

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 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The Democratic Socialist Republic of Sri Lanka

Complainant

Vs

Court of Appeal Case No:
CA/HCC/0001/2025
High Court Anuradhapura
Case No. **HC-96-2014**

Kiribandage Vajira Pradeep Kumara alias
Ukkubandage Kiribandage Vajira Pradeep
Kumara

Accused

AND NOW BETWEEN

Kiribandage Vajira Pradeep Kumara alias
Ukkubandage Kiribandage Vajira Pradeep
Kumara

Accused – Appellant

Vs

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

Respondent

Before : **P. Kumararatnam, J.**
Pradeep Hettiarachchi, J.

Counsel : Gayal Kalatuwawa for the Accused-Appellant.
Azard Navavi A.S.G. for the Respondent.

Argued on : 12.12.2025

Decided on : 06.03.2026

Pradeep Hettiarachchi, J

Judgment

1. The accused-appellant (hereinafter referred to as the “appellant”) was indicted before the High Court of Anuradhapura for committing rape on a girl under 18 years of age, an offence punishable under Section 364(2), read together with Section 364(2)(e) of the Penal Code, as amended by Act No. 22 of 1995.
2. The trial was conducted before a Judge of the High Court without a jury. At the conclusion of the trial, the learned trial Judge found the appellant guilty and convicted him accordingly. The appellant was sentenced to ten years’ rigorous imprisonment and was also ordered to pay a fine of Rs. 10,000, with a default sentence of six months’ imprisonment. Additionally, the appellant was directed to pay Rs. 200,000.00 as compensation to the prosecutrix, carrying a default sentence of six months’ imprisonment.
3. Being aggrieved by the said conviction and sentence the appellant has preferred the instant appeal. The appellant in his written submissions has urged five grounds of appeal namely:
 - a. The judgment of the learned High Court Judge is factually and legally incorrect;

- b. The learned High Court Judge failed to consider omissions and discrepancies in the evidence of prosecution witnesses;
 - c. The learned High Court Judge erred by holding that the evidence of PW1 is trustworthy to be acted upon;
 - d. The learned trial Judge failed to consider that the prosecution has failed to call material witnesses; and,
 - e. The learned trial Judge failed to consider the dock statement.
4. When the appeal was taken up for argument, the parties informed the Court that they would stand by the written submissions filed of record. The first three grounds of appeal are interrelated, and I shall therefore consider them together. In these grounds, the appellant primarily challenges the credibility of the prosecutrix. At the trial, four witnesses and the court interpreter testified for the prosecution. The appellant made a dock statement in which he denied the charge.
5. PW1 is the prosecutrix. According to her evidence, she was residing at her grandmother's house together with her mother, aunt, and uncle. Her father had passed away in the year 2000. There was a temple situated close to their residence.
6. On the day of the incident, PW1 had gone to the temple at night with her aunt to watch a drama performance. There was a large gathering at the temple. At one point, PW1 proceeded towards a nearby tank as she wished to answer a call of nature. She stated that the appellant followed her to that location. According to her testimony, the appellant began touching her, which she resisted.
7. She further stated that the appellant promised that he would marry her, removed her undergarment, and had sexual intercourse with her. Thereafter, PW1 went to the house of one of her friends. By that time, her aunt had already gone there in search of her. Subsequently, PW1 returned home.
8. Upon informing her mother of the incident, PW1 stated that she was beaten by her. On the following day, she proceeded to the police station and lodged a complaint. Thereafter, she was admitted to the Anuradhapura Hospital, where she was examined by the Judicial Medical Officer.

9. Of the grounds advanced by the appellant, I shall first consider grounds (a), (b), and (c), namely: whether the judgment of the learned High Court Judge is vitiated by factual or legal error; whether the learned Judge failed to give due consideration to the omissions and discrepancies in the evidence of the prosecution witnesses; and whether the learned Judge erred in finding the evidence of PW1 sufficiently reliable to warrant conviction.

10. In her evidence, PW1 stated that she went near the tank to answer a call of nature, and at that time the appellant followed her and committed the act of rape. According to her testimony, she had passed her grandmother's house while proceeding towards the tank. It is also noteworthy that, according to PW1, she identified the appellant by the light emanating from her grandmother's house and from a neighbouring house. This circumstance further suggests that, if she merely intended to answer a call of nature, she could have gone to her grandmother's house instead of proceeding towards the tank. This circumstance casts serious doubt on the credibility of PW1's testimony, especially on the question whether she had gone there with the intention of meeting the appellant.

11. The following matters further undermine the trustworthiness of PW1's testimony and cast serious doubt on the prosecution's version of events. PW1 did not inform anyone when she left the temple premises at night, which appears to be unusual conduct for a young girl. At one stage, PW1 stated that she had not spoken to the appellant prior to the incident and had seen him only once at the residence of one of her teachers. If that is so, the question arises as to how she was able to identify the appellant by his voice.

12. In cross-examination, it further transpired that PW1 had never informed the police that she had gone out to answer a call of nature at the time the alleged incident occurred. This omission is material and casts doubt on the credibility of PW1's evidence, as it raises questions regarding her reason for leaving the temple at night and proceeding towards the tank, which is an isolated location.

13. There were several material contradictions between the statement made by PW1 to the police and the evidence she tendered before Court. In her statement to the police, PW1 had stated that she engaged in a conversation with the appellant at the temple and that

she went out because the appellant had suggested that they go outside and chat. This version stands in direct contradiction to her evidence in examination-in-chief.

14. Similarly, according to her statement to the police, PW1 stated that after the alleged incident she returned to the temple together with the appellant. This too is inconsistent with her testimony in chief, wherein she stated that after the incident she went to the residence of one of her friends. These inconsistencies relate to material aspects of the prosecution's narrative and therefore assume significance when assessing the credibility and reliability of PW1's evidence.
15. PW1's evidence in re-examination discloses yet another version, materially different from her testimony in examination-in-chief. In re-examination, she admitted that after the alleged incident she, together with her mother, met the appellant at the temple and engaged in a conversation with him, during which he expressed his affection towards her.
16. This development appears inconsistent with her earlier account and introduces a further element requiring careful evaluation. When considered in conjunction with the other discrepancies and omissions, it assumes relevance in assessing the overall credibility and consistency of PW1's testimony. More importantly, this evidence, when considered in its totality, gives rise to a doubt as to whether PW1 had proceeded towards the tank with the appellant pursuant to a prior arrangement between them.
17. In a case of this nature, the evidence of the prosecutrix must be subjected to careful scrutiny, and it must inspire the confidence of the Court before a conviction can properly be founded upon it. It is well settled that corroboration is not an invariable rule of law, and a conviction may be sustained on the sole testimony of the prosecutrix if such evidence is found to be truthful, cogent, and reliable.
18. However, where the evidence of the prosecutrix itself lacks conviction and is riddled with material inconsistencies affecting the substratum of the prosecution's case, the question of seeking corroboration does not meaningfully arise. Evidence so tainted by serious discrepancies cannot safely be acted upon, even if there exists some measure of

corroborative material. In such circumstances, the Court must be slow to place implicit reliance on testimony that does not meet the requisite standard of credibility.

19. It is also pertinent to emphasize that even where the defence has failed formally to mark contradictions in the manner contemplated by law, if the evidence on record itself discloses material inconsistencies in the testimony of the prosecutrix, the Court is not precluded from taking such matters into consideration when assessing her credibility. The duty of the Court is to evaluate the totality of the evidence and to determine whether it meets the required standard of proof.
20. In the present case, the learned trial Judge appears to have given scant consideration to the contradictions that emerged during cross-examination, many of which are material and unarguably go to the root of the prosecution's case. Likewise, a significant omission in the police statement, highlighted by the defence, has not been adverted to in the judgment. A perusal of the judgment does not reveal any meaningful analysis or evaluation of these aspects, nor a careful assessment of the credibility and reliability of the prosecution evidence in light of the discrepancies brought to the fore.
21. The following authorities clearly set out the principles governing the effect of discrepancies and contradictions in evidence and the extent to which they bear upon the credibility of a witness.
22. In *The Queen v. M. G. Sumanasena* 66 N LR 350 it was held that in a criminal case suspicious circumstances do not establish guilt. Nor does the proof of any number of suspicious circumstances relieve the prosecution of its burden of proving the case against the accused beyond reasonable doubt and compel the accused to give or call evidence.
23. In *The Attorney General v. Sandanam Pitchai Mary Theresa* [2011] 2 SLR 292 the court held that:

“Whilst internal contradictions or discrepancies would ordinarily affect the trustworthiness of the witness statement, it is well established that the Court must exercise its judgment on the nature of the inconsistency or contradiction and whether they are true material to the facts in issue”.

24. In the case of *Mohamed Niyas Nauffer and others v. Attorney General (Sc. 01/2006 decided on 08/12/2006)*, the Court observed that;

“when faced with contradictions in a witness's testimonial, the Court must bear in mind the nature and significance of the contradictions, viewed in light of the whole of the evidence given by the witness.”

25. In *Iswari Prasad v. Mohamed Isa 1963 AIR (SC) 1728 at 1734* it was held that;

- a. “In considering the question as to whether evidence given by the witness should be accepted or not, the court has, no doubt, to examine whether the witness is, an interested witness and to enquire whether the story deposed to by him is probable and whether it has been shaken in cross-examination. That is whether there is a ring of truth surrounding his testimony.”

26. In view of the foregoing, the prosecution evidence cannot be said to inspire confidence. The inconsistencies and omissions identified are material and go to the heart of the case. When the evidence of the prosecutrix is examined in its entirety, it does not meet the requisite standard of reliability to sustain a conviction. In such circumstances, reliance on this testimony to convict the appellant renders the conviction unsafe.

27. Moreover, the learned trial Judge has failed to consider the dock statement made by the appellant in any meaningful manner. The judgment merely records that the appellant made a dock statement, but it does not reflect any evaluation of its contents or an assessment of its evidentiary value. Moreover, the learned trial Judge has failed to indicate whether he rejected the dock statement and, if so, the reasons for such rejection.

28. It is incumbent upon a trial court to consider the defence version, even when advanced by way of a dock statement, and to weigh it against the prosecution evidence. The omission to examine and assess the defence case, particularly where the prosecution evidence itself is attended by material inconsistencies, constitutes a significant lapse in the overall evaluation of the case.

29. In the present case, the material contradictions apparent in the testimony of the prosecutrix strike at the very root of her credibility, a matter that appears not to have

been adequately considered by the learned trial Judge. The presence of such infirmities undoubtedly casts serious doubt on the prosecution's version of events, and the benefit of that doubt must be given to the appellant.

30. In view of the foregoing analysis of the facts and the law, the conviction and sentence dated 28.08.2024 imposed by the learned High Court Judge of Anuradhapura are hereby set aside. The appeal is accordingly allowed.

Judge of the Court of Appeal

P. Kumararatnam,J

I agree,

Judge of the Court of Appeal