

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an Appeal against the judgment of the Learned High Court Judge of Puttalam made in terms of Section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

The Democratic Socialist Republic of Sri Lanka

Complainant

Vs

Ranhotige Suresh Shelton Jayasundara

Accused

Court of Appeal Case No:
CA/HCC/0043/2023

High Court of Puttalam Case No:
HC 106/2019

AND NOW BETWEEN

Ranhotige Suresh Shelton Jayasundara

Accused-Appellant

Vs

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

Complainant-Respondent

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

Counsel : Sandeepani Wijesooriya and Randeepa Wijesooriya for the Accused-Appellant.
: Shezan Mahboob, SC for the State.

Argued on : 04.06.2026

Decided on : 28.08.2026

Pradeep Hettiarachchi, J

Judgment

1. The Accused-Appellant (hereinafter referred to as “the Appellant”) was indicted before the High Court of Putlam on two counts;
 - a. On or about 14.11.2011 to 14.12.2011, within the jurisdiction of the High Court of Putlam, the Accused, by kidnapping a girl of 16 years of age named Rankoth Pedige Pavithra Sanjeevani from her lawful guardian, Rankoth Pedige Rupasignhe, committed an offence punishable under Section 354 of the Penal Code; and
 - b. In the same transaction and during the same time period, the Accused committed rape on the said Rankoth Pedige Pavithra Sanjeevani, an offence punishable under Section 364 (2) (e) of the Penal Code as amended by the Act No. 22 of 1995.
2. The trial commenced before the High Court Judge of Putlam, during which six witnesses testified for the prosecution. At the conclusion of the case for the prosecution,

the Appellant made a dock statement. Upon the conclusion of the trial, the Learned High Court Judge acquitted the Appellant from the first count while finding the Appellant guilty of the second count and accordingly convicted him.

3. Accordingly, the Appellant was sentenced to 15 years' rigorous imprisonment and a fine of Rs. 10,000, with a default sentence of 6 months' simple imprisonment. Furthermore, the Appellant was ordered to pay Rs. 300,000.00 as compensation to the prosecutrix, with a default sentence of 01 years' simple imprisonment.
4. It is against that conviction and sentence that the Appellant has preferred the instant appeal. During the hearing, the Appellant pursued the following grounds of appeal;
 - a. The evidence of the prosecutrix is unworthy of credit;
 - b. The Learned High Court Judge has failed to consider the legal principles relating to 'corroboration' as it would be relevant to the allegation of rape.
5. The principal contention advanced by the Appellant is that the evidence of the prosecutrix is unworthy of credit. At this stage, I think it would be appropriate to summarize the evidence of the prosecutrix and other prosecution witnesses as follows;
6. PW1, the prosecutrix, was a school-going minor at the time of the alleged incident. By the time she gave evidence before the trial court, she was a married woman. In her testimony, she stated that she had been suffering from frequent fainting spells, which she believed were caused by an unknown spirit. She further testified that she did not seek medical treatment at a hospital but instead obtained treatment from a Weda Mahaththaya, named Premaratne, who is deceased.
7. The prosecutrix further testified that she stayed at the residence of the said Weda Mahaththaya for two days while undergoing treatment. According to her evidence, on one occasion, while she was asleep, the said Weda Mahaththaya touched her body. She stated that, to the best of her knowledge, no other act of sexual abuse was committed against her. When she questioned him about the incident, he allegedly responded as “දැන් උඹට වෙනත් ඕන දේ වෙලා ඉවරයි.” Thereafter, the prosecutrix stated that she never returned to his residence.

8. During her examination-in-chief, the prosecutrix testified that, following the aforementioned incident, a villager named Gamini introduced the present Appellant to her parents. She stated that the Appellant was also known to be a Weda Mahaththaya.
9. The prosecutrix further testified that, on the day of the alleged incident, the Appellant came to her residence, informing her parents that he was taking her to the Anamaduwa Hospital to provide a urine sample of the prosecutrix. According to her evidence, while her parents were preparing to accompany them, the Appellant took the prosecutrix to obtain a helmet at about 9.30 to 10.00 a.m.
10. The prosecutrix stated that, instead of taking her to obtain a helmet, the Appellant took her to a house situated on a land called Gaslabuwatte.
11. The prosecutrix further testified that, as they entered the said house, she observed a worker present on the premises. She also stated that the house contained numerous weapons, including firearms and swords. According to her evidence, the said house did not consist of separate rooms.

“ප්‍ර: වැඩ කරන කෙනෙක් කියල නමා කොහොමද කියන්නේ?”

උ: එක ඇතුලේ ගොඩක් ආයුධ තිබ්බා. තුවක්කු තිබ්බා. කඩු වගයක් තිබ්බා.

ප්‍ර: ඒ කියන්නේ ඒ නිවාස ඇතුලේ?

උ: ඔව්.” (at vide page 65 of the Appeal Brief)

12. The prosecutrix further testified that the Appellant instructed the said worker to go and purchase a cigarette for him. Thereafter, the Appellant entered the house and asked the prosecutrix to remove her clothes. She stated that, when she resisted, the Appellant forcibly removed her undergarments himself. According to her testimony, the Appellant thereafter had sexual intercourse with her for approximately ten minutes.
13. Further, while the Appellant was engaging in sexual intercourse with her, the said worker returned to the premises. She stated that, following his return, the Appellant left the room to smoke a cigarette.

14. Thereafter, the prosecutrix testified that several persons, including Gamini, arrived at the scene. According to her evidence, the Appellant went outside to speak with them. While the Appellant was engaged in conversation with those persons, the prosecutrix attempted to contact her father using the Appellant's mobile phone. However, she testified that she was unable to make the call as the Appellant returned before the call could be completed.
15. During the examination-in-chief, the prosecutrix was questioned as to whether she attempted to raise an alarm when the three persons, together with Gamini, arrived at the place of the incident. In response, she testified that the appellant had threatened her and that, for that reason, she did not raise any alarm. However, the credibility of this explanation is questionable, considering that, according to her own evidence, after those persons arrived at the scene, the Appellant left her alone and went outside to speak with them. In such circumstances, it is reasonably possible to infer that the prosecutrix had an opportunity to ask for assistance by raising an alarm.
16. The prosecutrix further testified that, after the said persons left the scene, the Appellant had sexual intercourse with her for the second time, which allegedly continued for about 15-18 minutes. She testified that thereafter, the Appellant made a telephone call and returned her to her residence after about one hour from the alleged incident. This version of events gives rise to serious questions regarding the probability, particularly in view of the circumstances described by her in her own evidence.

ප්‍ර: ඊට පස්සේ නමා මොකද කලේ?

උ: ඊට පස්සේ මෙයා ෆෝන් එකෙන් කතා එක්කද මන්දා කතා කලා. කතා කරලා අහක්වෙලා මාව පැය දෙකකට විතර කාලයක් ඒ කරදර කරලා පැයක් විතර හිටිය. ඉඳලා මාව ගෙදරට ගෙනත් දැමීමා.

ප්‍ර: ඒ පැයක් විතර හිටියේ ඒ නිවසේමද?

උ: ඔව්.” (at vide page 78 of the Appeal Brief)

17. The prosecutrix testified that, upon returning to her residence, she found that no one was present in the house. She further testified that the Appellant again threatened her

not to disclose the alleged incident to anyone. Consequently, she did not immediately reveal the incident to her parents.

18. She further testified that, while they were at the said house, her parents contacted the Appellant and inquired whether they had gone to the Anamaduwa Hospital. According to her evidence, the Appellant informed them that he had taken the prosecutrix to the hospital. Therefore, when she returned home, the prosecutrix stated to her parents that she had gone to the hospital with the Appellant, instead of disclosing the alleged incident that had occurred.
19. According to the prosecutrix, she disclosed the alleged incident to her parents one week after it had occurred. However, it was Gamini who initially informed the Grama Niladhari regarding the alleged incident. Thereafter, the Grama Niladhari visited the residence of the prosecutrix and advised her to make a complaint to the police.
20. Accordingly, the prosecutrix lodged a complaint with the police on 14.12.2011. However, it is significant to note that the prosecutrix was unable to recall the exact date on which the alleged incident occurred.
21. It should be noted that an identification parade was conducted for the purpose of identifying the Appellant. During the cross-examination, it was suggested to the prosecutrix that she was already well acquainted with the Appellant prior to the conduct of the said identification parade. Further, the prosecutrix testified that the name of the Appellant was “Sameera”. However, it is significant to note that the actual name of the Appellant is different from the name stated by the prosecutrix. This discrepancy raises a question as to the reliability of her identification of the Appellant.

“ප්‍ර: මම යෝජනා කරනවා තමන් මීට කලින් හොඳට දැනගත්තු පුද්ගලයාව තමයි පෙරෙට්ටුවෙනුත් අයුර ගත්තේ?

උ: ඔව්.

ප්‍ර: මීට කලින් හොඳට දැනගෙන හිටිය ඔහුව. හැඩරුව, ඔහු කවුද කියලා දැනගෙන හිටිය?

උ: ඔව්.

ප්‍ර: තමන් පොලිස් පැමිණිල්ල කරන අවස්ථාවේ ඔහුගේ නම කිව්වද පොලිසියට?

උ: ඔව්.

ප්‍ර: විත්තිකරුගේ නම?

උ: ඔව්.

ප්‍ර: මොකක්ද කියපු නම?

උ: සමීර කියලා නමයි කිව්වේ. ”(at vide page 107 of the Appeal Brief)

22. Further, the defence marked 13 contradictions in the evidence of the prosecutrix. However, it should be noted that contradictions 1 – 10 relate to the previous incident narrated by the prosecutrix and do not concern the alleged incident which forms the subject matter of the present trial. Therefore, those contradictions are not material to the determination of the issue arising in the present case and do not require consideration individually.

23. Other contradictions marked in the evidence of the prosecutrix are as follows;

24. In her statement to the police, the prosecutrix stated that she did not know the exact name of the Appellant. However, during cross-examination, she testified that the name of the Appellant was “Sameera.” This contradiction was marked as D11. This discrepancy raises a serious doubt regarding the identification of the Appellant.

25. Moreover, the prosecutrix did not state in her police statement that the Appellant threatened her not to escape from the scene. However, in evidence, she testified that she was threatened by the Appellant and, as a result, she had no opportunity to escape. The introduction of such a significant detail at a later stage creates a doubt as to the consistency of her account.

26. Further, in her statement to the police, the prosecutrix stated that, while she was dressed and waiting outside the house, she observed Gamini approaching the said Gaslabuwatte. However, during her evidence before the trial, she testified that Gamini arrived after the first alleged act of sexual intercourse and before the second alleged act of sexual intercourse. “ඊටපසු මම ඇදුම් ඇඳගෙන ගෙයින් එලියට වෙලා ඉන්න කොට අපේ ගෙවල් ලග ඉන්න ගාමිණී මාමා ඒ වත්තට එනවා මම දැක්කා.” (ID12, marked in evidence at vide page 119 of the Appeal Brief)

27. Further, during cross-examination, the prosecutrix testified that she did not disclose the incident involving the Appellant to the Grama Niladhari. However, she subsequently stated that she had disclosed both incidents to the Grama Niladhari. This inconsistency in her evidence raises a doubt regarding the reliability and consistency of her account as to the disclosure of the alleged incident.

“ප්‍ර: දැන් සාක්ෂිකාරිය ග්‍රාමනිලධාරී තෝනට මේ විත්තිකරු සම්බන්ධයෙන් තමන් කිව්වද?
 උ: නැහැ.

ප්‍ර: තමන් කිව්වේ නැහැ?

උ: නැහැ.

ප්‍ර: ඒ ග්‍රාමනිලධාරී තෝනට කියන අවස්ථාවේදී තමන් ප්‍රේමරත්න සම්බන්ධව පමණයි කිව්වේ ?

උ: නැහැ. විස්තර දෙකම කිව්වා.” (at vide page 121 of the Appeal Brief)

28. Having considered the evidence of PW1, this Court finds that the testimony of the prosecutrix is unworthy of credit due to the material inconsistencies and contradictions in her account of the alleged incident. These contradictions go to the very root of the prosecution’s case and relate to material particulars of the alleged offence, thereby seriously undermining the credibility and reliability of her evidence.
29. The next witness called by the prosecution was PW2, Grama Niladhari of the relevant area. According to her evidence, on 09.12.2011, a villager named Premasiri Harischandra came to her office and informed her regarding the alleged incident. Upon receiving such information, PW2 visited the residence of the prosecutrix. However, during her first visit, the prosecutrix was not present at the house, and the mother of the prosecutrix did not disclose any specific information regarding the alleged incident.
30. Thereafter, PW2 visited the residence of the prosecutrix again and made inquiries from her regarding the incident. According to PW2’s evidence, the prosecutrix disclosed that an incident had occurred involving Weda Mahaththaya, identified as D.P.D. Premaratne, who was stated to be deceased by the time of the inquiry.
31. PW2 further testified that the parents of the prosecutrix informed her that a person had taken the prosecutrix to Gaslabuwatte, stating that she was being taken to the hospital

to obtain medicine. Upon further inquiry, PW2 discovered that the prosecutrix had in fact been taken to the said Gaslabuwatte. The person who initially informed PW2 about the incident also stated that the prosecutrix had gone to that area too. Thereafter, PW2 proceeded to Gaslabuwatte, where she met a person named Gamini, who stated that he was looking after cattle in that area. According to PW2's evidence, Gamini informed her that the prosecutrix had come to the said house and subsequently left the place with another person who was known as a Weda Mahaththaya. However, Gamini did not know the actual name of that person.

32. However, PW2 admitted that she did not make an inquiry from the prosecutrix regarding the second incident involving the present Appellant. This position is inconsistent with the evidence of the prosecutrix, who testified that she disclosed both incidents to PW2.

“ප්‍ර: ඊට පස්සේ තමුන්ට ඒ සිද්ධීන් සම්බන්ධයෙන් තමා මේ සංජීවනීගෙන් ප්‍රශ්න කර සිටියද මේ ගස්ලබුවත්තේ මොන හරි සිද්ධියක් වුනාද නැද්ද කියල?”

උ: ඒ සිද්ධිය සම්බන්ධව මම විමසීමක් කලේ නැහැ. මම පලවෙනි සිද්ධිය සම්බන්ධව පමණයි විමසීමක් කරලා තියෙන්නේ.” (at vide page 48 of the Appeal Brief)

33. The next witness called by the prosecution was PW3, the father of the prosecutrix. According to his evidence, he initially made a statement to the police on 15.12.2011 regarding the incident.

34. PW3 further testified that, following the first alleged incident involving the Premaratne Weda Mahaththaya, the prosecutrix became pregnant.

“ප්‍ර: කොහොම හරි මේ ප්‍රේමරත්න කියන තැනැත්තාගේ සිද්ධියෙන් පස්සේ තමාගේ දියණිය ගර්භනී තත්වයකින් ද හිටියේ?”

උ: ඔව් ඒ සිද්ධියෙන් පස්සේ එහෙම දෙයක් සිදු වුන.” (at vide page 139 of the Appeal Brief)

35. Thereafter, PW3 made a further statement to the police regarding the Appellant on 25.01.2018. It is significant to note that PW3 failed to provide any plausible explanation

for the considerable delay in making such a statement. Although PW3 admitted that both alleged incidents occurred within a short period of time, he did not disclose the alleged incident involving the present Appellant at the earliest opportunity. The unexplained delay in making such a subsequent statement raises a serious doubt as to the reliability and credibility of the allegation subsequently made against the Appellant.

“ප්‍ර: තමුන් ඒ මුල් අවස්ථාවේදී පොලිසියට ප්‍රේමරත්නගේ සිද්ධිය කියන අවස්ථාවේදීම මේ විත්තිකරු ගනාහැ පොලිසියට පැවසීමට හැකියාවක් තිබුනේ නැත්තේ ඇයි?

උ: කිව්වේ නැත්තේ කියන්නේ?

ප්‍ර: දැන් තමුන් පිළිගන්නා නේ 2018.01.25 වන දින තමයි තමුන් මේ විත්තිකරුට විරුද්ධව ගිහිල්ලා පොලිසියට කටඋත්තරයක් ලබා දුන්නේ කියලා?

උ: ඔව්.

ප්‍ර: ඇයි ඒ අවස්ථාවේදී මේ විත්තිකරුට විරුද්ධව කටඋත්තරයක් දීල ඒ ප්‍රේමරත්නගේ සිද්ධිය කියන වෙලාවේදීම මේ විත්තිකරු ගැනත් කිව්වේ නැත්තේ ඇයි?

උ: ඒ සිදුවීම සිදු උනේ එකවතාවකදී නෙවෙයි නේ. සිදුවීම දෙවතාවකින් සිදු වුනේ. පලවෙනි වතාව ප්‍රේමරත්නගෙන් එහෙම සිදු වෙලා දෙවනුව තමයි මේ පුද්ගලයා මගේ නිවසට ඇවිල්ල දියණියව රවට්ටගෙන, අපිවත් රවට්ටගෙන් අපිට ,ඒ විදියට ප්‍රකාශයක් කරලා දැන් ඒ පුද්ගලයා දැක්කට පස්සේ තමයි නියම දේ හැගීම හදවතට එන්නේ. පුද්ගලයා ඇවිල්ල අපිව රවට්ටලා අපි සිපවැළදගෙන දරුවාව අරගෙන යන්න පාර හදාගන්නා. ඉතින් ඇත්තටම අපි රැවටුන කියන එක තමයි දැනෙන්නේ හිතට.

ප්‍ර: මේ ප්‍රේමරත්නත් එක්ක සිදු වුණා යැයි කියන සිද්ධිය වෙලා යම් කාලයක් ගත වෙලාද මේ අහවල් සිද්ධිය සිදු වුණා කියලා කියන්නේ සාක්ෂිකරු ?

උ: කිවුවම. මෙයට අර ලෙඩේ තියෙනවනේ. ඒ ලෙඩේ තියෙන නිසා ප්‍රතිකාර කරන්න ඕන කියන තැනට දේවාල භූමියට කැන්ද ගෙන යන්න පුළුවන් කියන හිත ඇතුළු තමයි පුද්ගලයා, තව කෙනෙක් කියලා තියෙනවා මගේ මෙහෙම දුවෙකුට අසනීපයක් තියෙනවා. අපි ගියේ නැහැ මෙයාව කැන්දගෙන එන්න. ඒ ගමේම පිරිස් ඉඳල එයාගේ දුවෙකුටද කාටද සුව කර ගන්න මෙයාව කැන්දගෙන ගිහිල්ලා එනනින් තමයි කියලා තියෙන්නේ අපේ ගෙදර මෙහෙම මගේ දුවටත් අසනීපයි. පුලුවන්නම් ගිහිල්ලා එයාවත් සුව කරගන්න කියලා. අපි දන්නෙම නෑ මෙය අපේ ගෙදරට එනවා. කවරුහරි කෙනෙක් කියලා එවලා තියෙන්නේ. ඒක මට මතකයක් නෑ කවුද කිව්වේ කියලා මට කිව්වෙවත් නෑ. පුද්ගලයා ගෙදරට ඇවිල්ල අද වගේ මතකයි ගේ ඉස්සරහ පිට කොහොඹ ගහක් තිබුන. ඔය සරමක් ඇදගෙන කොහොඹ ගහ දිහා මෙහෙම මෙහෙම බල බල කැරකි කැරකි ඉඳල තමයි මට අද විත්ති රූපයක් මැවුණා.” (at vide page 144 of the Appeal Brief)

36. Further, it should be noted that, according to the evidence of the prosecutrix, she disclosed the alleged incident to her parents approximately one week after its occurrence. Moreover, when PW2 inquired into the matter, she testified that the parents of the prosecutrix informed her that an incident occurred at Gaslabuwatte. Therefore, it is apparent that PW3 was aware of the circumstances surrounding the alleged incident from the earliest stage.
37. However, despite having knowledge of the alleged incident and the circumstances in which the prosecutrix was taken to Gaslabuwatte, PW3 did not make any statement to the police regarding the present Appellant at the initial stage; it was only after a lapse of eight years that PW3 made a statement implicating the Appellant. No satisfactory explanation was provided for this significant delay. The unexplained delay in disclosing the alleged involvement of the Appellant, despite PW3 being aware of the relevant facts from the outset, raises a serious doubt regarding the credibility and reliability of the subsequent allegation made against the Appellant.
38. According to PW3, the Appellant agreed to take the prosecutrix to the hospital, and they were preparing to accompany him. At that time, the Appellant informed them that it was necessary to purchase a helmet for the prosecutrix. While PW3 and his wife were getting ready to leave, the Appellant left with the prosecutrix. PW3 further testified that he and his wife thereafter waited at the 7th junction for about one and a half hours, and when the Appellant and the prosecutrix did not arrive, they returned home.
39. It is improbable that PW3 did not make any attempt to search for the prosecutrix after the Appellant took her away. Instead, according to his evidence, he merely waited at the 7th junction together with his wife for about one and a half hours. As the father of the prosecutrix, if PW3 believed that the Appellant had taken his daughter away and failed to return within a reasonable period of time, it would be expected that he would take immediate steps to locate her or inquire into her whereabouts. His failure to do so creates a doubt regarding the genuineness and probability of the sequence of the events.
40. PW3 further testified that, after returning home, he found the prosecutrix there. However, it is significant to note that, according to the evidence of the prosecutrix, the Appellant had made a telephone call to her parents and informed them that they had

gone to the hospital. Nevertheless, PW3 did not testify that he received any such telephone call from the Appellant or that he was informed by the Appellant regarding their alleged visit to the hospital. This creates a further inconsistency between the evidence of the prosecutrix and PW3 regarding the sequence of the events narrated by the prosecution.

“ප්‍ර: තමාගේ දෙමාපියයෝ එදා නිවසට ආවද?

උ: ඔව්. මාව ගෙනත් දාලා ඉවර වුනාට පස්සේ තමා ඒ කට්ටිය අවේ.

ප්‍ර: ඒ ගොල්ලෝ ඇහුවද ආනමඩුව ඉස්පිරිතාලට ගියද කියල?

උ: මාව අර නිවසේ නියාගෙන ඉන්නකොට මෙයාට කෝල් එකක් අරන් තිබ්බා. කෝල් එකක් අරගෙන ගොඩක් වෙලා තාත්තයි අම්මයි බලාගෙන් ඉදලා තියෙනව මන් එනකන්.”

(at vide page 80 of the Appeal Brief)

41. The next witness called by the prosecution was PW5, who was engaged in looking after cattle in the Gaslabuwatte area. According to his evidence, he went to Gaslabuwatte and upon returning, he observed a motorcycle parked near the house. He further testified that he usually kept the equipment required for obtaining milk inside the said house. When he opened the door of the house for that purpose, he observed a person known as “Weda,” whose actual name was unknown to him, and the prosecutrix inside the house without clothes.
42. PW5 further testified that, thereafter, he informed Gamini regarding what he had observed. Gamini subsequently informed the Grama Niladhari and the police regarding the alleged incident.
43. However, it is significant to note that the prosecutrix, in her evidence, never disclosed that PW5 entered the said house and observed that both herself and the Appellant were naked.
44. The above inconsistencies appearing in the evidence of the prosecution witnesses cast serious doubt upon the credibility of the prosecution version. These contradictions are not merely minor discrepancies but relate to material aspects of the alleged incident. Therefore, the cumulative effect of these inconsistencies renders the version presented

by the prosecution unreliable and raises a reasonable doubt regarding the allegation made against the Appellant.

45. In the present case, the prosecution case substantially rests upon the testimony of the prosecutrix. However, as already discussed, her evidence contains material contradictions and inconsistencies relating to the sequence of events, which go to the very root of the prosecution case. In such circumstances, the question that arises is whether the evidence of the prosecutrix, standing alone, is of such quality and credibility to sustain a conviction.
46. The appellate courts have consistently recognized that the evidence of a prosecutrix must be carefully scrutinized and must satisfy the test of reliability and credibility before a conviction can safely be entered.
47. In ***Ajith vs. Attorney General (2009) 1 Sri L.R 23***, held that *“If the prosecutrix in a rape case is not reliable or believable witness, the evidence seeking to corroborate her story cannot strengthen her evidence. The Court should seek corroborative evidence only if the prosecutrix is a reliable witness.”*
48. In ***Savinda vs. Republic of Sri Lanka (2010) 1 Sri L.R. 32***, *“In my view, in a charge of rape if the evidence of the prosecutrix does not satisfy the test of probability and or the prosecutrix is not a credible witness, Court should reject her evidence and acquit the accused.”*
49. Accordingly, corroboration assumes significance only after the court is satisfied that the testimony of the prosecutrix is trustworthy; it cannot be used to strengthen or sustain a prosecution case founded upon evidence that is inherently unreliable.
50. Thereafter, the prosecution called PW12, JMO. According to his evidence, based on the history provided by the prosecutrix, she had been taken to a Weda Mahaththaya named R.P.D.P. Premaratne. The prosecutrix had stayed at the residence of the said Weda Mahaththaya on several nights over a period of one and a half months. According to the history provided, on the first occasion on which she spent the night at the residence of

the said Weda Mahaththaya, she experienced some discomfort on the following morning.

51. PW12 further testified that, according to the history provided by the prosecutrix, on the last occasion she stayed at the residence of the said Weda Mahaththaya, she felt that he was sleeping beside her while placing one of his hands on her body. On the following morning, she experienced discomfort.

52. According to the history provided to PW12, approximately one and a half weeks after the said incident, another Kapu Mahaththaya named 'Sameera' came to the residence of the prosecutrix and took her to the said house, stating that he would take her to another 'dewala' in order to resolve the previous incident. The prosecutrix stated that there was another male person present in the said house, who subsequently left, leaving her alone with the said Kapu Mahaththaya. Thereafter, the said Kapu Mahaththaya took her inside the house and allegedly raped her on two occasions. The prosecutrix further stated that she could not recall the exact date on which the alleged incident occurred.

53. According to the observations made by the JMO, the prosecutrix had normal labia and a thick annular hymen with a healed complete tear at the 6 o'clock position. The JMO further opined that such a tear could have occurred at least two weeks prior to the date of examination of the prosecutrix.

54. It is significant to note that, according to the history provided by the prosecutrix to the JMO, she identified the Appellant as 'Sameera.' However, the actual name of the Appellant is not Sameera. This discrepancy raises a serious doubt regarding the identification of the Appellant and further undermines the reliability of her evidence on this crucial issue.

55. Material discrepancies in a witness's evidence concerning the identification of an accused strike at the very root of the reliability of that evidence. In such circumstances, it would be unsafe for the Court to act upon the testimony of that witness without satisfactory corroboration.

56. In *Sucha Singh Vs. State of Punjab, (2003) 7 SCC 643*, it was held inter alia:

“.....normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so.....Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto.”

57. Further, since there exists a serious doubt as to whether PW1 experienced the alleged incident in the manner as she narrated, it becomes highly doubtful and unsafe to rely upon. In such circumstances, the evidence of PW1, being uncorroborated on this crucial aspect and suffering from the issues of credibility and reliability, cannot be accepted as a safe basis to sustain a finding against the Appellant.
58. Further, it is noteworthy that the prosecution failed to adduce any evidence regarding the alleged identification parade, notwithstanding the prosecutrix's testimony that she had identified the Appellant at such a parade. It is apparent from the evidence that the prosecutrix was well acquainted with the accused prior to the identification parade. In those circumstances, the necessity and evidentiary value of the identification parade are questionable.
59. Additionally, it is significant to note that, in the present case, the prosecutrix gave birth to a child following the alleged acts of sexual intercourse, and the evidence suggested that the paternity of the said child could only have been attributed either to the deceased Weda Mahaththay or to the present Appellant. In these circumstances, the most reliable and conclusive means of determining whether the Appellant had, in fact, engaged in sexual intercourse with the prosecutrix was through DNA analysis.

60. Notwithstanding that, the investigating officers failed to obtain the requisite order from the Magistrate to conduct a DNA test for the purpose of establishing the paternity of the child. The failure to secure and produce the best available scientific evidence resulted in a material omission in the investigation. Such an omission consequently impaired the Appellant's right to a fair trial. Accordingly, the benefit of such doubt arising from the defective investigation ought to be extended in favour of the Appellant.
61. Furthermore, the importance of conducting a fair investigation had been emphasized by this Court in a long line of judicial authorities.
62. For instance, in the case of ***Commission to Investigate Allegations of Bribery or Corruption v Indikeiya Hewage Kusumadasa Mahanama and Another*** SC TAB 1A & 1B/2020 (Decided on 11-01-2023), the Supreme Court held that the lawful investigation is a prerequisite for a fair trial and that investigative irregularities can vitiate the entire prosecution. The Court held;

“As a lawful investigation is a prerequisite for a fair trial, an entrapment gives rise to the distinct possibility of the accused being deprived of a ‘fair trial’ ...If detected during the appellate stage. ... the responsibility of the appellate judge is to.. quash the conviction and acquit the accused, if the reception of such evidence at the trial had deprived the accused of a ‘fair trial’ resulting in a miscarriage of justice.”

63. Having considered the totality of the evidence and the surrounding circumstances of the present case, it is evident that the testimony of the prosecutrix is fraught with material inconsistencies and contradictions regarding the occurrence of the alleged incident and the sequence of the events. The evidence of PW3 is likewise improbable and lacks sufficient credibility. Furthermore, the medical evidence does not conclusively establish that the alleged penetration was indeed committed by the Appellant himself. On the contrary, the evidence reveals that approximately one and a half weeks prior to the alleged incident, the prosecutrix had reportedly been subject to sexual intercourse by another individual. Consequently, the prosecutrix's identification of the Appellant by the name 'Sameera,' in the absence of satisfactory evidence establishing his identity, gives rise to further material doubt regarding the identity of the perpetrator.

64. The failure to secure the best available scientific evidence before the trial court prejudiced the Appellant's right to a fair investigation. Consequently, any doubt arising from this defective investigation must operate in favour of the Appellant. Accordingly, this omission further undermines the safety of the conviction entered against the Appellant.
65. The above-mentioned discrepancies in the prosecution evidence appear to have escaped the attention of the Learned Trial Judge in evaluating the evidence. 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.
66. In the present case, the material discrepancies manifested in the prosecution evidence prevent the prosecution from satisfying the threshold of proving the charge beyond reasonable doubt. In these circumstances, I am of the view that it would be unsafe to permit the conviction to stand.
67. Accordingly, the conviction entered by the Learned High Court Judge cannot be sustained in law. The Appellant is therefore acquitted of the charge, and the appeal is hereby allowed.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree

Judge of the Court of Appeal