

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

In the matter of an application for Revision
Jurisdiction in terms of Article 138 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

**The Democratic Socialist Republic of
Sri Lanka.**

**CA. Revision Application No:
CA/CPA/04/2026**

Vs. (COMPLAINANT)

Wasala Muni Devage Gunawardhna

**Matale High Court
Case No: MT/HC/128/2020**

Alias

**Wasala Muni Dewala Gedara
Gunawardhna**

No.31/21, Dobagasdeniya,
Matale.

(ACCUSED)

(Currently Imprisoned in Prison)

AND NOW BETWEEN

**Wasala Muni Dewage Ajith Jayalal
Gunawardhna**

No.31/21, Dobagasdeniya,
Matale.

(PETITIONER)

Vs

01. Wasala Muni Devage Gunawardhna

Alias

**Wasala Muni Dewala Gedara
Gunawardhna,**

No.31/21, Dobagasdeniya,
Matale.

(Accused – 1st Respondent)

(Currently Imprisoned In Prison)

02. Hon. Attorney General,

Attorney General's Department,
Colombo 12.

(Complainant 2nd Respondent)

Before: **A. Ranaraja J.**

&

Dr. Sumudu Premachandra J.

Counsel: Mohan Weerakoon, PC with Sandamali Peiris for the
Petitioner.

Shezan Mahboob, SC for the State.

Written Submissions: By the Petitioner on behalf of the Accused 1st
Respondent filed on 19/06/2026.

By the Complainant 2nd Respondent filed on
23/06/2026.

Inquired On: 05/06/2026

Order On : 17/07/2026.

Dr. Sumudu Premachandra J.

1] The Accused was indicted and subsequently convicted on three counts of Grave Sexual Abuse under Section 365 B (2) B of the Penal Code for committing intercrural sex against a minor victim. For each count, the Learned High Court Judge sentenced the Accused to 8 years of rigorous imprisonment and a fine of Rs. 5,000/- (with a 6-month default simple imprisonment term), with all 3 prison sentences ordered to run consecutively, totaling 24 years of rigorous imprisonment. In addition Rs. 500,000/- compensation to paid to the victim child in default, 24 months imprisonment has been imposed.

2] The prosecution's case relies primarily on the testimony of the Victim (P.W.1), who was 9 years old at the time of the incidents in late 2019 and 12 years old when giving evidence. The Victim testified clearly and consistently that the Accused, a neighbor approximately 70 years old, lured him into a room on three separate occasions (on or before 30/09/2019, 02/10/2019, and 03/10/2019) and subjected him to sexual abuse. This testimony was supported by the Victim's father (P.W.2), who witnessed his son scratching his legs, elicited the disclosure, and reported the matter to the police on 06/10/2019. Additionally, the Judicial Medical Officer (P.W.9) confirmed that although no physical injuries were found, the clinical history provided by the child matched the allegations, and intercrural sex could not be excluded as a medical possibility.

3] This revision application is filed on behalf of the Accused-1st Respondent by his biological son (the Petitioner) under Article 138(1) of the Constitution and Section 04(2) of the ICCPR Act, seeking a Revision of a criminal conviction. Under Case No.MT/HC/128/2020 at the High Court of Matale, the father (the Accused) was convicted for three counts on 21/11/2025, for grave sexual abuse under Section 365 (B) (2) B of the Penal Code.

4] The State raises preliminary objections regarding the maintainability of the application, arguing that the Petitioner has failed to establish any exceptional circumstances that would warrant invoking the Court's Revisionary Jurisdiction. Furthermore, they highlight an unexplained delay in filing the

Petition, noting that certified copies of the High Court judgement were received on 11/12/2025.

5] In considering the preliminary objection first, it is seen that the judgement was delivered and sentence was passed on 21/11/2025. The Petitioner asserts that the 2nd Respondent his father was unable to exercise the right of appeal due to the Cyclone Ditwah. This revision was filed on 14/01/2026, nearly one and half months after the appealable period lapsed.

6] It is to be considered that the Cyclone Ditwah made a landfall along Sri Lanka's eastern coast on 28/11/2025, bringing several days of continuous heavy rainfall, severe flooding, and landslides. The devastating storm impacted all 25 districts of the country. It has triggered the most extensive flooding and landslide damage affecting million people across all 25 districts of the country. According to the Disaster Management Centre, the cyclone had, as of 29/12/2025, resulted in 646 fatalities and left 173 people missing.¹

7] The Petitioner relies on **Attorney General V. Ediriweera** [S.C. Appeal No. 100/2005] (2006 B.L.R. 12), for Jurisdictional hurdle of revision applications and there His Lordship Balapatabendi, J. held whether the medical condition of the Accused-Appellant, the delay in the appellate process, and other humanitarian factors constitute "exceptional circumstances" sufficient to warrant the grant of bail pending appeal.

8] Considering the above circumstances, I hold that the filing of an appeal was prevented by the Cyclone Ditwah, due to uncontrollable circumstances, and thus, this revision should not be dismissed on the preliminary objections.

9] The learned President Counsel pointed out the following grounds;

- a) Definite contradiction between the victim (P.W.1 and father of victim (P.W.2).

¹**Cyclone Ditwah - Situation Report (23 January 2026)** -<https://srilanka.un.org/en/308868-cyclone-ditwah-situation-report-23-january-20260> – accessed on 10/07/2026)

- b) Failure on the part of the learned trial judge to accept uncorroborated P.W.1's evidence.
- c) Failure on the part of learned trial judge to apply test of probability on the prosecution version.
- d) On sentencing, the age of the Accused has not been considered.
- e) medical condition of the Accused has not been considered on sentencing.
- f) Punishment is excessive.

10] The main contention of the Petitioner was that the victim's evidence was unreliable. The incident elicited when the boy(victim) got caught to his father while playing with his private parts. But, the victim in his evidence said, that when he was scratching the legs, the father asked who trained to do since, he was thinking he was masturbating. Further, the victim has told the police that Gunaratne Seeya (ගුණරත්න සීයා) did this, but while he was giving evidence, the victim said Gunaratne Mama (ගුණරත්න මාමා) did this to him. The learned President Counsel further contended that the Police had not found the piece of clothes where seminal fluid was wiped out after the act. The learned President Counsel contended that the evidence of victim is not credible, thus, the conviction is bad in law.

11] I now consider the credibility of the victim and prosecution. The victim testified that he was 10 years of age when the offence happened. Thus, the victim can be treated as a child witness.

12] The competency and evaluation of child witnesses have been considered in may apex court cases. In **Welayudan Subramaniam alias kannaiya vs Attorney General**, CA 344/2017, decided on 30/04/2019, K. PRIYANTRA FERNANDO, J., held that;

"It is open to the Court to convict on the evidence of a single child witness, whatever her age. (R. V. B. [201 OJ EWCA Crim 4; [2011J Crim. L.R. 233)."

13] Further in relation to evaluation of evidence, in **Oliver Dayananda Kalansuriya V. Republic of Sri Lanka** CA 28/2009 (13/02/2013), in line with Indian Context, a division of this court held that wholistic approach should be done;

“The Indian Supreme Court in State of Uttar Pradesh V. MK Anthony [1984J SCJ 236/ [1985J CRL. LJ. 493 at 498/499 held; "While appreciating the evidence of a witness, the approach must be whether the evidence of a witness read as a whole appears to have ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to tender it unworthy of belief Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here and there from evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate Court which had not this benefit will have to attach due weight to the appreciation of evidence by the Trial Court and unless there are reasons weightly and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. "

14] Indian Supreme Court in relation to sexual assault in the case of **Bhoginbhai Hirjibhai V. State of Gujarat** [1983J AIR SC 753 held that;

"In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to the injury."

15] In **Thambarasa Sabaratnam V. A.G.** CA 12712012, after discussing a series of cases court held;

"Therefore, it is clear that an accused person facing a charge of sexual offence can be convicted on the uncorroborated evidence of the victim when her evidence is of such character as to convince the Court that she is speaking the truth."

16] With regard to the 12-year-old child witness, in **UPALI SARATHCHANDRA & OTHERS VS REPUBLIC OF SRI LANKA**, (2005) 2 S.L. R. 267,

*"The Court had carefully analyzed and evaluated and weighed the evidence of the 12 year old eye witness and was convinced that he had given cogent and truthful testimony in court, also by observing the demeanour and deportment of this witness. No particular number of witnesses shall in any case be required for proof-of any fact. **Evidence must not be counted but weighed.**"* [Emphasis is added]

17] On careful perusal of the evidence placed before the Trial Court, it is clear that the victim has elaborated the four intercrural sexual acts clearly within the short period of time. The evidence of the victim can be considered as credible and the contradictions and omissions are trivial do not go to the root of the case. Moreover, evidence must be considered as a holistic approach rather than looking at pieces in isolation. The story of the prosecution must reflect the complete reality of a situation at the final conclusion. In the instant case, the story of the victim is probable and can be accepted as the truth.

18] The Defence further contended the date of offence has not been clearly given by the victim and it is vague. The pages 88 and 89 of the case brief, with regard to the date of the offence, the child victim said “දින හරියටම මතක නැහැ”. However, he said it was 5 days before the first complain was lodged “දවස් පහකට කලින් තමයි පලවෙනි සිද්ධිය වුනේ”. The dates in the indictment show “දින හෝ ඊට ආසන්න දිනකදී”. That is “on or about”. Would that vitiate the conviction?

19] It should be noted that most of the charge sheets, the date of the offence has been mentioned stating the date along with on or about (දින හෝ ඊට ආසන්න දිනකදී). In this regard, addressing the Petitioner's claim that the dates of the offenses were not properly established, the State emphasizes that the indictment correctly framed the charges "on or about" the specified dates, which aligned with the timeline verified by both the Victim and the medical reports. It is seen, when the Victim was giving evidence, considering the first complain, the State has proved the particular dates relating to the offences.

20] In **R Vs. Dossi** 12 Cr. App. R. 158, it has been held as follows:

*“That a date specified in an indictment is not a material matter unless it is an essential part of the alleged offence; **the defendant maybe convicted although the Jury find that the offence was committed on a date other than that specified in the indictment.** Amendment of the indictment is unnecessary, although it will be a good practice to do so (provided there is no prejudice) where it is clear on the evidence that if the offence was committed at all, it was committed on the day other than that specified.”* [Emphasis is added]

21] When the indictment/charge sheet shows the date of the offence stating the date along with on or about (දින හෝ ඊට ආසන්න දිනකදී) or from (date) to (date), period of “in between”, it is sufficient to prove that the offence had been committed on or about or in between the said dates. In our law, charge sheets or indictments stating an offense occurred "on or about" a specific date are

legally valid and can be sustained in court. This phrasing is used in indictments/ charge sheets when the exact date is unknown or immaterial to the core elements of the crime, unless the Accused put Defence of Alibi, introduced by Section 126A of the Code of Criminal Procedure Act No. 15 of 1979 (as amended by Act No. 14 of 2005), where it applies not only to High Court trials but also to proceedings before Magistrate's Courts, now govern by statutory law (Vide SC APPEAL NO: SC/APPEAL/61/2023 [Decided on 09/10/2024]). The date of offence is vital to in plea of Alibi cases enabling the Accused to prove that particular date of time, he was elsewhere, otherwise the failure to prove the exact date and time cannot be taken as a material or fatal discrepancy of a charge. In this case, there is no such defence.

22] The accused had given evidence on oath. He said that he had erectile dysfunction and his claim of a pre-existing enmity , " loud sound music dispute" with the Victim's father. It is seen that apart from mere assertion on oath, the Accused failed to produce any medical evidence to substantiate his medical condition and never put forward the alleged animosity to the key prosecution witnesses during the trial, making it a clear afterthought.

23] On considering whether, the prosecution had proved charges beyond reasonable doubt, Lord Denning in **Miller v. Minister of Pensions** [1947] 2 All ER 372, he stated at page 373 what is proof of beyond reasonable doubt:

“Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence “of course it is possible, but not in the least probable,” the case is proved beyond reasonable doubt, but nothing short of that will suffice.”

24] It must be borne that as held in **Karunarathna v. OIC, Police Station, Rambukkana** (SC/APPEAL/61/2023, SC Minutes of 09/10/2024 at page 20):

“The prosecution must prove the accused’s guilt beyond a “reasonable doubt”, not beyond “any doubt”. A reasonable doubt refers to a doubt based on logical reasoning through proper evaluation of evidence. This requires the trier of fact to weigh all evidence supporting guilt against evidence suggesting innocence, considering the strengths and weaknesses on both sides. If, after this evaluation, the evidence overwhelmingly favors the prosecution and eliminates any reasonable doubt about the guilt of the accused, the case can be deemed proven beyond a reasonable doubt. This standard applies to the totality of the evidence as a whole, not to each individual piece of evidence the prosecution relies on to prove the guilt of the accused”

25] His Lordship Justice Kodagoda in **Sivathasan v. Attorney General** [2021] 2 Sri LR 290 at 304-305 emphasized that a reasonable doubt is a real, substantial doubt arising from objective consideration of the facts, not an imaginary or flimsy one: A reasonable doubt is a real or actual and a substantial doubt, as opposed to an imaginary or flimsy doubt that may arise in the mind of the decider of facts (judge or the jury, as the case may be), following an objective consideration of all the attendant facts and circumstances.

26] In the case in hand, this Court sees that the Learned High Court Judge's finding of guilt was based on a sound, well-reasoned assessment of the credible, and justify the conviction. The prosecution has proved the charge beyond reasonable doubt. Thus, the revision for conviction is dismissed.

27] The learned President Counsel, apart from the grounds of revision, contended that the sentence is excessive and consecutive sentences have been imposed. When applying consecutive sentences, this Court is of the view that the Accused's personal context and attendant circumstances must be considered. This Accused is a first offender. At the time of the alleged offense, the Accused

was an elderly 77-year-old married man, a father of five children, and undergoing medical treatment for severe heart disease including recovering from a heart attack and heart surgery. Given his advanced age and multiple illnesses, the 24-year consecutive sentence ensures he will die in the prison. However, the nature of offence attracts this kind of sentence, in contrast, he is to be considered as a first offender and he should be given leniency in sentencing. (Vide **Kumara V. Attorney General** [2003] 1Sri LR 139)

28] In **Pitiduwa Gamage Sumith Rohana V. Attorney General and Two Others** CALA 06/2013 Court of Appeal minute dated 25.01.2016, had identified some of the relevant Aggravating and Mitigatory factors as follows;

Aggravating factors,

- a) Use of violence when committing crime
- b) Use of weapons when committing crime
- c) Drug related offences d) Member of an organized gang
- e) Repeating acts of similar offence
- f) Previous convictions or pending cases of the similar type
- g) Effect upon victims physical or mental condition
- h) Obstruction for justice
- i) Commission of an offence while on bail
- j) Willful damage to state or private property
- k) Disruption of governmental functions
- l) Commits the offence in order to conceal another offence
- m) Using high office to commit the offence

Mitigatory factors,

- a) First offender
- b) Good character

- c) Determination to quit the criminal life
- d) Serious medical condition
- e) Victims conduct
- f) Lesser harm (crime committed to avoid greater harm)
- g) Coercion and/or duress
- h) Voluntary disclosure of offence

29] Given the consideration that the 1st Accused Respondent, Wasala Muni Dewala Gedara Gunawardhna, I am of the view that the sentence should be varied as below:

For 1 count: 7 years imprisonment and Rs. 5000 fine, in default 6 months simple imprisonment

For 2 count: 7 years imprisonment and Rs. 5000 fine, in default 6 months simple imprisonment

For 3 count: 7 years imprisonment and Rs. 5000 fine, in default 6 months simple imprisonment

All sentences should be run concurrently from the date of the High Court Conviction, that is 21/11/2025.

Compensation to be paid to P.W.1, is unchanged, should be paid, in default 24 months simple imprisonment.

Revision is partly allowed, sentence varied.

JUDGE OF THE COURT OF APPEAL

AMAL RANARAJA J.

I agree

JUDGE OF THE COURT OF APPEAL