

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

In the matter of an Appeal made under
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.

Court of Appeal No:
CA/HCC/0317/2025
High Court of Anuradhapura
Case No: HC/201/2011

The Attorney General
Attorney General's Department
Colombo-12.

COMPLAINANT

Vs.

Nandasirige Chinthaka Nishan
Arunashantha

ACCUSED-APPELLANT

BEFORE : **P. Kumararatnam, J.**
R. P. Hettiarachchi, J.

COUNSEL : **Neranja Jayasinghe with Randunu
Heellage for the Appellant.
Hiranjana Peiris, PC, ASG for the
Respondent.**

ARGUED ON : **03/06/2026**

DECIDED ON : **03/08/2026**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellants (hereinafter referred to as the Appellants) along with three other accused persons were indicted jointly in the High Court of Anuradhapura as follows:

1. On or about 12.10.2004, being in possession of an automatic gun, thereby committing an offence punishable under Section 22(1) read with Section 23(3) of the Firearms Ordinance No. 33 of 1976 as amended by Act No. 22 of 1996.
2. In the same transaction, being in possession of 09 live bullets, thereby committing an offence punishable under Section 9(1) read with Section 27(1) (a) of the Explosive Act No.21 of 1956.

The trial commenced before the High Court Judge of Anuradhapura. After the conclusion of the prosecution's case, the Learned High Court Judge had called for the defence and the Appellant had made a dock statement and closed his case.

After considering the evidence presented by both parties, the Learned High Court Judge who heard the case at the High Court of Anuradhapura delivered the Judgement and had convicted the Appellant as charged and sentenced him as follows:

- For the 1st Count – life imprisonment was imposed on the Appellant.
- For the second Count - 02-years rigorous imprisonment with a fine of Rs.2500/- on the Appellant. The fine is subject to 03 months simple imprisonment.

Being aggrieved by the aforesaid conviction and sentence, the Appellant preferred this appeal to this court.

The Learned Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence. Also, at the time of argument the Appellant was connected via the Zoom platform from prison.

Background of the Case.

In this case the Appellant was arrested on 12.10. 2004. The arrest and the investigation were conducted by the officers attached to the Galgamuwa Police Station.

PW1, IP/Rowel was attached to the Galgamuwa Police Station when the incident had happened. According to him, on the day of the incident, upon receiving an information about a group of armed individuals proceeding

through Galgamuwa Town in a van, he led a police team and proceeded to the Galgamuwa junction and turned to the Nanneriya Road. Apart from the colour of white, no other information was provided to them. Upon seeing a van proceeding along the Nanneriya Road, they had followed the van. While following the van, they had seen the said van skidding off the road due to excessive speed and toppling off the road two or three times before it came to a halt. PW1 had stopped his vehicle and gone near the toppled vehicle. At that time, he had seen two persons running away from the vehicle while carrying arms in their hands. When he went near the van, he had seen the Appellant coming out of the van, holding a gun. He had arrested him at that time with the gun, which had been produced as a production in this case. Apart from his evidence, no other witnesses were called by the prosecution to strengthen their case.

Although the Government Analyst Report was admitted under Section 420 of the Code of Criminal Procedure Act No.15 of 1979, the court had called the Government Analyst and recorded his evidence.

The Appellant had filed the following grounds of appeal:

1. The evidence of the prosecution fails the test of credibility and the test of probability.
2. The prosecution had failed to prove the chain of custody of the weapon.
3. The Learned High Court Judge had failed to consider the dock statement.
4. The learned High Court Judge had adopted a wrong procedure in leading evidence under Section 439 of the Code of Criminal Procedure Act No. 15 of 1979.

In the first ground of appeal the learned Counsel for the Appellant contended that the evidence of the prosecution fails the test of credibility and the test of probability.

In this case the prosecution had only called PW1 in support of their case. PW1 had started the mission upon receiving an information of a white colored van which had been proceeding through Galgamuwa town. No other information was provided. When they were on the Nanneriya Road, they had seen a van and they had followed the same. Although it was his position that he saw the van skidding off the road, in the cross examination he had admitted that he did not witness how the van skidded off the road. When he came to the spot, the van was already off the road with damages. The relevant portion is re-produced below:

Pages 178-179 of the brief.

ප්‍ර : දැන් ඔබ දැක්කද ඔය වාහනය නාන්තේරිය පහු වෙනකොට ඔය වාහනය පෙරලෙනවා

උ : දැක්කේ නෑ ස්වාමිණි.

ප්‍ර: ඔබ දකිනකොට කොහොමද වාහනය තිබුනේ?

උ: වාහනය පෙරලිලා හිටන් ආයේ පියව් තත්වයට තියෙනවා.

ප්‍ර: ඔබ කොහොමද කියන්නේ වාහනය පෙරලිලා පියව් තත්වයට තිබුනා කියලා දකින්නේ නැතිව?

උ: ඒ වාහනය ඇත දිත් ජේනවා වාහනය කැඩිලා සම්පූර්ණයෙන් පැත්තක් ගැලවිලා ගිහිල්ලා Deference ගැලවිලා ගිහිල්ලා රෝදයක් පැත්තකට වෙලා. අබලන් තත්වයේ වාහනයක්. ස්වාමිණි වාහනයක් පාරෙන් පිට පනිනවා නම් මේක ආපදාවකට ලක් වෙච්ච එකක් කියලා අනුමාන කරන්න පුළුවන්. මොකද වාහනය පාරේ නෙමෙයිනේ තියෙන්නේ ස්වාමිණි

ප්‍ර: ඒ කියන්නේ තමුත් දැක්කේ පාරෙන් ඉවතට පැනලා තිබිච්ච වෑන් එකක් තියෙනවා දැක්කේ?

උ:එහෙමයි ස්වාමිණි

Although he had seen two people escaping from the van, he had not taken any action to apprehend them. Further, he had arrested the Appellant who had come with a gun from the toppled vehicle. The learned Counsel

strenuously argued that the position taken up by PW1 is per se contradictory and cannot be believed as no corroborating evidence was led by the prosecution.

A *per se* contradiction refers to a substantial or irreconcilable inconsistency in the testimony of a witness or between key pieces of evidence. In criminal trials, such contradictions would destroy the credibility of the witness. In situations where two statements could not practically be true at the same time, it would amount to a substantial inconsistency, for which the consequences would be severe. The prosecution would be responsible for proving guilt beyond a reasonable doubt; therefore, serious contradictions would lead in the evidence being discarded, or the accused being given the benefit of the doubt.

In the case of **Kotuwila Kankanamalage Premalal Leonard Perera v Attorney General** [SC/Appeal/220/2014] decided on 09.11.2018 the Supreme Court observed that

“It is evident that a Magistrate will only act on the evidence of a witness if the witness is a credible witness and the credibility is tested mainly on the demeanour or deportment of a witness after applying several tests such as probability/ improbability, spontaneity, belatedness, consistency/inconsistency, and/or interestedness/disinterestedness/”.

In the case of **K. Padmathilaka alias Sergeant Elpitiya v. The Director General of Commission to Investigate Allegation of Bribery and Corruption** [2010] BLR 67 the court held that:

“Credibility of prosecution witnesses should be subject to judicial evaluation in totality and not isolated scrutiny by the judge. When witness makes an inconsistent statement in their evidence either at one stage or two stages, the testimony of such witness is unreliable.....It is a cardinal

principle that unreliable evidence cannot be rendered credible, simply because there is some corroboration material”.

In the case of **Joy Devaraj vs The State of Kerala** (2024) INSC 473 it was held:

“The threshold for disbelieving a witness is not mere discrepancy or inconsistency but material discrepancy and inconsistency, which renders the account narrated by the witnesses so highly improbable that the same may safely be discarded altogether from consideration.”

In this case, the evidence given by PW1 creates a reasonable doubt about the happening of the incident as described by him. The infirmities highlighted above had escaped the attention of the Learned High Court Judge in evaluating the evidence of PW1.

In the second ground of appeal, the learned Counsel for the Appellant contended that the chain of custody of the weapon has not been proved by the prosecution.

Chain of custody refers to the history of evidence which is documented and verifiable, beginning from the moment of collection until the moment such evidence is presented in court. As such, each and every update relating to the evidence would be tracked, including its control, transfer, storage, access, analysis and final disposition.

Each person handling the evidence would therefore be required to sign and make a log of their respective interactions, including the time, date and reason for each transfer. This would build up a clear legal record of responsibility, therefore, as a result, any missing information on timelines or unclear explanations would be potential vulnerabilities that the opposing side could use and exploit to their advantage.

According to the prosecution, PW1 had handed over the gun to PW15 and thereafter, there is no evidence as to who had taken the production and there is no evidence regarding the chain of custody up to the Government Analyst. As the prosecution had failed to prove exactly how and who had handled the gun from the crime scene to the courtroom and the Government Analyst, I conclude the evidence is deemed to be inadmissible or insufficient. This too had escaped the attention of the Learned High Court Judge.

The learned Counsel raised the question whether the Learned High Court Judge has evaluated the dock statement of the Appellant.

A dock statement refers to an unsworn statement made by an accused from the courtroom dock rather than giving sworn testimony. The evaluation of such statements would be extremely important, as they would be legally considered to be evidence, and as such, must be carefully assessed to protect the defendant's right to a fair trial. Therefore, although a dock statement would lack the full probative weight as cross-examined evidence would, it still remains important to the case at hand. Further, even if the statement is not fully believed, if its content is sufficient to create a reasonable doubt regarding the prosecution's case in the perspective of the jury or judge, the accused would then legally be entitled to an acquittal.

In **Queen V. Kularatne** 71 NLR 529 at page 531 it was held that: -

“when an unsworn statement is made by the accused from the dock, the jurors must be informed that such statement must be looked upon as evidence, subject however to the infirmity that the accused had deliberately refrained from giving sworn testimony. But the jury must also be directed that,

- (a) if they believe the unsworn statement, it must be acted upon,*
- (b) if it raises a reasonable doubt in their minds about the case for the prosecution, the defence must succeed, and*
- (c) that it should not be used against another accused.”*

In **Kathubdeen v. Republic of Sri Lanka** [1998] 3 SLR 107 the court held that:

“It is settled law that an unsworn statement must be treated as evidence. It has also been laid down that if the unsworn statement creates a reasonable doubt in the prosecution case or if it is believed, then the accused should be given the benefit of that doubt.”

Election of making a statement from the dock is a statutory right of an Accused, which should not be disregarded when evaluating evidence by the trial Judge. In this case the Learned High Court Judge had completely disregarded the dock statement of the Appellant and only considered the prosecution evidence. He had said in the judgment that since the Appellant had failed to adduce evidence, therefore, he considers only the prosecution evidence. The relevant page is re-produced below:

Page 303 of the brief.

කෙසේ වෙතත් මෙම නඩු විභාගයේදී විත්තිය විසින් සාක්ෂි කැඳවීමක් සිදු කර නොමැත. එබැවින් පැමිණිල්ල විසින් ඉදිරිපත් කර ඇති සාක්ෂි මෙම අධිකරණය විසින් විශ්ලේෂණය කළ යුතු වේ.

Hence, this ground too has merit.

In the final ground of appeal, the Appellant contended that the procedure adopted in leading evidence under Section 439 of the Criminal Procedure Code was wrong.

In this case, although the prosecution and defense admitted the Government Analyst Report under Section 420 of the Code of Criminal Procedure Act, the Learned High Court Judge had called the Government Analyst under Section 439 of the CPC. The learned Counsel for the Appellant contended that directing the learned State Counsel to lead the evidence of Government Analyst is wrong, as both the State Counsel and the defense only have the right of cross examination. His argument is that the Court should have led

his evidence and left the witness to be cross examined by the prosecution and the defense.

Section 439 of the Code of Criminal Procedure Act No.15 of 1979 states:

Any court may at any stage of an inquiry, trial, or other proceeding under this Code summon any person as a witness or examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined; and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

As per Section 439 of the CPC, the trial Judge can summon, recall or re-examine any person if it is decided that their testimony is crucial to reach a just and fair decision in that particular case.

Under Section 439 of the CPC and Section 165 of the Evidence Ordinance, the Trial Judge is vested with a broad statutory authority to summon any person as a witness or to examine anyone present in court, in order to obtain the appropriate proof of any relevant facts. This is in line with the Court's responsibility to discover the truth, and not to merely silently observe.

When the judge calls a court witness, the established practice would be to allow both the State Counsel as well as the defence to cross-examine the witness. However, in situations where the testimony of the witness is with the objective of establishing any facts favourable to the case of the prosecution, or to bring forward primary facts originally produced before the Court, the State Counsel will be directed to lead the examination-in-chief of the witness. This is a generally accepted practice insofar as it facilitates the systematic and practical gathering of evidence.

Therefore, I conclude that allowing the State Counsel to lead the evidence of the Government Analyst called by the Court has not caused any prejudice to the Appellant. It is pertinent to note that the prosecution and the defence

had admitted the Government Analyst Report under Section 420 of the Code of Criminal Procedure Act.

In criminal trials, the probability of facts would be of utmost importance in relation to fact-finding and evaluation of evidence. It would act as the connecting link between the available circumstantial evidence and the final conclusion, and as such, would assist in the decision of whether guilt has been proven or not. Due to the practical difficulties in ascertaining absolute certainty, the legal system contains high probability thresholds that must be met in order to convict; this would protect the innocent from any wrongful judgments.

In this case, considering the evidence given by PW1, there is a serious doubt regarding the events explained by the witness. The non investigation with regard to the involvement of the van which met with the accident is highly questionable.

In **Woolmington v DPP** (1935) the Court ruled that in criminal cases, the burden of proof is always on the prosecution to prove the defendant's guilt beyond a reasonable doubt. The defendant is presumed innocent until proven guilty, and it is not for the defendant to prove his innocence.

In **The Queen v. K.A. Santin Singho** 65 NLR 447 the court held that:

“It is fundamental that the burden of proof is on the prosecution. Whether the evidence the prosecution relies on is direct or circumstantial, the burden is the same. This burden is not altered by the failure of the appellant to give evidence and explain the circumstances”.

In **Miller v. Minister of Pensions** (1947) 2 All E.R. 372 the court held that:

“...the evidence must reach the same degree of cogency as is required in a criminal case before an accused person is found guilty. That degree is well settled. It need not reach certainty, but it must carry high degree of probability. Proof beyond reasonable doubt does not mean proof

beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, "of course it is possible, but not in the least probable," the case is proved beyond reasonable doubt, but nothing short of that will suffice".

In **The King Vs. W. P. Buckley** 43 NLR 474, it was stated by Howard, C.J.:

"In arriving at a verdict of guilty, the majority of the jury must have viewed the evidence in sections accepted and convicted the appellant on those parts that were satisfactory and disregard those facts that pointed to the improbability of the story put forward by the Crown. The jury should have viewed the evidence as a whole. If they had done so, we are of opinion that they must have had a reasonable doubt as to the guilt of the appellant. The verdict is in our opinion, unreasonable, in as much as taken as a whole the evidence does not support the conviction."

In the case of **Officer - In - Charge, Police Station Udu Dumbura Vs. U.G. Sunil and Others** (SC/APPEAL/27/2019), decided on 05.06.2024 it was noted:

"It has been firmly established that, in a criminal case, that the charges against the Accused should be proved beyond reasonable doubt. Proof beyond a reasonable doubt generally means the Court must carefully consider the entirety of admissible evidence to such scrutiny to see whether the ingredients of the charges are proved. If the Court is not satisfied the accused person must be acquitted."

In this case as stated earlier, the Learned Trial Judge had come to a conclusion that the evidence given by PW1 could be accepted as true regarding the raid conducted in respect of the Appellant. But as stated

earlier, PW1's evidence contained serious infirmities and inconsistencies which certainly undermine his evidence. The grounds of appeal pleaded above have merits which certainly disturb the judgment of the Learned High Court Judge.

Due to the aforesaid reasons, I set aside the conviction and the sentence dated 16/07/2025 imposed on the Appellant by the Learned High Court Judge of Anuradhapura. Therefore, I acquit him from both charges.

Accordingly, the appeal is allowed.

The Registrar of this Court is directed to send this judgement to the High Court of Anuradhapura along with the original case record.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL