: ඔබ ඔය කියන මුල්ම වරට ඔහු ආවා. ඇවිල්ලා ඔබ කිව්වනේ ලිංගික සම්බන්ධතාවය තිබුනේ ඒ දවස ?

උ: 2012 දෙසැම්බර් මාසයේ. දෙසැම්බර් හරි නොවැම්බර් හරි. දෙසැම්බර්.

ප්‍ර: මුලින්ම දෙසැම්බර් ?

උ: දෙසැම්බර්.

ප්‍ර: ඔබට මතක විදියට ඔබ ඔය පලවෙනි දවස කියන්නේ ඒ සිදුවීම 2012 දෙසැම්බර් ?

උ: දෙසැම්බර් මාසේ.

ප්‍ර: නිශ්චිත දිනයක් මතක නැහැ නේද?

උ: ඔව්.

ප්‍ර: එතකොට ඔබ කිව්වනේ සම්බන්ධතාවයක් තිබුණා කියලා එදා. ඒක අධිකරණයට දැන ගන්න අවශ්‍යයි සටහන් කිරීමේ පහසුව සඳහා

පමණක්. මොකක්ද ඇත්තටම ඔබ ඔය සම්බන්ධයක් තිබුණා කියන එකෙන් අදහස් කලේ කියන එක?

උ : සාමාන්‍යයෙන් හස්බන්ඩ් ඇන්ඩ් වයිෆ් අතර තියෙන ලිංගික ජීවිතයක් තියෙන්නේ. ඒ ජීවිතය.

ප්‍ර : හස්බන්ඩ් ඇන්ඩ් වයිෆ් අතර කියන එකෙන් ඔබ අදහස් කරන දේ ඔබට කෙටියෙන් කියන්න පුළුවන්ද කොහොමද ඒක සිද්ධ වුනේ කියලා?

උ : ගෙදර කවුරුත් හිටියේ නැහැ.

Vide Pages 63-65 of the Brief

ප්‍ර : එතකොට ශරීරයේ අවයවවලට කියන කාන්තා පාර්ශවය සහ පිරිමි පාර්ශවයේ නම් දන්නවා ඇතිනේ බොහෝ විට. තමන් දන්න විදියට

කියන්න දැන් තමා ලිංගිකව හැසිරුණා කියන එකෙන් අදහස් කරන්නේ මොකක්ද?

උ : ඔහුගේ පුරුෂ ලිංගය මගේ පහල තියෙන යෝනි මාර්ගයට ඇතුළත් කලා.


(ඒ.කේ.එම්.පටබැදිගේ)
මහාධිකරණ විනිසුරු,
කොළඹ මහාධිකරණ අංක - 04,

ප්‍ර : ඒ ක්‍රියාව සිද්ධ වුනේ කුමන ස්ථානයේදී ද?

උ : ආදරුප්පුවිදියේ මගේ නිවස.

Vide Pages 65 & 66 of the Brief

ප්‍ර : දැන් මේ සිද්ධියේදී විත්තිකාරයා කිව්වනේ ආදරුප්පුවිදිය නිවසේදී යම්කිසි අවස්ථාවක සිද්ධ වුනා කියලා. ඊටපස්සේ විත්තිකාරයාත් එක්ක ඒ ආකාරයේ සම්බන්ධතා තිබුනද ?

උ : තිබුනා.

ප්‍ර : අවස්ථා කීයකදී පමණද එකපාරක්ද, දෙපාරක්ද ගොඩක් සැරවල්වල එහෙම ඉඳලා තියෙනවද ?

උ : ඉඳලා තියෙනවා. 10 පාරක් විතර වගේ.

ප්‍ර : මහත්මිය ඔබ කිව්වනේ 10 පාරක් විතර ඒ කියන්නේ ඔබ අර කිසි ආකාරයේ ලිංගික සන්සර්ගයේ යෙදීමද ?

උ : එහෙමයි.

ප්‍ර : දැන් 1 වන අවස්ථාවේ ඉඳලා කොච්චර විතර කාලයක් මාස ගත්තොත් එහෙම සමස්ථ කාලපරිච්ඡේදය කොච්චරද?

උ : මාසයක් එකහමාරක් විතර.

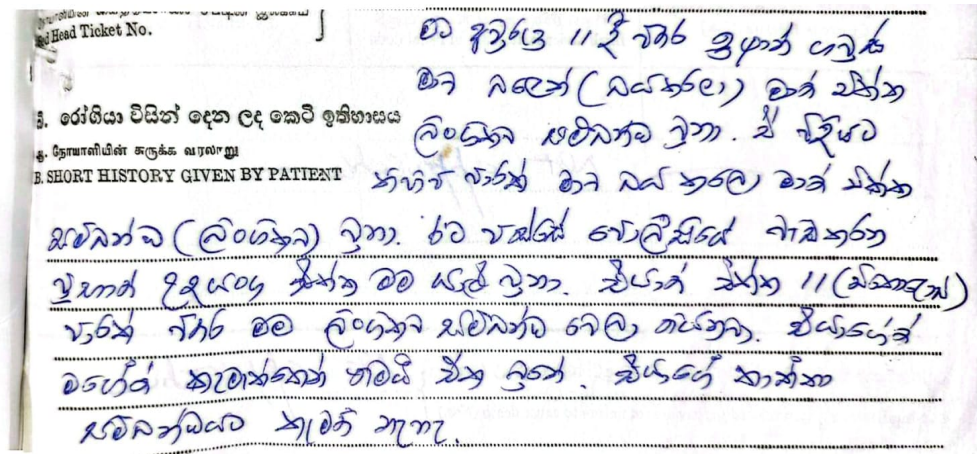
ප්‍ර : 1 වන සිද්ධියේ සිට ඔබ ඔය කියන ලිංගික හැසිරීම සිදුවුනේ මාස ?

උ : එකහමාරක් දෙකක් අතර කාලයේ.

Vide Pages 69 & 70 of the Brief

It is stated that, beginning December 2012, the appellant has visited PW01 at her residence situated in *Aduruppu Weediya* area and engaged in sexual intercourse with her on multiple occasions. PW01 has further stated that approximately ten such encounters have occurred within one and half months. Further, born on March 15th, 1997, PW01 has been a 15 year old girl at that time.

11. Following a complaint lodged against the appellant, an investigation has commenced. During this investigation, PW01 has been presented to *Dr. K.S. Dahanayake, MD (Forensic Medicine)*, for an examination. Prior to conducting the examination, *Dr. Dahanayake* has recorded the patient's history. PW01 has then made the following statement;



Vide Page 355 of the Brief

12. It is stated that when PW01 was eleven years old, a person identified as *Ghouse* engaged in sexual intercourse with PW01 under threat. Subsequently, PW01 reportedly began a romantic relationship with the appellant. It is further stated that PW01 and the appellant engaged in consensual sexual intercourse on approximately eleven occasions. It being so, PW01 has been consistent and trustworthy as regards to her narrative involving the appellant.
13. First and foremost, consistency in a prosecutrix's statement serves as a fundamental indicator of truthfulness. In cases of sexual abuse, it is not uncommon for victims to initially confront the trauma through varied accounts as they grapple with the emotional and psychological implications of the experience.
14. However, when a prosecutrix's account remains consistent across different instances, whether in police statements, Court testimonies or other settings, such consistency reinforces the validity of her claims. Courts must recognise that, in situations laden with psychological complexity, mere existence of a consistent narrative can be a powerful testament in the absence of additional corroborative evidence.
15. Moreover, trustworthiness is a critical factor that influences the evaluation of a prosecutrix's testimony. A trustworthy prosecutrix is

forthcoming about her experiences and maintains a clear recollection of events. This factor becomes particularly relevant in sexual abuse cases, where societal scepticism can often cloud judgement regarding victims. The governing principle should be that, in assessing credibility of a prosecutrix, the Court should prioritise her assertiveness, coherence, and the emotional sincerity with which she expresses her ordeal.

16. In the case of *Premasiri vs. Attorney General* [2006] 3 Sri. LR 106, Eric Basnayake J, has held,

“There is no rule that there must be corroboration in every case, before a conviction can be allowed to stand. It is well settled law that a conviction for the offence of rape can be based on the sole testimony of the prosecutrix, if it is reliable, unimpeachable and there is no infirmity;”

17. Further, in the case of *Sunil and Another vs. Attorney General* [1986] 1 Sri. LR 230, Dheeraratne J, has held,

“I think it is perfectly legitimate for a judge, in a case of this nature, to direct a jury that if they find the evidence of the complainant so convincing, they could act on that evidence alone, even in the absence of her evidence being corroborated.”

18. Regarding the medico-legal report *Dr. Dahanyake*, has described the nature, size, shape, disposition and the sight of injuries as follows;

අංකය No.	වෛද්‍ය විමර්ශන, ප්‍රමාණය, පිහිටීම, දිශාව සහ ස්ථානය Nature, size, shape, disposition and site of injury
-	Weight:- 47 kg Height: 05 feet & 3.5 inches
-	Eye brows and lips were coloured
-	Clad in red blouse, skirt and black shoes
-	Genital examination:-
-	Age appropriately developed genitalia
-	Fimbriated hymen with dilated hymenal orifice with laxity. Posterior vaginal wall could be visualized through the hymenal orifice
-	Arms - normal
-	No bodily injuries.
-	Sexually Transmitted Diseases referral:- no evidence of sexually transmitted diseases.

Vide Page 11 of the Brief

19. He has then provided his opinion on whether the injuries are consistent with the history of the patient stating as follows;

වෛද්‍ය විමර්ශන Injuries caused by:-	Comments:-
(අ) මඩුව ආදාන - අනි (a) Blunt Weapon - Nos.	Compatible with
කැපීම - අනි (b) Cut - Nos.	
(ආ) තියුණු කැපීමක ආදාන (a) Sharp cutting instrument	Repeated hymenal penetration
දැවීම - අනි (b) Stab - Nos.	
(ඇ) ගිනි අවි - අනි (a) Firearms - Nos.	Not applicable
(ඈ) පිළිස්සීම - අනි (a) Burns - Nos.	
(ඉ) බැදීම - අනි (a) Bite marks - Nos.	

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20. This opinion corroborates PW01's testimony regarding her multiple incidents of sexual intercourse with a person named Ghouse and with the appellant. Furthermore, it reinforces the conclusion that PW01 was a truthful witness. PW01 has also categorically rejected the suggestions presented to her, namely that the appellant had not engaged in sexual intercourse with her and that he had been falsely implicated by PW01.

21. The appellant in his dock statement has asserted that he did not engage in sexual intercourse with PW01. He has further claimed that PW01 has had a romantic relationship with another police officer, whose name has been mentioned, and that PW01 has previously been a victim of gang rape while working at a club. These assertions have been aimed to distance him from any incriminating evidence of sexual intercourse with PW01.

22. However, despite the appellant suggesting these instances of third party involvement, these specific allegations have not been put to PW01 during her cross examination. These omissions suggest that these claims had been an afterthought on the appellant's part, rather than points raised at the earliest opportunity. The learned High Court Judge has considered these material omissions before deciding not to act on the appellant's statement.

23. In the case of *Pilippu Mandige Nalaka Krishantha Kumara Thisera v A.G* (CA87/2005) decided on 17.05.2007, Sisira de Abrew J, has held

"...I hold that whenever evidence given by a witness on a material point is not challenged in cross examination, it has to be concluded that such evidence is not disputed and is accepted by the opponent subject of course to the qualification that the witness is a reliable witness."

24. Further, in the case of *Sivathasan vs. Attorney General* [2021] 2 SLR 290, Kodagoda, J, has stated,

"It would therefore be seen that suggestions to prosecution witnesses are very important, and inter-alia serve as an opportunity for the defence to place before prosecution witnesses the position of the defence. It enables the Court to take early cognizance of the position of

the defence and also enable prosecution witnesses to respond to the defence position. That the defence placed before Court their position at the first available opportunity also enables it to satisfy the 'test of spontaneity'. Therefore, it is of importance that the defence uses this opportunity to specifically and in unambiguous terms indicate both to the Court and to prosecution witnesses, the position of the defence. Should the defence not make use of this opportunity and take up a particular position for the first time during the case for the defence, that position will suffer from the weakness of 'belatedness'."

25. In those circumstances I am not inclined to interfere with the conviction, disputed judgement together with the sentencing order and proceed to affirm the same. The substantive terms of rigorous imprisonment shall run concurrently and begin from the date of conviction, *i.e.* September 3rd, 2024.

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

Appeal dismissed.

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

Judge of the Court of Appeal

Dr. Sumudu Premachandra, J.

I agree

Judge of the Court of Appeal