

**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, read with Article 138 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka

**CA-HCC-134/2024**

HC of Puttalam Case No:

HC 08/2021

The Democratic Socialist Republic of Sri Lanka

**Complainant**

**Vs.**

Naththandige Densyl Nilantha

**Accused**

**And Now**

Naththandige Densyl Nilantha

**Accused-Appellant**

**Vs.**

The Hon. Attorney General

Attorney General's department

Colombo 12.

**Complainant-Respondent**

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

**Counsel:**       Asankada D. Mendis for the Accused-Appellant  
  
                      Wasantha Perera DSG for the Respondents

**Argued On:** 08.05.2025

**Written**

**Submissions:** 26.09.2024 (by the Accused-Appellant)  
**On**

**Judgment On:** 25.06.2025

### **JUDGMENT**

**B. Sasi Mahendran, J.**

The Accused-Appellant (hereinafter referred to as "the Accused") was brought before the High Court of Puttalam on two counts of grave sexual abuse against a minor, Balapuwaduge Aruna Lakshan Mendis. These charges were filed under Section 365B (2)(b) of the Penal Code, as amended by Acts Nos. 22 of 1995, 28 of 1998, and 16 of 2006.

During the trial, the Prosecution presented evidence from eight witnesses and submitted three productions. In response, the Accused provided a dock statement in his defense. Upon conclusion of the proceedings, the Learned High Court Judge, in the judgment dated 30.05.2024, found the Accused guilty of the first charge. As a result, he was sentenced to 14 years of rigorous imprisonment and fined Rs. 20,000/-, with a default penalty of three months. Additionally, he was ordered to pay Rs. 200,000 as compensation to the victim, carrying a default sentence of six months. However, he was acquitted of the second charge.

The grounds of appeal as pleaded by the Accused as follows;

1. The evidence of PW1 has failed to satisfy the test of spontaneity, probability, and belatedness, hence, PW1's evidence was not credible and the learned High Court would not have acted upon such evidence to convict the accused.
2. That the learned trial judge has not given reasons to convict the Accused for one count and acquit from the other count.
3. That the learned trial Judge has not analysed the dock statement of the accused in the correct perspective.

The prosecution's case, which led to this conviction, is as follows. The first witness, PW1, Balapuwaduge Aruna Lakshan Mendis, was nine years old at the time and a fourth-grade student. He stated that his mother was separated from his father. The second witness, Balapuwaduge Mervin Pransis Mendis, was living with the accused. On the day in question, after dropping the victim off at school, the accused instructed him to return early, as he planned to purchase a bicycle for him. When the victim came from school, the accused had shown a pornography video. Thereafter removed his clothes asked him to lie on the bed and placing his male organ to the victim anal. This happened when no one was at home.

According to the victim, this incident occurred in December 2015. He initially informed his mother, but after she took no action, he reported the matter to his brother. The brother then contacted their father by phone, and subsequently, the victim disclosed the details of the incident to him. PW2's father, Balapuwaduge Mervin Pransis Mendis, went to the

school to speak with the victim and later took him to the police station. After statements were recorded, the victim was presented before the JMO and examined on 24.03.2016. During this examination, the victim recounted the incident, and the JMO documented it in summary form.

**At page 64**

ප්‍ර : ගෙදර ගියාට පස්සේ මොකද වුනේ?

උ : ගෙදර ගියාට පස්සේ මේ මාමා මට සිටි එකක් දාලා බලන්න කිව්වා.

ප්‍ර : ඔයා බැලුවද සිටි එක?

උ : ඔව්.

ප්‍ර : මොනවද එකේ තිබුනේ කියලා මතකද?

උ : එකේ තිබුනා අනවශ්‍ය විඩියෝ වගයක් තමා තිබුනේ.

ප්‍ර : කවරු කවරුද ඒ විඩියෝ එකේ හිටියේ?

උ : ගහන කෙනෙකුයි පිරිමි කෙනෙකුයි.

ප්‍ර : අනවශ්‍ය යයි කියලා කිවේ ඇයි ඔයා, ඒ ගොල්ලෝ මොනවද ඇදගෙන හිටියේ?

උ : එයාලා ඇදුම් ඇදගෙන හිටියේ නැහැ.

.....

ප්‍ර : මොනවද කරන්න කියලා කිව්වේ?

උ : ඒ විඩියෝ එකේ තිබුන විදියට එයා එක්ක ඒවා කරන්න කිව්වා.

ප්‍ර : දැන් මොනවද ඒවා කියලා අපට කියන්න මොනවා කරන්න කියලද කිව්වේ?

උ : එයාගේ වූ කරන එක මගේ අතට දීලා එක උරවන්න කිව්වා.

ප්‍ර : ඔයා ඒ ක්‍රියාව කලාද?

උ : ඔව්.

ප්‍ර : ඊටපස්සේ මොකද උනේ ?

උ : ඊටපස්සේ ඒ විදියටම එයා එක එක ඒවා කිව්වා එයාගේ වූ කරන එක මගේ කක්කා කරන සිදුරට ඇතුළු කළා.

ප්‍ර : ඒ වෙලාවේ ඔයා මොනවද ඇදගෙන හිටියේ?

උ : ඒ වෙලාවේ මොනවත් මම ඇදගෙන හිටියේ නැහැ.

According to JMO Witness Number 06 namely Sriyantha Amararathna, who examined the victim on 24.03.2016, the statement provided by the victim was recorded in summary form. Upon examination, the anal area was found to have three healed tears at the 2, 4,

and 10 o'clock positions. The doctor's findings align with the victim's account, as the medical history and the recorded wounds in the report are consistent with the version presented by PW1. While this may not serve as direct corroboration, it can be used to assess the victim's consistency.

The counsel for the accused appellant brought to the notice of the court that when PW1 was given the evidence, he had changed his story from time to time. According to the evidence of PW1 in his police statement, he had not attended school that day due to a headache. However, during the trial, his testimony changed, stating that he had gone to school and later returned home.

### Page 62

උ: මේ ඩෙන්සිල් මාමා තමා මාව ඉස්කෝලෙට එක්කන් ගියේ එදා ස්කූටියේ. ඒ යනකොට මාව ඉස්කෝලෙන් බස්සද්දී කිව්වා මට බයික් එකක් දෙන්නම් කියලා ඉස්කෝලෙදි ඔලුව රිදෙනවා හරි මොකක් හරි ලෙඩක් කියලා එන්න කිව්වා ගෙදර. එයා එක්කන් යන්න එන්නම් කියලා.

ප්‍ර : එතකොට ඔයා මොකද කලේ ඒ සම්බන්ධයෙන්?

උ : මට බයික් එකක් එහෙම අරන් දෙනවා කියල නිසා ඉස්කෝලෙදි ඔලුව රිදෙනවා ඉන්න බැහැ කියලා ගෙදර ආවා .

### Page 81

උ : ඔව් ඉස්කෝලෙදි ඉන්න බෑ කියලා ඔලුව රිදෙනවා කියලා ආවා ගෙදරට කෝල් කරලා.

The key issue at hand is whether this contradiction casts doubt or undermines the credibility of the witness. It is important to consider that the incident occurred in December 2015, with the witness providing a statement in March 2016, followed by his testimony in 2023.

We are mindful of the sentiments expressed by Justice Takar J in **Bhoginbhai Hirjibhai V. State of Gujarat, AIR 1983 SC 753**;

*“By and large a witness cannot be expected to possess a photo graphic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen. Ordinarily a witness cannot be expected to recall*

*accurately the sequence of events which take place in rapid succession or in a short time plan. A witness is liable to get or mixed up when interrogated later on”.*

”

The above observation was followed by His Lordship **W.L Ranjith Silva J**, in the Case of **Don Kuruppu Arachchige Indika Gayan v The Republic of Sri Lanka**, CA 205/2007, decided on 16<sup>th</sup> December 2010.

Upon reviewing the entire evidence presented by PW01, we observe that no contradiction or omission has been brought to the court’s attention, except for the discrepancy mentioned above. Accordingly, we conclude that the rest of his testimony remains consistent.

Regarding the victim’s evidence, we acknowledge that his testimony was largely consistent, and the noted contradiction does not affect his credibility. We also recognize that PW01 provided evidence after a lapse of nine years, during which it is natural that he may not recall every minor detail—especially those he may have deemed insignificant. Additionally, we are mindful that victims of sexual harassment often choose not to discuss their experiences and prefer to move past them.

The contradiction pertains only to whether the victim attended school at the relevant time, and it does not influence the core incident itself. In our view, this discrepancy is not substantial enough to create reasonable doubt about his testimony. Therefore, we dismiss the contention raised by the defense counsel.

One of the grounds urged by the counsel is that there is a delay in making the complaint. We acknowledge the timing of the incident—at the time, Aruna Lakshan was only nine years old and had reported the matter to his mother. However, the mother did not take any immediate action to report the incident to anyone. According to the victim, he felt compelled to inform his mother as he had been subjected to repeated abuse by the accused.

page 65

ප්‍ර : දැන් වූදින එම ක්‍රියාව ලක්ශාන්ට කලාට පස්සේ මොනවා හරි කිව්වද ලක්ශාන්ට ?

උ : මට ඒක කාටවත්ම කියන්න එසා කිව්වා.

ප්‍ර : ඊටපස්සේ ලක්ශාන් ඔය සිද්ධිය ගැන කාටහරි කිව්වද?

උ : ඊටපස්සේ එයා මට දෙනුන්පාරක් එයා එක කරන්න ගත්තා ඊටපස්සේ මට වදයක් නිසා මම එක අම්මට කිව්වා.

page 67

ප්‍ර : ඒ කියන්නේ 2015 අවුරුද්දේදී නැත්නම් වෙනත් අවුරුද්දකද කියලා කියන්න මතකයක් තිබෙනවාද?

උ : නැහැ. 2016 වෙනත් ඕනි හරියට එහෙම හරියට දින මතක නැහැ.

Our courts have held that a witness's testimony should not be dismissed solely due to a delay in making a statement, as long as the delay can be reasonably justified.

**In the case of Dhannasiri vs. The Republic of Sri Lanka 2012 (1) SLR 268 Tilakawardane, J held inter alia;**

"Two critical tests before considering belated evidence as reliable " evidence are: firstly reasons for delay and secondly, whether those reasons are justifiable."

when considering the belated evidence or a belated statement, one cannot neglect the basis for such delay which transpired in the evidence.

In the same case in the Court of Appeal (2010 (2) SLR 241) Sisira de Abrew, J held inter alia;

"Because the witness is a belated witness, Court ought not to reject his testimony on that score alone. Court must inquire into the reason for the delay and if the reason for the delay is plausible and justifiable the Court could act on the evidence of the belated witness."

Further, in the case of **Udagama Vs. AG 2000 (2) SLR 103** at page 107, Hector Yapa, J held,

Counsel contended that the witness Piyaseeli had made a belated statement to the police, 15 months after the incident. The explanation given by her that the delay was due to the situation that prevailed in the country is unacceptable, for the reason that her own brother Karunadasa who gave evidence at the trial and her mother Alisnona, had made statements to the police on the very next day after the incident.

Although there appears to have been a delay in filing the complaint, the delay is justified. We acknowledge that, as a child, he was living with his mother, who did not take any action against the accused. It was only later that he informed his father.

The main defence taken by the Learned Counsel for the accused-appellant was that PW2, the father of the victim, had brought forth this allegation against the appellant due to personal animosity. It is important to note that PW2 became aware of the situation through the victim's brother.

page 71

ප්‍ර : එතකොට මේ සාක්ෂි දීලා කියන සිද්ධිය කගේ හරි ඉගැන්වීමකට කියන දෙයක්ද?

උ : නැහැ.

ප්‍ර : ඔයාගේ තාත්තා කොයි වෙලාවක හි ඔයාට කිව්වද කව හරි හසු කරලා සාක්ෂියක් දෙන්න කියලා?

උ ; නැහැ.

ප්‍ර ; ඔයාට මේ වුදිත් එක්ක තරහක් හෝ අමනාපයක් තිබෙනවද?

උ : නැහැ.

The victim has explicitly stated that he personally informed his father about the incident. The learned trial judge has rightly dismissed the allegation made by the accused and has provided justification for this decision.



We find no reason to doubt the testimony of PW01, as his evidence was consistent and could be relied upon to support his allegations against the appellant. His testimony remained intact despite cross-examination.

In cases of sexual abuse, delays in reporting are common due to fear or lack of awareness. Considering these factors, I am of the view that none of the grounds of appeal presented by the appellant's counsel warrant interference with the findings of the Learned High Court Judge.

The judgment dated 30.05.2024 is upheld, and the conviction, along with the sentence, remains in effect.

The appeal is dismissed.

**JUDGE OF THE COURT OF APPEAL**

**Amal Ranaraja, J.**

**I AGREE**

**JUDGE OF THE COURT OF APPEAL**