

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 and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Commission to Investigate Allegations of Bribery or Corruption

Complainant

Court of Appeal No:
CA/HCC/0230/2023

High Court of Colombo Case No:
HCB/31/2018

-Vs-

Sangarange Indika Mahesh Sandanayake
“Isura”, Etawila Road,
Heenitiyangala,
Kaluthara-South

Accused

AND NOW BETWEEN

Sangarange Indika Mahesh Sandanayake
“Isura”, Etawila Road,
Heenitiyangala,
Kaluthara-South

Accused-Appellant

-Vs-

1. The Director General,
Commission to Investigate Allegations
of Bribery or Corruption.

Complainant-Respondent

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

Counsel : Yasith Jayasundara for the Accused-Appellant
: Udari Kumarihamy with Anusha Sammandapperuma
for the Respondent

Argued on : 03.08.2026

Decided on : 01.10.2026

Pradeep Hettiarachchi, J

Judgement

1. This appeal arises from the judgment dated 25.08.2023, delivered by the learned High Court Judge of Colombo. The Accused-Appellant (hereinafter referred to as “the Appellant”) was indicted before the High Court of Colombo on the following counts;
 - a. On or about 15.12.2016, within the jurisdiction of the High Court of Colombo, the Accused, being a public servant, solicited a sum of Rs. 25,000/- as a gratification from the complainant as an inducement to issue Environmental Protection Licenses and a Certification of Conformity and thereby committed an offence punishable under Section 19(b) of the Bribery Act No. 11 of 1954 as amended by Acts No. 02 1965, No. 38 of 1974, and No. 09 of 1980;
 - b. During the same time, place, and in the course of the same transaction as mentioned in the first count, being a public servant, the Accused, by soliciting the said sum of money, committed an offence punishable under Section 19(c) of the Bribery Act No. 11 of 1954 as amended by Acts No. 02 of 1965, No. 38 of 1974, and No. 09 of 1980;

- c. On or about 20.12.2016, within the jurisdiction of the High Court of Colombo, the Accused, being a government servant, solicited a sum of Rs. 25,000/- as a gratification from the complainant as an inducement to issue Environmental Protection Licenses and a Certification of Conformity, thereby committed an offence punishable under Section 19(b) of the Bribery Act No. 11 of 1954 as amended by Acts No. 02 1965, No. 38 of 1974, and No. 09 of 1980;
 - d. During the same time, place, and in the course of the same transaction as mentioned in the third count, being a public servant, the Accused, by soliciting the said sum of money, committed an offence punishable under Section 19(c) of the Bribery Act No. 11 of 1954 as amended by Acts No. 02 of 1965, No. 38 of 1974, and No. 09 of 1980.
- 2. At the trial, six witnesses testified for the prosecution. Subsequently, the Appellant made a dock statement.
- 3. At the conclusion of the trial, the learned Trial Judge found the Appellant guilty of four counts. The Appellant was accordingly convicted and imposed 5 years' rigorous imprisonment for each count to run concurrently and a fine of Rs. 5000/- for each count, in default, six months' simple imprisonment. The Appellant was further ordered to pay Rs. 25,000/- as a fine under Section 26 of the Bribery Act.
- 4. Aggrieved by the said conviction and sentence, the Appellant has preferred the present appeal on the following grounds;
 - a. The learned High Court Judge has failed to give due consideration to the material infirmities in the prosecution evidence relating to the first and second counts;
 - b. The learned High Court Judge has failed to accord due weight to the dock statement of the Appellant;
 - c. The impugned judgment of the High Court Judge is contrary to the evidence led at the trial;
 - d. The learned High Court Judge failed to conclude that the prosecution had not proved the case beyond reasonable doubt.

5. I shall now consider the first, third, and fourth grounds of appeal, as the Appellant challenges the strength of the prosecution's evidence. In doing so, I will examine whether the learned Trial Judge failed to give due consideration to the infirmities in the prosecution's evidence and failed to analyze the prosecution's evidence in terms of the test of credibility and the test of probability, as contended by the Appellant.
6. At the trial before the High Court, the prosecution primarily relied on the evidence of PW1, Anura Priyankara Perera, the complainant. His evidence may be briefly summarized as follows;
7. At the time of the alleged offence, the Appellant was serving as a Technical Officer attached to Payagala sub-office of Beruwela Pradeshiya Sabha. Prior to the alleged incident, PW1 and the Appellant were known to each other. According to the evidence of PW1, he was a businessman who owned Shakthi Saw Mill, Water Nest Hotel, and Shakthi Hardware at the relevant time. PW1 had submitted an application dated 24.09.2016 for extension of the Environmental Protection License (EPL) in respect of Shakthi Saw Mill and an application dated 02.09.2016 for the issuance of a Certificate of Conformity (COC) in respect of the swimming pool at Water Nest Hotel.
8. According to PW1, the said EPL and COC were required to be obtained from Beruwala Pradeshiya Sabha. Following the submission of the relevant applications, the Appellant, in his capacity as the Technical Officer, visited the premises where Shakthi Saw Mill and Water Nest Hotel were situated on 09.12.2016. PW1 was not present at the premises at the time of the Appellant's visit and, upon being informed of the visit, contacted the Appellant by telephone. PW1 requested the Appellant to proceed with the site inspection and informed him that he would return to the office on the following day. The Appellant, however, requested PW1 to meet him on 14.09.2016.
9. Accordingly, PW1 went to Payagala Sub-Office on 14.06.2016 and met the Appellant. According to PW1, on that occasion, the Appellant informed him that a substantial sum of money would be required in order to facilitate the approval of the aforesaid applications. It is significant, however, that, according to PW1's own evidence, the Appellant did not, at that stage, demand or solicit any specific sum of money from him.

10. However, it is pertinent to note that PW1 was not precise as to the substance of the initial conversation between himself and the Appellant.

“ප්‍ර: ඊට පස්සේ මොකද වුනේ?

උ: ඊට පස්සේ මම ඇහුවා, දැන් ස්ථාන පරීක්ෂණය කල මගේ මේක අනුමත කර දෙන්න කියල. ඊට පස්සේ ගයිල් එක පෙනෙනලා ඉවර වෙලා මේක මෙහෙම කරන්න බැහැ. මේකට ලොකු ගානක් යනවා. එහෙම හුගක් දේවල් කතා කළා.” (at vide page 145 of the Appeal Brief)

11. Thereafter, according to PW1, the Appellant called him on 15.12.2016 and requested a sum of Rs. 45000/-. PW1 testified that he informed the Appellant that he was unable to pay such an amount and requested that the sum be reduced, following which, according to PW1, they ultimately agreed upon a sum of Rs. 20,000/-. However, PW1 subsequently gave evidence to the effect that the specific amount requested by the Appellant during the said telephone conversation was Rs. 25,000/-. Thus, there is an apparent inconsistency in PW1’s evidence as to the precise amount allegedly solicited by the Appellant.

“ප්‍ර: තමුන් කිව්වනේ මුදල අඩු කරන්න කියලා. තමුන්ට යම්කිසි ගානක් යෝජනා කලද මේ ගානට අඩු කරන්න කියල?

උ: මම කිව්වා ස්වාමීනි, රු.20,000/- ක් වගේ මම කොහොමහරි හොයල දෙන්නම් කියල.

ප්‍ර: දැන් තමුන්ගේ දුරකථන සකච්ඡාවෙදී විත්තිකරු කොපමණ මුදලක් තමුන්ගෙන් ඉල්ලා සිටියද?

උ: රු. 25,000/- ක් ස්වාමීනි.” (at vide page 147 of the Appeal Brief)

12. Thereafter, PW1 informed the CIABOC of the alleged solicitation. Acting upon the instructions of the CIABOC officers, PW1 again met the Appellant at the same office on 16.12.2016. According to PW1, on that occasion also, the Appellant solicited a sum of Rs. 25,000/- from him. PW1 thereafter informed the CIABOC officers of the substance of that conversation; consequently, arraignments were made to conduct a raid on 19.12.2016.

13. The evidence further reveals that, on 19.12.2016, officers of the Bribery Commission proceeded to the Hotel Water Nest belonging to PW1 and met with him there. PW1 then

provided a statement regarding the alleged solicitation of the sum of Rs. 25,000/- by the Appellant. Thereafter, acting on the instructions of PW3, PW1, together with PW2, proceeded to the sub-office of Payagala on the same day for the purpose of meeting the Appellant. PW2 accompanied PW1 as a decoy. However, PW1 and PW2 were unable to meet the Appellant on that occasion. Consequently, the proposed raid was postponed until the following day.

14. On 20.12.2016, upon meeting the Appellant, PW1 inquired as to the progress of his work. According to PW1, the Appellant responded that he had not yet received the money. PW1 then informed the Appellant that he had brought the money with him. Thereafter, the Appellant stood up from his chair, whereupon PW1 and PW2 also stood up from their respective chairs, and the said money was handed over to PW1 by PW2. Thereafter, PW1 handed the said money to the Appellant.

15. However, PW1 initially testified that he had not counted the money prior to it being handed over to the Appellant. Subsequently, he testified that he had in fact counted the said money. Thus, PW1's evidence is inconsistent as to whether he counted the money before it was allegedly handed over to the Appellant.

“ප්‍ර: අමරසිංහ මහත්මයාගෙන් තමුන් සල්ලි ගන්න අවස්ථාවේ ගැනල බැලීමක් කලද?

උ: නෑ ගැනලා බැලීමක් කලේ නෑ.

ප්‍ර: තමුන් ඒ සල්ලි ටික බැලුවේ නෑ.

උ: ගැනලා බැලුව ඒ වෙලාවේ.” (at vide page 167 of the Appeal Brief)

16. According to PW1, thereafter, the Appellant placed the said money in his locker. At that point, officers of the Bribery Commission approached the scene, apprehended the Appellant, and subsequently arrested him after informing him of the allegations against him.

17. Evidently, the testimony of PW1 is fraught with a substantial number of infirmities that significantly undermine the credibility and reliability of PW1.

18. In particular, PW1 contradicted his own evidence with regard to the amount allegedly solicited by the Appellant on 15.12.2016. Although PW1 initially testified that the Appellant had solicited a sum of Rs. 45,000/- during the said telephone conversation,

he subsequently testified in evidence that the amount solicited was Rs. 35,000/-. This inconsistency relates directly to the alleged solicitation and, therefore, cannot be regarded as a matter wholly unrelated to the material facts of the case.

“ප්‍ර: 2016.12.15 වෙනිදා කියක මුදලක් තමුන්ගෙන් ඉල්ලා සිටියද?

උ: රුපියල් තිස්පන්දාහක මුදලක් ඉල්ලා සිටියා.” (at vide page 173 of the Appeal Brief)

19. Furthermore, during cross-examination, PW1 testified that he was not on good terms with the Appellant. It is evident that this arose from an incident concerning the issuance of the COC, where PW1 was required to pay a fine of Rs. 19,700/- for having commenced the use of the hotel premises as a business establishment prior to obtaining the COC. Further, it was the Appellant who had recommended the imposition of the said fine. This evidence is relevant to the assessment of the relationship between PW1 and the Appellant and, consequently, to the credibility and reliability of PW1’s testimony.

“ප්‍ර: අනුකූලතා සහතිකය තමුන් ලබා ගන්න ඉල්ලුම් කරන්නේ තමුන් ඒ උත්සව ශාලාවේ පදිංචි කටයුතු ආරම්භ කළාට පසුවයි?

උ: ඔව්.

ප්‍ර: එමනිසා තමුන්ට රු. 19700/- ක දඩයක් ගෙවන්න සිද්ධ වුන?

උ: වෙනත් ඇති ස්ථාමිනි.

ප්‍ර: ඒ නිසා මේ විත්තිකරු එක්ක තමන්ට අමනාපයක් ඇති වුන?

උ: කිසිම අමනාපයක් නැහැ. ප්‍රාදේශීය සභාවා ගියොත් දඩ තමයි ගෙවන්න වෙන්නේ.”

(at vide page 188 of the Appeal Brief)

20. It should be noted that the evidence suggests the existence of a strained relationship between PW1 and the Appellant. Having regard to the prior interactions between them, including the circumstances surrounding the recommendation of a fine to PW1, such circumstances cannot be disregarded in assessing the evidence as a whole. They constitute relevant circumstances to be taken into consideration in evaluating the credibility and reliability of PW1’s testimony.

21. These circumstances, when considered together with the material inconsistencies in PW1's evidence, raise questions as to the probability of the prosecution version and cast doubt upon the accounts of events given by PW1.
22. Accordingly, when the evidence of PW1 is considered as a whole, the material inconsistencies and surrounding circumstances create a reasonable doubt as to the credibility and reliability of his testimony. In such circumstances, it would be unsafe to sustain the conviction of the Appellant upon the testimony of PW1, particularly where his evidence does not furnish a consistent and reliable account of the material events alleged by the prosecution.
23. The next witness to testify on behalf of the prosecution was PW2, Amarasinghe, an officer attached to the Bribery Commission, who acted as the decoy in the present case.
24. PW2 testified that, on 19.12.2016, he, together with other officers of the Bribery Commission, proceeded to investigate the allegation made by PW1. Accordingly, they went to the Water Nest Hotel, where they met PW1. Thereafter, PW3, the Chief Investigating Officer, recorded a statement from PW1 concerning the alleged solicitation of gratification by the Appellant.
25. Upon recording the said statement, PW3 inquired from PW1 whether he was willing to assist the Commission in its investigation. Upon obtaining his consent, PW3 requested PW1 to select an officer whom he considered suitable to accompany him when meeting the Appellant. PW1 accordingly selected PW2 for that purpose.
26. PW3 thereafter instructed PW2 to accompany PW1 and to ascertain from the Appellant the particulars of the alleged gratification that had been solicited.
27. Pursuant to the aforesaid instructions, PW2 and PW1 proceeded to the sub-office at Payagala on 19.12.2016. However, they were unable to meet the Appellant, as he was not present at the office. Consequently, the proposed raid was postponed until the following day.
28. On 20.12.2016, acting upon the instruction of PW3, PW1 and PW2 again proceeded to the said office and met the Appellant. After engaging in conversation for some time,

PW1 inquired about the progress of his work. According to PW2, the Appellant then inquired whether PW1 had brought the money. PW1 responded in the affirmative. Thereafter, the Appellant stood up from his chair, followed by PW1, and PW2 handed the money to PW1, who counted the said money and thereafter handed it over to the Appellant.

29. However, PW2's evidence does not provide a clear and consistent account as to whether PW1 had counted the money before it was handed over to the Appellant. In this regard, PW2 was unable to give a satisfactory answer in his evidence as to whether PW1 had counted the money prior to handing it over to the Appellant.

“ප්‍ර: පැමිණිලිකරු ඒ මුදල් ලබාගෙන මොකක්ද කළේ?”

උ: ඔහු ඒ මුදල ගණන් කළා ඒ අවස්ථාවේදී.” (at vide page 220 of the Appeal Brief)

30. Furthermore, according to the evidence of PW2, he stood up from his chair for the purpose of proceeding outside the Appellant's cabin. However, this is inconsistent with the evidence of PW1, who testified that, at the time the money was allegedly handed over to the Appellant, PW1, PW2, and the Appellant were all standing inside the Appellant's cabin. This material discrepancy in their respective accounts relates to the circumstances surrounding the alleged handing over of the money and therefore warrants consideration when assessing the reliability of the prosecution case.

“ප්‍ර: කවිද නැගිටිවේ?”

උ: මුලින්ම සැකකරු, එත් එක්කම පැමිණිලිකරු නැගිටිව.

ප්‍ර: ඊට පස්සේ තමනුත් නැගිටිව?”

උ: ඔව්, මම නැගිටිවේ සල්ලි දීල ඉවර වුනාට පස්සේ, එලියට යන්න තමයි මම නැගිටිවේ.”

(at vide page 228 of the Appeal Brief)

31. Further, PW5 corroborated the fact that a fine had been imposed upon PW1 and that, upon payment of the said fine, PW1 thereafter obtained the relevant COC.

“ප්‍ර: සාක්ෂිකාරිය දැන් තමුන් කිව්වා 2016.05.16 ඉල්ලීමක් කරලා තිබෙනවා කියල එම

ඉල්ලීමට අනුව මොකක්ද පයාගල උප කාර්යාලයෙන් මොනවද කරලා තිබෙන්නේ?”

උ: එම ඉල්ලීම අනුව අනුකූලතා සහතිකය ලබාදීමට ප්‍රථමව වාර්තාවේ තිබෙන්නේ ඒ සම්බන්ධයෙන් අනුකූලතා සහතිකය නොලබා ගොඩනැගිල්ල ප්‍රයෝජනයට ගෙන ඇති බැවින් රු. 19700/- දඩ මුදලක් ගෙවා ඉන්පසුව අනුකූලතා සහතිකය ලබාගන්න කියලා.

ප්‍ර: කවද්ද මය අනුකූලතා සහතිකය ලබාගෙන තියෙන්නේ?

උ: අනුකූලතා සහතිකය ලබාගෙන තිබෙන්නේ 2016.11.15 වන දින කමිටු තීරණය පරිදි 2016.12.08.” (at vide page 303 of the Appeal Brief)

32. More importantly, the evidence of PW5 indicates that the Appellant was not the sole authority responsible for the issuance of the approvals applied for by PW1. According to PW5, in relation to the issuance of EPL, the relevant matter was dealt with by a committee at Beruwela Pradeshiya Sabha, while the function of Payagala sub-office was to submit the relevant file and report to the appropriate authority. PW5 further testified that three officers from the sub-office were required to inspect the relevant premises in connection with an application for an EPL, while the Community Development Officer attached to the said Pradeshiya Sabha was also involved in the process.

“ප්‍ර: පරිසර ආරක්ෂක බල පත්‍ර නිකුත් කරන්න ඒ කමිටුවේ කී දෙනෙක් ඉන්නවද?

උ: පරිසර ආරක්ෂක බල පත්‍ර කමිටුව ප්‍රධාන කාර්යාලයෙන් ඒ සම්බන්ධයෙන් අපේ උප කාර්යාලයෙන් කෙරෙන්නේ වාර්තාවට අදාල ගොනුව උප කාර්යාලයට ඉදිරිපත් කිරීම පමණයි.

ප්‍ර: පරිසර ආරක්ෂක බල පත්‍ර ලබා ගන්න තමුන්ගේ කාර්යාලයේ උප කාර්යාලයෙන් නිලධාරීන් කී දෙනෙක් එම ස්ථානය පරීක්ෂා කරන්න යනවද?

උ: තුන්දෙනෙක්.

ප්‍ර: පරිසර විෂය පිළිබඳ ප්‍රජා සංවර්ධන නිලධාරියා යන්නේ නැද්ද?

උ: ප්‍රජා සංවර්ධන නිලධාරී සම්බන්ධ වෙනවා ප්‍රධාන කාර්යාලයෙන්.” (at vide page 309 of the Appeal Brief)

33. The fact that a fine had been imposed upon PW1 is further corroborated by the evidence of PW6.

“ප්‍ර: කොපමණ දඩ මුදලක්ද, රු. 19000/- ගණනක දඩ මුදලක් කියල කිව්වොත් නිවැරදිද?

උ: රු. 19768/- ක් ස්වාමිනි.

ප්‍ර: ඒ කියන්නේ මේ පී. කේ. ඒ. පෙරේරා නමැත්ත විවිධ ලේකන ඉදිරිපත් කර ඔබගේ කාර්යාලයට අනුකූලතා සහතික ඉල්ලා සිටියත් ඊට කලින්ම ඔහු ව්‍යාපාර කටයුතු කරගෙන් ගිහිල්ල නියෙනවා?

උ: ගොනුවේ සටහන් අනුව මුල ඉදන් පටන් ගෙන නියෙනවා ස්වාමිනි.” (at vide page 335)

34. Thus, the evidence of PW5 and PW6 independently establishes that PW1 had been required to pay a fine in connection with the use of the premises prior to obtaining the COC, and that the Appellant was not the sole authority responsible for the issuance of the relevant certificates. These circumstances are relevant when considering the evidence of PW1 regarding the nature of his relationship with the Appellant and the circumstances surrounding the alleged solicitation.
35. In my opinion, the inconsistencies and infirmities apparent in the evidence of PW1 and PW2 are not confined to minor or peripheral matters, but relate to material aspects of the prosecution case, including the sequence of events and the circumstances surrounding the alleged solicitation. These discrepancies, when considered together with the surrounding circumstances, materially affect the credibility and reliability of the prosecution evidence.
36. It is also desirable to emphasize that the officers, when conducting a raid of this nature, are required to make notes on every important event and are also entitled to peruse their notes in order to refresh their memory when testifying. Hence, where material contradictions are present in their testimony, the Court cannot lightly disregard such inconsistencies and proceed to convict the Appellant.
37. Accordingly, I am of the view that the learned High Court Judge failed to give due consideration to the material infirmities in the prosecution evidence and that the impugned judgment is not supported by the evidence led at the trial. The prosecution has therefore failed to establish the charges against the Appellant beyond reasonable doubt.
38. I shall now consider the final ground of appeal; it was contended that the learned High Court Judge failed to properly analyze and evaluate the evidence adduced by the

defence and consequently erred in law by summarily rejecting the evidence of the Appellant without adequate consideration.

39. In this regard, it was clearly elicited during the evidence of PW1 that a strained relationship existed between PW1 and the Appellant. However, the learned High Court Judge failed to give due consideration to the existence of this strained relationship. In these circumstances, the possibility that PW1 may have been motivated to make a false allegation against the Appellant cannot be entirely ruled out. The existence of such animosity provides a plausible motive for the fabrication of the allegation and ought to have been carefully considered when assessing the credibility and reliability of PW1's testimony.
40. Further, there exists a material contradiction between the evidence of PW1 and PW2 concerning the sequence of events. The inconsistencies in their respective accounts cast doubt on the accuracy and reliability of their testimony regarding the sequence of events. Accordingly, the learned High Court Judge ought to have carefully considered these contradictions when assessing the credibility of the witnesses and the weight to be attached to their evidence.
41. Unfortunately, the aforesaid infirmities, together with the material inconsistencies in the prosecution evidence, appear to have escaped the attention of the learned High Court Judge. It is well settled that an appellate court is generally slow to interfere with the findings of a Trial Judge. Nevertheless, where material discrepancies exist that go to the root of the prosecution case and render it unsustainable, and where such discrepancies appear to have been overlooked by the Trial Judge, appellate intervention is warranted.
42. Furthermore, it is significant to note that the learned High Court Judge rejected the dock statement of the Appellant on the ground that it was an unsworn statement and that the prosecution had no opportunity to cross-examine the Appellant. In my view, the fact that the statement was unsworn and was not subjected to cross-examination does not, in itself, justify its outright rejection, as these are inherent characteristics of a dock statement.

43. The principles governing the evidentiary value of a dock statement are well settled in our jurisprudence. In ***Gunasiri and two others v. Republic of Sri Lanka 2009 (1) Sri L.R. 39***, it was held with authority as follows:

“If the dock statement is believed it must be acted upon. If it creates a reasonable doubt the defence must succeed.”

44. To elaborate further, although a dock statement is unsworn and is not subject to cross-examination, it must nevertheless be treated as evidence. Its probative value must be assessed by considering whether, and to what extent, the matters stated therein are consistent with, or contradicted by, the other evidence led at the trial, the surrounding circumstances, and the inherent probabilities of the case. The trial Judge must consider the dock statement together with the totality of the evidence and determine what weight, if any, should properly be attached to it. The mere fact that the statement is unsworn and was not subjected to cross-examination does not, by itself, justify its rejection without such evaluation.

45. The above position is further articulated in ***Ehelepola v. Officer in Charge, Police Station, Kandy and Another (1998) 1 Sri L.R. 295***, by the Supreme Court as follows:

*“I have examined the judgment of the learned Magistrate and find that the Magistrate has indeed stated that the dock statement made by the appellant had no evidentiary value. On this matter the learned Magistrate has clearly misdirected himself. It is indeed well settled law that when an unsworn statement is made by an accused from the dock, that such statement must be looked upon as evidence subject however to the infirmity that the accused had deliberately refrained from giving sworn testimony. Though there is no statutory provision for it, the right of an accused to make an unsworn statement from the dock has been recognized by our Courts for many years. (See *The King v. Sittamparam* 20 NLR 257 and is now part of the established procedure in our Criminal Courts. If such statement is believed, it must be acted upon, if it raises a reasonable doubt in their minds about the case for the prosecution, the defence must succeed. However, it should not be used against another accused. (Vide *The Queen v. Kularatne* 71 NLR 529. In the instant case, the learned Magistrate had admittedly given no consideration whatsoever to*

the unsworn statement made by the appellant from the dock and has specifically stated that such statement had no evidentiary value. In The Queen v. Mapitigama Buddharakhita Them and two others 63 NLR 433, the Court of Criminal Appeal has observed that the right of an accused person to make an unsworn statement from the dock is recognized in our law. That right would be of no value, unless such a statement is treated as evidence on behalf of the accused, subject however to the infirmity it attaches to statements that are unsworn and have not been tested by cross-examination.”

46. Thus, it is incumbent upon the Trial Judge to analyze and evaluate the dock statement and give reasons for declining to accept it. Failure to do so would result in the defence evidence remaining unevaluated and unassessed, thereby denying the appellant a fair trial. In the present case, regrettably, the learned Trial Judge failed to analyze and evaluate the probative value of the Appellant’s dock statement. This failure, in my view, caused grave prejudice to the Appellant, as the defence evidence was thereby left unevaluated and unassessed.

47. In the aforesaid circumstances, I conclude that it is not safe to affirm the conviction against the Appellant.

48. For the reasons set out above, we allow the appeal and we proceed to quash the conviction and sentence imposed on the Appellant by the learned High Court Judge.

Judge of the Court of Appeal

P. Kumararatnam, J.,

I agree

Judge of the Court of Appeal