

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

**In the matter of an Appeal under
section 331 of the Code of Criminal
Procedure Act No. 15 of 1979 (as
amended).**

Democratic Socialist Republic of Sri
Lanka

Complainant

Court of Appeal
Case No. **CA HCC 92/2025**

Vs.

High Court of Puttalam
Case No. **HC 200/2019**

Withanaloge Bimal Wickramaratne

Accused

AND NOW BETWEEN

Withanaloge Bimal Wickramaratne

Accused-Appellant

Vs.

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

Complainant-Respondent

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

Counsel: K. Kugaraja, AAL, for the Accused-Appellant.

Yuhan Abeywickrama, D.S.G. for the Complainant-Respondent.

Argued on: 18.12.2025

Judgment on: 28.01.2026

JUDGMENT

AMAL RANARAJA, J.

1. The Accused-Appellant (hereinafter referred to as the “Appellant”), has been indicted in the *High Court of Puttalam* in High Court case number HC 200/2019.

2. The charges in the indictment are as follows;

Charge 01

That on or about a date between July 20, 2002 and July 19,2003, at *Kottukachchi*, within the jurisdiction of this Court, the appellant did commit the offence of rape on a minor, who was under the age of 16 years at the time, an offence punishable under section 364(2) of the Penal Code (Amendment) Act No.22 of 1995.

Charge 02

That on or about a date between July 20,2002 and July 19,2003, at *Kottukachchi*, within the jurisdiction of this Court, the appellant on another instance other than that mentioned in the first charge, did commit the offence of rape on a minor, who was under the age of 16 years at the time, an offence punishable

under section 364(2) of the Penal Code (Amendment) Act No.22 of 1995.

Charge 03

That on or about a date between July 20, 2002 and July 19,2023, at *Kottukachchi*, within the jurisdiction of this Court, the appellant on another instance other than that mentioned in the first charge and the second charge, did commit the offence of rape on a minor, who was under the age of 16 years at the time, an offence punishable under section 364(2) of the Penal Code (Amendment) Act No.22 of 1995.

3. At the conclusion of the trial. The appellant has been convicted of all three charges and sentenced as follows;

<i>A term of ten years' rigorous imprisonment each in respect of the 1st, 2nd and 3rd charges.</i>

<i>Also, been fined a sum of Rs. 10,000 each in respect of all three charges.</i>

<i>A term of 3 months' simple imprisonment each, in default of the payment of the fines imposed.</i>
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<i>Further, the appellant has also been directed to pay a sum of Rs. 300,000 as compensation to PW01, with a term of one year rigorous imprisonment in default.</i>

<i>The learned High Court Judge has also directed that the substantial terms of imprisonment in respect of the 1st, 2nd and 3rd charges shall run concurrently.</i>
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4. Aggrieved by the conviction, disputed judgment, together with the sentencing order the appellant has preferred the instant appeal to this Court.

Case of the Prosecution

5. PW01, born on May 11, 1987, had been a fifteen years old girl during the period relevant to the charges. At that time, a church had been under construction near PW01's sister's house, and the appellant nominated as its pastor. The appellant has developed an acquaintance with PW01 and subsequently invited her to "*serve God*".
6. Driven by a desire to serve God, PW01 has moved into the house where the appellant resided with his family. PW02, had also moved into the appellant's house, before PW01. After PW01 moved in, one night on an unknown date, after the other household members have gone to sleep, the appellant has entered the room, which PW01 was sharing with PW02, and engaged in sexual intercourse with her, despite her dissent. Within the next few days, the appellant has again had sexual intercourse with PW01.

When PW01 has expressed a desire to return home, the appellant has taken her to her grandmother's residence. Her grandmother has then advised PW01 to remain at the appellant's house. PW01 has complied and continued to stay there, during which time, the appellant has allegedly continued to sexually abuse her. Approximately 8 to 12

months later, PW01 has developed an infection and an accompanying urine test has revealed that she was pregnant.

Consequent to this revelation, PW01 has returned to her sister's house, divulged the story and lodged a complaint against the appellant. Following the complaint an investigation has commenced and PW01 subjected to a medical examination. DNA testing of the appellant, PW01 and the child has confirmed the appellant's paternity. The birth certificate, the medico-legal report pertaining to PW01 and the DNA report has been presented as evidence and marked as 'Exhibits 37-1, 37-2, and 37-3' respectively.

Case of the Appellant

7. The appellant has asserted that he committed no offence.

Evaluation

8. In her testimony, PW01 has stated that the appellant engaged in sexual intercourse with her following her move into the appellant's house. She has further testified that these acts occurred despite her dissent.

While PW01 has not been able to state the precise dates of these incidents, she has described them occurring on three occasions prior to be taken to her grandmother's home by the appellant.

Subsequently, after returning to the appellant's house on her grandmother's advice, further such acts have taken place on several occasions.

The alleged incidents are situated in the year 2002. PW01's testimony has been given in 2021, representing a substantial passage of time, i.e. a period of 19 years. In light of this considerable delay, it is inherently difficult and arguably unreasonable to expect a witness to accurately recall and articulate the precise dates of the events that transpired so long ago.

A witness may forget details over time. This loss of memory is particularly concerning in cases with lengthy trial processes, where the time elapsed between the event and the Court date can stretch into years. Factors such as trauma, stress and natural cognitive decline can further exacerbate this issue leading to fragmented or incomplete recollections. As time pass, witnesses are less likely to recall specific details accurately or may confuse them with other events affecting the coherence of their testimonies.

Further, a Court would often consider the totality of the evidence presented. A discrepancy in a detail may not detract from the overall integrity of the testimony. When corroborated by other evidence or witnesses, a testimony with minor discrepancies can still be regarded as credible.

9. Exhibit 3-2, the medico-legal report prepared by *Dr. N. Gnanaratne, District Medical Officer, Anamaduwa*, provides crucial details regarding PW01's pregnancy. The report state that as of August 10, 2003, the foetal age was approximately 26 weeks. This medical assessment indicates that PW01 has conceived on or about early to mid-February, 2003.

Crucially, this time frame coincides with when PW01 moved into the appellant's house and according to her allegations, were sexually abused by him. The short history provided by PW01 herself as recorded in 'Exhibit 3-2' further corroborates this timeline.

PW01 has been born on May 11, 1987. This means she has been a minor, just fifteen years old, at the time of conception.

The scientific certainty provided by 'Exhibit 3-3', the DNA report, establishes the appellant as the biological father of the child born to PW01.

10. Taken together, these compelling and interconnected pieces of evidence, i.e., the precise medical assessment of foetal age, the coinciding timeline of cohabitation and the alleged abuse, PW01's tender age at conception and the conclusive DNA paternity report, provide powerful and independent corroboration of PW01's detailed narrative of rape by the appellant.

The learned High Court Judge has also considered the appellant's narrative alongside that of the prosecution, taking a holistic view of both. However, given the overwhelming evidence, direct and circumstantial, presented by the prosecution, the learned High Court Judge has disregarded and dismissed the appellant's narrative.

11. In light of those circumstances, I am not inclined to interfere with the conviction, the disputed judgment, together with the sentencing order and proceed to affirm the same.

Accordingly, I dismiss the appeal and make no order regarding costs.

Appeal is dismissed.

12. The Registrar of this Court is directed to send a copy of this judgment to the *High Court of Puttalam* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree,

Judge of the Court of Appeal