

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

**In the matter of an Appeal in terms of
Section 331(3) of the Code of
Criminal Procedure Act No. 15 of
1979 read with Article 139 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.**

Democratic Socialist Republic of
Sri Lanka.

Complainant

Court of Appeal Case No.
CA HCC 190/2024

Vs.

High Court of Kurunegala
Case No.
HC 64/2013

Mapa Hamilage Sunil Premasiri Mapa

Accused

AND NOW BETWEEN

Mapa Hamilage Sunil Premasiri Mapa

Accused-Appellant

Vs.

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

Complainant-Respondent

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

Counsel: Dineru Bandana for the Accused-Appellant.

 Suharshi Herath, D.S.G., for the Respondent.

Argued on: 07.03.2025

Decided on: 28.03.2025

JUDGMENT

AMAL RANARAJA, J.

1. The Accused-Appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Kurunegala* in High Court case no. 64/25. The charges in the indictment are as follows;
 - i. That on or about 01.06.2008, at *Agulgamuwa*, within the jurisdiction of this Court, you have committed the offence of grave sexual abuse on a minor, who was less than 16 years of age and thereby committed an offence punishable under section 365 B (2)(b) of the Penal Code as amended by Act No. 22 of 1995 and Act No. 29 of 1998.

ii. That between 02.06.2008 to 23.06.2008, at *Agulgamuwa*, within the jurisdiction of this Court, you have committed the offence of grave sexual abuse on a minor, who was less than 16 years of age and thereby committed an offence punishable under section 365 B (2)(b) of the Penal Code as amended by Act No. 22 of 1995 and Act No. 29 of 1998.

iii. Having committed grave sexual abuse on a minor during the period mentioned in the first and second charges and at the same place but at a time other than the time mentioned in the first and second charges above, and thereby committed an offence punishable under section 365 B (2)(b) of the Penal Code amended by Act No. 22 of 1995 and Act No. 29 of 1998.

2. At the conclusion of the trial, the Learned High Court Judge has convicted the appellant of the first and second charges and acquitted him of the third. Thereafter, the Learned High Court Judge has imposed the following sentence on the appellant;

Charge 1

A term of 15 years rigorous imprisonment together with a fine of Rs.10,000 with a term of six months simple imprisonment in default of the payment of the same.

Charge 2

A term of 15 years rigorous imprisonment together with a fine of Rs.10,000 and a term of six months simple imprisonment in default of the payment of the same.

3. The appellant aggrieved by the conviction together with the sentencing order has forwarded the instant appeal to this Court.

Case of the prosecution

4. PW 01 has been 14 years old and studying in grade 8 when the incidents referred to in the charges occurred. The first incident has occurred when the appellant i.e. the father of PW 01 had taken her to a jungle to pick cashews. On that occasion, the appellant has dragged PW 01 further into the jungle and had intercrural sex with PW 01. Three days later, when PW 01 was asleep at home, at around midnight, the appellant has come to the place she was sleeping and had intercrural sex with PW 01 once again.

Case of the appellant

5. The appellant has maintained that he was not mentally retarded to have sex with his daughter. His narrative is that since his wife was

having an extra marital affair, the latter planned all of this, to mislead the police and to imprison the appellant.

6. Grave sexual abuse is a profoundly disturbing issue that affects individuals, families and communities. It violates the rights and dignity of victims. Grave sexual abuse refers to the act of forcing or coercing an individual into sexual activity. This abuse occurs in various forms. In this instance, it has purportedly occurred in the form of intercrural sex.
7. PW 01 the victim, has been 14 years old when the offences were committed against her. She has been examined by PW 07, a judicial medical officer, *Dr. Sunil Hewage*, several months after the incidents took place. Further, her examination in court has taken place 12 years later. Given this considerable gap of time, any discrepancy in the short history given to PW 07 or in her testimony can be understood.
8. Firstly, it is important to recognise that the child's memory can be highly malleable. At the age of 14, PW 01 would have been still undergoing significant emotional and psychological development. Over the years, her recollection of the traumatic incident may have been influenced by various factors including changes in an environment,

personal experience and the natural process of maturing into adulthood.

9. Additionally the passage of time can lead to fading memories and altered perceptions of events. As the years pass, PW 01 may have encountered information or perspectives that shape the understanding of the incident
10. Moreover, the stress associated with recounting such a painful experience in a public setting like a Court room could further contribute to the inconsistencies in her testimony. It is also crucial to consider the context in which she was examined 12 years after the event. PW 01 in that instance would not only be confronting her past but also navigating the complexities of the legal system. The pressures of providing evidence in a formal setting can affect everyone's ability to recall details accurately.
11. PW01 has not initially disclosed to PW 02 the incidents of abuse she experienced from the appellant. After some time, PW 01 has revealed to PW 02 that she had been subjected to grave sexual abuse by the appellant. PW 02 had also been in her early teens and known to PW 01 at that time. The delay in disclosure to PW 02 can be attributed to the threats made by the appellant who created an environment of fear.

Subsequently, PW 02 has informed PW 03 who is the mother of PW 01. Upon learning about the allegations of grave sexual abuse against the appellant, PW03 has promptly taken action to make a complaint to the Police.

12. Recognising these factors is essential to ensure that justice is served and that the perspective of PW 01 is given appropriate weight in the legal process.

13. The contradictions and omissions that have been highlighted in Court should be deemed immaterial, as they do not fundamentally undermine PW 01's testimony or compromise the prosecution's case. It is essential to recognise that while discrepancies may exist they do not necessarily reflect a lack of credibility and reliability; instead it is quite clear that they stem from the complexities of human memory or the detailed nature of the events in question. Ultimately, these issues should not distract from the comprehensive truth the prosecution seems to establish.

14. In the pursuit of justice, the integrity of the PW 01's testimony is paramount. However, a situation has arisen in which PW 01 has not disclosed the exact date of the offences. This discrepancy, while significant in some contexts should not strip PW 01 of a right to a fair trial. It is essential to understand the implications of such discrepancies and the broader principles of justice that must prevail.

It is crucial to recognise complexities around the recording of crimes. PW 01 may face various psychological and emotional factors that may inhibit her ability to recall specific dates accurately. Trauma, memory distortion or fear of retribution can all contribute to PW 01's uncertainty about when the offences occurred. Therefore absence of a precise date should not be viewed as a lack of credibility rather it highlights the need for sensitivity and understanding the judicial process. Moreover, the cornerstone of a fair trial lies in the comprehensive examination of all evidence presented, rather than singular date. To dismiss a case solely due to an imprecise date undermines the principal of justice and the potential for truth to be revealed through crucial examination.

15. Further, though PW 01 has not disclosed the exact date of the offences, it is apparent that the appellant has not been misled by such discrepancy.

16. Section 166 of the Code of Criminal Procedure Act No.15 of 1979 is as follows;

“Any error is stating either the offence or the particulars required to be stated in the charge and any omission to state the offence or these particulars shall not be regarded at any stage of the case as material, unless the accused was misled by such error or omission.”

17. In the decided case of ***D.R.M.Pandithakoralege (Excise Inspector) vs. V.K.Selvanayagam*** 56 NLR 143, Swan, J, has stated,

“There can be no doubt that the accused was in no way misled by the mistake as regards the date in the plaint. In the case of William Edward James ¹ it was held that a mistaken date in an indictment, unless the date is of the essence of the offence or the accused is prejudiced, need not be formally amended. In the course of his judgment dismissed the appeal the Lord Chief Justice referred to the judgment of Atkin J in the case of Dossi ² where it was held that from time immemorial a date specified in an indictment has never been considered a material matter unless time was of the essence of the offence.”

18. The appellant has argued that the prosecution’s evidence reveal a strong motive for false implication. This assertion is based on the fact that PW 01 and PW 03 have brought the appellants alleged bad character into the case, while PW 02 displayed a bias. Notably, the abusive nature attributed to the appellant emerges during the cross-examination rather than in the examination in chief. Importantly, the Learned High Court Judge has not relied on this evidence to support his conclusion.

19. The Learned High Court Judge has thoroughly evaluated the evidence placed before Court at the trial taking into account the age and the background of the witnesses. Further, the Learned High Court Judge has also proceeded to carefully evaluate the background facts presented during the trial. He has concluded that the prosecution has provided compelling evidence that establishes a strong case against the appellant through meticulous examination of witness testimonies, expert reports and also that the prosecution has succeeded in creating a coherent narrative that supports its allegations. Throughout this process, the Learned High Court Judge has ensured that no undue burden has been placed on the appellant.

20. In this instance, I shall now consider the principles relevant to the evaluation of a dock statement. When evaluating dock statement, the following guidelines must be considered;

- i. A dock statement should be considered as evidence subject to infirmities that it was not a sworn statement and not tested by cross-examination.
- ii. If the docks statement is believed, it must be acted upon.
- iii. If the dock statement creates a reasonable doubt in the prosecution's case, the defence of the accused must succeed.

- iv. The dock statement of one accused person should not be considered against the other accused.

21. It is evident from the Learned High Court Judge's disputed judgment that he has carefully assessed the pertinent facts regarding why the appellant's dock statement failed to create a reasonable doubt about the prosecution's case.

"31. පැමිණිල්ලේ නඩුව අවසානයේදී විත්තිකරු විසින් විත්තිකුඩුවේ සිට ජරකාශයක් ලබා දී ඇත. එම ජරකාශය මගින් සහ පැමිණිල්ලේ සාක්ෂිකරුවන් හරස් ජරශ්න වලට භාජනය කිරීමේදී විත්තිකරුගේ ස්ථාවරය වී ඇත්තේ මෙම චෝදනාව වින්දිත තැනැත්තියගේ මව වෙනත් පුරුෂයකු සමඟ පැවති අනියම් සම්බන්ධතාවයක් හේතුවෙන් විත්තිකරු රිමාන්ඩ් භාරයට පත්කිරීමට වින්දිත තැනැත්තියගේ මවගේ මෙහෙයවීම මත සිදු කරන ලද අසත්‍ය පැමිණිල්ලක් බවය. කෙසේ නමුදු වින්දිත තැනැත්තියගේ මව එවැනි අනියම් සම්බන්ධතාවයක් පැවැත්වූ බව බවට කිසිදු පිළිගත හැකි සාක්ෂියක් අධිකරනයට ඉදිරිපත්ව නැත. අනෙක් අතට කවර තත්ත්වයක් යත්තේ වුවද වින්දිත තැනැත්තිය විසින් සිය පියාට එරෙහිව මේසා විශාල අසත්‍ය චෝදනාවක් ඉදිරිපත් කිරීමට පෙළඹේ යයි විශ්වාස කිරීම අසීරු වේ. වින්දිත තැනැත්තියගේ සාක්ෂිය සලකා බැලීමේදී එම සාක්ෂියෙහි ඒකමතික භාවය ඉතා ඉහල මට්ටමක පවතින බව පෙනී යයි. තවද වින්දිත තැනැත්තිය අපරමාදීව අයට සිදු වූ අතවරය

සම්බන්ධයෙන් ජරකාශ කිරීමට ඉදිරිපත් වී ඇති බව සැලකිය හැක. ඇයගේ සාක්ෂිය කිසිදු පරස්පරතාවයකට ලක්ව නැත. පැමිණිල්ල මගින් කැඳවන ලද වෙනත් සාක්ෂිකරුවන්ගේ සාක්ෂි මගින් හෝ ඇයගේ සාක්ෂිය පරස්පරතාවයකට ලක් කිරීමට සමත්ව නැත. එකී සියලු කරුණු සලකා බැලීමේදී විත්තිකරු විසින් විත්ති කුඩුවේ සිට කරනු ලැබූ ජරකාශය මගින් පැමිණිල්ලේ නඩුව කෙරෙහි අල්පමාත්ර සැකයක් හෝ ජනිත නොවන බව තීරණය කරමි."

22. Moreover, even though the appellant has suggested his position to PW 01 regarding the fact that this case was fabricated by PW 01 and PW 03 because of the illicit affair of PW 03, the appellant has failed to

suggest such stance to PW 02. Also PW 01 and PW 03 have categorically rejected the stance of the appellant.

23. In the case in hand, both PW 01 and PW 03 have explicitly rejected the stance put forth by the appellant. Their testimonies indicate that they do not find the arguments or suggestions put to them by the appellant compelling. Also, the combined testimony of PW 01, PW 02 and PW 03 illustrates a clear consensus that challenges the credibility of the appellant's assertions leading to significant implications for the overall case.

24. In those circumstances, I am not inclined to interfere with the disputed judgment together with the sentencing order and dismiss the appeal.

The Appeal is dismissed.

25. The Registrar of this Court is directed to communicate a copy of this judgment to the *High Court of Kurunegala* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree.

Judge of the Court of Appeal