

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of a Petition of Appeal in
terms of Section 331(1) of the Code of
Criminal Procedure Act No. 15 of 1979.

The Democratic Socialist Republic of Sri
Lanka

Complainant

Court of Appeal Case No:

HCC-227-230-2025

High Court of Awissawella Case

No: **HCA-81-2008**

-Vs-

1. Wanniarachchilage Susil Kumara
Wanigarathne *alias* Karabuwa
2. Kankaniralalage Priyantha Manjula
3. Kelaniyage Nevil Shantha
4. Kelaniyage Jeewantha Sandaruwan
alias Welgama Mudiyanseelage
Jeewantha Sandaruwan

Accused

AND NOW BETWEEN

1. Wanniarachchilage Susil Kumara
Wanigarathne *alias* Karambuwa
2. Kankaniralalage Priyantha
Manjula
3. Kelaniyage Nevil Shantha

4. Kelaniyage Jeewantha
Sandaruwan *alias* Welgama
Mudiyanselage Jeewantha
Sandaruwan

Accused-Appellants

-Vs-

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

Complainant- Respondent

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

Counsel : Jayaba Kalupahana for the 1st Accused - Appellant
: Punarji D. Karunasekara for the 2nd and 3rd Accused - Appellants
: Niranjan Jayasingha with Randunu Heellage and Pravindika Kularathne
for the 4th Accused - Appellant
: Riyaz Bari, DSG for the Respondent

Argued on : 08.07.2026

Decided on : 07.08.2026

Pradeep Hettiarachchi, J

Judgment

1. This appeal arises from the judgment and sentences dated 19.06.2025 delivered by the Learned High Court Judge of Awissawella. The 1st to 4th Accused-Appellants (hereinafter referred to as “the Appellants”) were indicted before the High Court of Awissawella on four counts:
 - a. On or around 14.06.2004, within the jurisdiction of the High Court of Awissawella, the accused abducted one Liyana Arachchige Airangani, against her will, with the intent that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, thereby committed an offence punishable under Section 357 of the Penal Code;
 - b. At the same time, during the same transaction, the 1st accused, acting together with the 2nd, 3rd, and 4th accused, committed gang rape upon the said Liyan Arachchige Airangani, thereby committing an offence under Section 364(2) (g), punishable under Section 364(2) of the Penal Code;
 - c. At the same time, during the same transaction, the 2nd accused, acting together with the 1st, 3rd, and 4th accused, committed gang rape upon the said Liyan Arachchige Airangani, thereby committing an offence under Section 364(2) (g), punishable under Section 364(2) of the Penal Code;
 - d. At the same time, during the same transaction, the 3rd accused, acting together with the 1st, 2nd, and 4th accused, committed gang rape upon the said Liyan Arachchige Airangani, thereby committing an offence under Section 364(2) (g), punishable under Section 364(2) of the Penal Code; and,
 - e. At the same time, during the same transaction, the 4th accused, acting together with the 1st, 2nd, and 3rd accused, committed gang rape upon the said Liyan Arachchige Airangani, thereby committing an offence under Section 364(2) (g), punishable under Section 364(2) of the Penal Code.
2. The trial was conducted before the Learned High Court Judge without a jury. At the conclusion of the trial, the Learned High Court Judge found the Appellants guilty on

the respective charges and convicted them accordingly. Consequently, the following sentences were imposed on the Appellants:

- a. For the 1st count, each of the Appellants was sentenced to five (5) years' rigorous imprisonment and a fine of Rs. 10,000, with a default sentence of six (6) months' rigorous imprisonment;
 - b. For the 2nd count, the 1st Appellant was sentenced to eighteen (18) years' rigorous imprisonment and a fine of Rs. 50,000, with a default sentence of twelve (12) months' imprisonment. In addition, the 1st Appellant was ordered to pay Rs. 500,000 as compensation to the prosecutrix, with a default sentence of twenty-four (24) months' imprisonment;
 - c. The 2nd Appellant was sentenced to ten (10) years' rigorous imprisonment in respect of the 3rd count and was also ordered to pay a fine of Rs. 10,000, with a default sentence of six (6) months' imprisonment. In addition, the 2nd Appellant was directed to pay Rs. 100,000 as compensation to the prosecutrix, with a default sentence of twelve (12) months' imprisonment;
 - d. The 3rd Appellant was sentenced to ten (10) years' rigorous imprisonment in respect of the 4th count and was also ordered to pay a fine of Rs. 10,000, with a default sentence of six (6) months' imprisonment. The 3rd Appellant was further directed to pay Rs. 100,000 as compensation to the prosecutrix, with a default sentence of twelve (12) months' imprisonment; and
 - e. The 4th Appellant was sentenced to ten (10) years' rigorous imprisonment in respect of the 5th count and was also ordered to pay a fine of Rs. 10,000, with a default sentence of six (6) months' imprisonment. In addition, the 4th Appellant was directed to pay Rs. 100,000 as compensation to the prosecutrix, with a default sentence of twelve (12) months' imprisonment.
3. It is against the said convictions and sentences that the Appellants have preferred the present appeal.

4. The principal ground advanced on behalf of the 1st Appellant is that the identification of the 1st Appellant by the prosecutrix is unreliable, having regard to the lighting conditions that prevailed at the time of the alleged offences. It was therefore contended that it would be unsafe to allow the conviction against the 1st Appellant to stand.
5. Similarly, the 2nd and 3rd Appellants challenged the reliability of their identification by the prosecutrix, contending that the prevailing lighting conditions at the time of the incident rendered such identification unsafe.
6. The 4th Appellant primarily contended that the prosecution had failed to establish his involvement in the commission of the offences and that his identity remained in issue. It was further contended that the Learned Trial Judge had rejected the defence evidence on unreasonable grounds and had failed to extend the benefit of the doubt to the Appellant.
7. During the trial before the High Court, the prosecutrix and her mother testified for the prosecution, in addition to the official witness. At the conclusion of the prosecution evidence, the Appellants made dock statements.
8. According to the prosecutrix, during the relevant period, she was employed at a garment factory situated in the Awissawella Industrial Zone. She had also been crowned the New Year Queen at the New Year Festival held in her village. On the day of the incident, she had returned home after attending work at the garment factory.
9. The prosecutrix, her parents, and her uncle (bappa) were the only occupants of the house. Since the house did not have an electricity supply, they used a kerosene lantern and two bottle lamps for illumination. After having dinner, they retired to bed, except for her uncle, who remained awake and continued writing with the aid of the light provided by the lantern.
10. After some time, she heard someone knocking forcefully on the door, claiming that they were from the police. When the door was opened, her uncle took the lantern. However, the person who first entered the house assaulted her uncle, causing him to fall to the floor. As a result, the kerosene lantern was extinguished. Nevertheless, when the door was opened, there was moonlight illuminating the surroundings.

11. The person who entered the house then grabbed the prosecutrix by her shoulder and pulled her outside, alleging that the prosecutrix's family was engaged in selling illicit liquor. He pretended that a police vehicle was waiting outside and that a female police constable was inside the vehicle to question the prosecutrix.
12. The prosecutrix was forcibly taken a considerable distance away, and the journey took approximately one hour. Eventually, she was taken to a rubber plantation. When she was being dragged out of the house, she observed two persons outside, and another person joined them later on the road.
13. At one point, they reached a place where the rubber trees had been uprooted. Thereafter, she was taken to another location where rubber tapping was being carried out. At that place, one of the persons pushed the prosecutrix to the ground, forcibly removed her clothes, and raped her. Thereafter, she was taken again to a rocky area, where the same person raped her for the second time.
14. According to the prosecutrix, it was during the second incident of rape that she was able to identify the Accused, as he was wearing an ear stud. She further stated that the place where the second incident occurred did not have a rubber plantation since the trees had been uprooted, which enabled her to identify the person known as "Karabuwa." She described him as having long hair and stated that she had seen him prior to the incident while she was travelling to work.
15. After the prosecutrix was raped for the second time, she was asked to wash herself at a nearby water pit and was thereafter allowed to leave. It was around 12.30 a.m. at that time. Since she was unable to find her way back, she climbed a tree and remained there until dawn. Subsequently, she managed to locate the path and returned home.
16. As the principal contention advanced on behalf of the 1st Appellant relates to the reliability of his identification by the prosecutrix in view of the prevailing lighting conditions at the time of the offence, it is appropriate to first consider and analyze the evidence of the prosecutrix concerning the identification of the 1st Appellant.

17. It is not in dispute that the prosecutrix had seen the 1st Appellant prior to the incident while she was attending the garment factory. This aspect of her evidence was not challenged in cross-examination. Accordingly, the 1st Appellant was not a stranger to the prosecutrix at the time of the incident. The issue that now arises for determination is whether the prevailing lighting conditions during the relevant events were adequate to enable the prosecutrix to make a reliable identification of the 1st Appellant.
18. According to the evidence of the prosecutrix, when she was dragged out of the house, she was not able to identify the 1st Appellant. Thereafter, she was taken to a rubber plantation where the 1st Appellant raped her. When she was taken to a rocky area and raped for the second time, she was able to identify the 1st Appellant more clearly, as that area was not covered by rubber trees, which had been uprooted. The identification was further facilitated by the light emanating from the stars.
19. Significantly, the prosecutrix stated that she observed an ear stud worn by the 1st Appellant during the second incident of rape. This distinctive feature, coupled with the fact that the 1st Appellant was already known to her prior to the incident, assumes considerable importance in assessing the reliability of the identification.
20. In ***R V Turnbull (1977) 1977 QB 224***, the Court of Appeal laid down important guidelines for judges in trials where identification evidence was disputed. Warnings that have to be given to juries in identification cases;
- a) Amount of time the suspect was under observation by the witness*
 - b) Distance between suspect and witness*
 - c) Visibility at the time the witness saw the suspect*
 - d) Obstructions between suspect and witness*
 - e) Knows suspect or has seen him/her before*
 - f) Any particular reason for the witness to remember the suspect*
 - g) Time lapse since witness saw suspect*
 - h) Error or material discrepancy in the description given by witness*

21. ***R vs. Turnbull [1977] QB 224*** is based on the court’s acknowledgement of the real risk of miscarriages of justice in visual identification cases and can be distilled from the following passages in the judgment of **Lord Widgery CJ**: “[P. 228]

“First, whenever the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. In addition, he should instruct them as to the reason for the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken

... Secondly, the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made ...

Recognition may be more reliable than identification of a stranger; but even when the witness is purporting to recognise someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made. All these matters go to the quality of the identification evidence ...”

22. In the present case, it is evident that the 1st Appellant was known to the prosecutrix, and she explained the circumstances in which she had previously seen him while attending work. This was not a case where the prosecutrix identified the 1st Appellant based on a fleeting glance; rather, she had sufficient opportunity to observe and recognize him.
23. Furthermore, there was a specific identifying feature that assisted her identification, namely the ear stud worn by the 1st Appellant. There was no evidence of any obstruction between the Appellant and the prosecutrix that could have affected her ability to observe him. Moreover, the distance between them was not considerable, thereby providing the prosecutrix with a reasonable opportunity to make an identification. The time lapse between the incident and the subsequent identification was also not significant.

24. Accordingly, having applied the guidelines set out in *R v Turnbull*, I find no basis to disbelieve or approach with suspicion the manner in which the prosecutrix identified the 1st Appellant.
25. It is also significant to note that the prosecutrix's house was not connected to an electricity supply and that the occupants had relied upon kerosene lamps for illumination for a considerable period prior to the incident. Therefore, the prosecutrix would have been accustomed to identifying persons and performing daily activities under limited lighting conditions. This circumstance is relevant in assessing the reliability of her identification, as she was not unfamiliar with poor lighting conditions in the manner a person accustomed to an urban environment may be.
26. The Supreme Court of India has dealt with the evidentiary value of identification in different factual settings in a long line of cases, which provide useful guidance on the principles to be applied when assessing the reliability of identification evidence.
27. In the case of ***Machli Singh V. State of Punjab, AIR 1983 SC 957***. Supreme Court of India held that:

"The Villagers living in villages where electricity has not reached as yet get accustomed to seeing things in the light shed by the lantern. Their eye sight gets conditioned and become accustomed to the situation. Their powers of seeing are therefore not diminished by the circumstances that the incident is witnessed in the light shed by the lantern and not electric light."

28. In the case of ***Kalilro Tiwari V. State of Bihar, AIR 1997 SC 2186***, the Supreme Court of India held:

"Where the only source of light at place of occurrence which was village where dacoit in question took place where an earthen lamp, the identification of Accused even in such light would not be problem for villagers especially when many of dacoits were direct relations of complainant. The visibility capacity of urban people who are acclimatized to fluorescent lights or in candescent lamps is not the standard to be applied to villagers whose optical potency is attuned to country- made lamps."

Their visibility is conditioned to such lights and hence it would be quite possible for them to identify men and matters in such light.”

29. *M. G. Eshwarappa v State of Karnataka* AIR 2017 Supreme Court 1197,

“As to the source of light it is argued that it is not clear as to how PW-1 Rajeshwari recognized the accused. Had the accused been unknown persons, we would have accepted this argument. But the accused were close relatives living in the house of the witness, as such, it cannot be said that it was difficult at all for her to recognize them when they assaulted her brother at 7.30 p.m. on the way back from Honnali to Marigondanahalli.”

30. In *Pruthiviraj Jayantibhai Vanol v Dinesh Dayabhai Vala* Criminal Appeal No. 177 OF 2014, it was held:

“There is evidence about the availability of light near the place of occurrence. Even otherwise, that there may not have been any source of light is hardly considered relevant in view of the fact that the parties were known to each other from earlier. The criminal jurisprudence developed in this country recognizes that the eye sight capacity of those who live in rural areas is far better than compared to the town folks. Identification at night between known persons is acknowledged to be possible by voice, silhouette, shadow and gait also. Therefore, we do not find much substance in the submission of the respondents that identification was not possible in the night to give them the benefit of the doubt.”

31. In light of the aforementioned authorities and the circumstances of the present case, it can reasonably be concluded that the identification of the 1st Appellant by the prosecutrix does not give rise to any reasonable suspicion. Accordingly, the conclusion reached by the Learned Trial Judge regarding the identification of the 1st Appellant by the prosecutrix does not warrant any further intervention.

32. The evidence of the Judicial Medical Officer who examined the prosecutrix assumes considerable significance in the evaluation of the prosecution case. The JMO observed

36 injuries on the prosecutrix's body and opined that the injuries found on the hymen were compatible with the history given by her. He further explained the nature and location of the injuries found on other parts of the body and expressed the view that those injuries were also consistent with the account given by the prosecutrix, particularly regarding the manner in which she had been dragged to the location where the offence was committed.

33. For the foregoing reasons, I am satisfied that the prosecutrix's evidence identifying the 1st Appellant is reliable and may safely be relied upon. Accordingly, I see no basis to interfere with the finding of the Learned Trial Judge on the issue of the identification of the 1st Appellant by the prosecutrix. Accordingly, the ground of appeal advanced on behalf of the 1st Appellant is devoid of merit and must fail.

34. Further, as stated earlier in this judgment, the sentences imposed by the Learned High Court Judge upon the 1st Appellant in respect of the 1st and 2nd counts are neither excessive nor manifestly disproportionate. The sentences fall well within the statutory limits prescribed by law and reflect a proper exercise of the sentencing discretion vested in the trial court.

35. It should be noted that the 1st Appellant gained entry into the prosecutrix's residence by falsely representing himself as a police officer, thereby abusing the trust associated with that office. He thereafter committed a brutal act of rape, causing injuries to the prosecutrix. Having regard to the manner in which the offence was committed, the injuries sustained by the prosecutrix, and the surrounding circumstances, considered cumulatively, I am satisfied that the sentences imposed are proportionate to the gravity of the offences, legally sound, and therefore warrant no interference. Accordingly, the sentences imposed upon the 1st Appellant are hereby affirmed.

36. I now proceed to consider the grounds of appeal advanced by the 2nd to 4th Appellants. It was contended on behalf of the 2nd and 3rd Appellants that their identification by the prosecutrix and her mother at the identification parade was unreliable, on the basis that the witnesses had been shown the Appellants while they were in police custody before the identification parade was conducted.

37. The prosecutrix, in her evidence, never admitted that the Appellants had been shown to her while they were in police custody. However, the real issue for determination is not whether the Appellants were shown to the prosecutrix prior to the identification parade, but whether she had a sufficient opportunity to identify them at the time of her abduction or during the commission of the offences.
38. The evidence clearly establishes that, at the time she was abducted from her residence, the prosecutrix was unable to identify any of the Appellants. She identified the 1st Appellant only during the second incident of rape, after she had been taken to a rocky area where there was no rubber plantation, and she has adequately explained the circumstances that enabled her to identify him. Her evidence in that regard has remained consistent and unshaken.
39. In contrast, the prosecutrix was unable to identify the other Appellants at the scene of the incident. She first identified them only when she was called upon to do so at the identification parade. In these circumstances, the evidentiary value and reliability of those subsequent identifications require careful scrutiny.
40. In her examination-in-chief, the prosecutrix testified that she could see only the shadows of the persons who abducted her and gave no description of any of them. Nor is there any evidence that she was able to identify the other Appellants at the scene where the rape was committed.

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ප්‍ර: ඔය වෙලාවේ කීදෙනෙක් හිටියද?

උ: තුන් දෙනෙක් හිටියා.

ප්‍ර: එසේ තිදෙනෙක් ඇවිත් සිටින බව තමා දැක්කේ කොහොමද?

උ: වයාව දැක්ක, තව කෙනෙක් මගදී යනකොට එකතු වුණා.

ප්‍ර: උරහිසෙන් අල්ලා ගන්නා කිව්වා.

උ: ඔව්.

ප්‍ර: ඒ වෙලාවේ අනික් පුද්ගලයන් දැක්කද?

උ: ඔව්, මම දැක්ක යම්තම් හද එලියට.” (at vide page 214 of the Appeal Brief)

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“ප්‍ර: මා යෝජනා කරන්නේ, 2,3 විත්තිකරුවන්ට අදාළව ඔවුන් හඳුනා ගැනීමට පුළුවන් ගරීර ලක්ෂණ කිසිම අවස්ථාවක පැමිණිල්ලේ සඳහන් කර නැහැ?

උ: මට මතකයි කිව්වා වගේ.” (at vide page 221 of the Appeal Brief)

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41. In contrast, none of the 2nd to 4th Appellants were previously known to the prosecutrix, nor had she seen them prior to the incident. The evidence clearly establishes that she was unable to identify any of them at the time of her abduction. Nor is there any evidence that she identified the 2nd to 4th Appellants at the rubber estate or at any other place where the offences were committed.

42. In the present case, this Court is required to consider two distinct aspects concerning the identification of the 2nd, 3rd, and 4th Appellants by the prosecutrix, namely, the credibility of the prosecutrix as a witness and the reliability of her identification evidence regarding the 2nd, 3rd, and 4th Appellants. According to her testimony, she was only able to observe the shadows of the persons who abducted her. Furthermore, she admitted that she was unable to clearly identify the other Appellants at the time the alleged act of rape was committed. Nevertheless, she stated that she subsequently identified the Appellants at the identification parade based on the shadows that she had observed at the time of the incident.

“ප්‍ර: තමුන් මේ විත්ති කුඩුවේ ඉන්න 2,3 විත්තිකරුවන් සම්බන්දයෙන් නේද කිව්වේ යම්තම් වායාව මතකයි කියලා?

උ: ඔව්.

ප්‍ර: හරියටම දකින එකෙයි වායාව දකින එකයි වෙනස්?

උ: ඔව්.

ප්‍ර: තමුන් පෙරෙට්ටුවට ගියාම පුද්ගලයින් රාශියක් හිටියා පෙරෙට්ටුව පැවැත්වෙන ස්ථානයේ?

උ: ඔව්.

ප්‍ර: තමුන් ඒ අය අතුරින් 2,3 විත්තිකරුවන් හඳුනාගත්තේ යම්තම් දැකපු වායාව නිසාද?

උ: ඔව්.” (at vide page 223 of the Appeal Brief)

43. Having carefully considered the entirety of the evidence, I am unable to conclude that the prosecutrix deliberately or falsely implicated the 2nd to 4th Appellants. Her testimony appears to have been given honestly and in the genuine belief that the persons whom

she identified at the identification parade were the perpetrators of the offences who were present at the material time.

44. Nevertheless, the issue before this Court is not the credibility of the prosecutrix, but the reliability of her identification evidence regarding the 2nd to 4th Appellants. As discussed above, her own testimony establishes that, at the time of the abduction and the commission of the act of rape, she was only able to observe the shadows of the persons accompanying the 1st Appellant. Further, she was unable to describe any distinctive physical features which would have enabled her to recognize them subsequently at the identification parade. Her evidence further demonstrates that the identification at the parade was based solely on her recollection of those shadows.

45. In these circumstances, although the prosecutrix may have genuinely believed that the persons identified by her were the perpetrators, such belief cannot substitute for reliable identification evidence. In the absence of any specific identifying features observed by her at the time of the incident, and having regard to the limited opportunity she had to observe the 2nd to 4th Appellants, subsequent identification at the identification parade cannot be regarded as sufficiently reliable to found a conviction. Accordingly, I hold that the identification evidence relating to the 2nd, 3rd, and 4th Appellants is unsafe to rely upon and is insufficient.

46. Moreover, it is significant to note that the mother of the prosecutrix testified that she identified the Appellants at the identification parade. However, during cross-examination, it was elicited that the Appellants had been shown to her while they were in police custody prior to the said identification parade.

“ප්‍ර: පෙරෙට්ටුවට කලින් වින්නිකරුව දැක්ක නිසා තමයි පෙරෙට්ටුවේදී හදුනා ගත්තේ කියලා යෝජනා කරනවා?

උ: එහෙමයි.” (at vide pages 364-365 of the Appeal Brief)

47. Furthermore, it is noteworthy that she initially testified that only the 1st Appellant had come to their house at the material time and that he was the only person she identified.

“ප්‍ර: එක් කෙනෙකුට වැඩියෙන් ආවද?

උ: මම දැක්කේ එක්කෙනයි.

ප්‍ර: කවුද ඒ එක්කෙනා?

උ: කරලුවා.” (*at vide page 334 of the Appeal Brief*)

48. In these circumstances, it would be unsafe to sustain the convictions of the 2nd to 4th Appellants solely on the basis that the prosecutrix and her mother identified them at the identification parade. Such identification, unsupported by any prior opportunity to observe or recognize the Appellants at the time of the incident, is insufficient to establish their identity beyond reasonable doubt.

49. For the reasons set out above, the convictions and sentences imposed on the 2nd, 3rd, and 4th Appellants cannot be sustained. They are accordingly set aside, and the said Appellants are acquitted of all the charges. Their appeals are therefore allowed.

50. Insofar as the 1st Appellant is concerned, I find no basis to interfere with the conviction or the sentence imposed by the Learned Trial Judge. The conviction and sentence are accordingly affirmed, and the appeal of the 1st Appellant is dismissed

Judge of the Court of Appeal

P. Kumararatnam, J

I agree,

Judge of the Court of Appeal