

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

An Appeal filed in terms of Section 331 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.

The Democratic Socialist Republic of Sri Lanka

Complainant

Court of Appeal Case No:

HCC/263-265/2023

High Court of Kalutara Case No:

HC/730/2006

-Vs-

1. Kanaththage Nilruk Jayashantha
2. Appunetthi Sisira Sarath Kumara
alias Shantha
3. Kanaththage Sanath Jeewendra
4. Appunetthi Nuwan Ranga
5. Hewa Mannage Jagath Rohana
6. Ruwanpura Manoj Prasad
7. Samaramanna Pradeep Nishantha

Accused

AND NOW BETWEEN

1. Appunetthi Sisira Sarath Kumara
alias Shantha
2. Kanaththage Sanath Jeewendra
3. Appunetthi Nuwan Ranga

Accused-Appellants

-Vs-

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

Complainant- Respondent

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

Counsel : Palitha Fernando P.C. with Iranga Wijaya Gunawardana for the 2nd and
4th Accused - Appellants
: Indika Mallawarachchi for the 3rd Accused - Appellant
: Shanil Kularathne A.S.G for the Respondent

Argued on : 19.05.2026 and 26.05.2026

Decided on : 23.07.2026

Pradeep Hettiarachchi, J

Judgment

1. The 1st to 7th accused were indicted in the High Court of Kalutara on the following counts;
 - a. On or around 08.08.2001, within the jurisdiction of the High Court of Kalutara, the 1st Accused, acting together with the 2nd, 3rd, 4th, 5th, 6th, and 7th Accused, committed gang rape upon one Abesiri Narayanage Priyanthika,

thereby committing an offence punishable under Section 364(2) (g) of the Penal Code as amended by Act No. 22 of 1995;

- b. At the same time, during the same transaction, the 2nd accused, acting together with the 1st, 3rd, 4th, 5th, 6th, and 7th Accused, committed gang rape upon one Abesiri Narayanage Priyanthika, thereby committing an offence punishable under Section 364(2) (g) of the Penal Code as amended by Act No. 22 of 1995;
- c. At the same time, during the same transaction, the 3rd accused, acting together with the 1st, 2nd, 4th, 5th, 6th, and 7th Accused, committed gang rape upon one Abesiri Narayanage Priyanthika, thereby committing an offence punishable under Section 364(2) (g) of the Penal Code as amended by Act No. 22 of 1995;
- d. At the same time, during the same transaction, the 4th accused, acting together with the 1st, 2nd, 3rd, 5th, 6th, and 7th Accused, committed gang rape upon one Abesiri Narayanage Priyanthika, thereby committing an offence punishable under Section 364(2) (g) of the Penal Code as amended by Act No. 22 of 1995;
- e. At the same time, during the same transaction, the 5th accused, acting together with the 1st, 2nd, 3rd, 4th, 6th, and 7th Accused, committed gang rape upon one Abesiri Narayanage Priyanthika, thereby committing an offence punishable under Section 364(2) (g) of the Penal Code as amended by Act No. 22 of 1995;
- f. At the same time, during the same transaction, the 6th accused, acting together with the 1st, 2nd, 3rd, 4th, 5th, and 7th Accused, committed gang rape upon one Abesiri Narayanage Priyanthika, thereby committing an offence punishable under Section 364(2) (g) of the Penal Code as amended by Act No. 22 of 1995;

- g. At the same time, during the same transaction, the 7th accused, acting together with the 1st, 2nd, 3rd, 4th, 5th, and 6th Accused, committed gang rape upon one Abesiri Narayanage Priyanthika, thereby committing an offence punishable under Section 364(2) (g) of the Penal Code as amended by Act No. 22 of 1995;
- h. At the same time, during the same transaction, the accused committed robbery of gold items to the value of Rs. 17,150/- from the possession of the said Abesiri Narayanage Priyanthika, thereby committing an offence punishable under Section 380 of the Penal Code.
2. When the indictment was read over and explained to the accused, each of them pleaded not guilty to the charges. As the accused elected to be tried without a jury, the trial proceeded before the Learned Judge of the High Court sitting without a jury.
3. At the trial, the prosecution called four witnesses. In addition, the Interpreter of the High Court testified for the limited purpose of producing the proceedings of the non-summary inquiry. Upon the conclusion of the prosecution case, all the accused made dock statements.
4. At the conclusion of the trial, the Learned High Court Judge acquitted the 1st, 5th, 6th, and 7th accused of the 1st, 5th, 6th, and 7th counts, respectively. The 2nd, 3rd, and 4th accused were found guilty on the 2nd, 3rd, and 4th counts, respectively. All the accused were acquitted of the 8th count.
5. The Learned High Court Judge sentenced each of the 2nd, 3rd, and 4th accused to 15 years' rigorous imprisonment. In addition, each was ordered to pay a fine of Rs. 25,000, with a default sentence of six months' imprisonment. They were further directed to pay compensation of Rs. 200,000 each to the prosecutrix, in default of which they would undergo a further term of two years' rigorous imprisonment.

6. Being aggrieved by the said convictions and sentences, the 2nd, 3rd, and 4th Accused-Appellants (hereinafter referred to as “the Appellants”) have preferred the present appeal.
7. Notwithstanding the several grounds of appeal set out in their respective written submissions, the Appellants principally contended that the Learned High Court Judge failed to consider the legal effect of the acquittal of all the accused on Count No. 8. They further submitted that the evaluation of the evidence by the Learned High Court Judge was unsatisfactory, that the medical evidence did not corroborate the testimony of the prosecutrix but, on the contrary, contradicted it, and that the Learned High Court Judge had arrived at certain findings that were unsupported by the medical evidence.
8. It was also contended that the impugned judgment does not comply with the requirements of Section 283 of the Code of Criminal Procedure Act.
9. The first witness for the prosecution was the prosecutrix (PW1). According to her evidence, on the day of the incident, she had attended a wedding and returned home accompanied by her two friends, Jayalath and Rupika. At that point, the 2nd, 3rd, and 4th accused arrived and requested water. Thereafter, the 1st, 5th, 6th, and 7th accused, who were also known to the prosecutrix, also arrived at the scene.
10. PW1 further stated that the 2nd accused, who was armed with an iron rod, placed it on the neck of the prosecutrix and pushed her onto a bed. The 4th accused raped the prosecutrix, while the 2nd accused remained present in the room. The other accused allegedly dragged Rupika and Jayalath out to the road. Thereafter, the 1st, 3rd, 7th, 6th, and 5th accused also raped the prosecutrix. PW1, however, stated that the 2nd accused did not commit rape.
11. According to the prosecutrix, she was subjected to rape by the said accused for about 45 minutes and, upon leaving, they threatened her not to disclose the incident to the police or to any third party.

12. Thereafter, the prosecutrix proceeded to the road, where she found Rupika and Jayalath still in the custody of the 1st, 3rd, and 4th accused. She then went to her aunt's house and subsequently proceeded to the police station, where she lodged a complaint regarding the incident.
13. PW2, Mahesh Jayalath Perera, also testified before the Court. He stated that he was summoned to the police station and was shown the accused persons who were, at that time, in the police cell.
14. According to PW2, on the day of the incident, he had gone to the prosecutrix's house along with one Rupika. While they were there, three accused arrived armed with an iron rod. The witness and the prosecutrix were subsequently assaulted by them. PW2 further stated that the entire incident lasted for approximately one and a half to two hours.
15. PW4 is the Judicial Medical Officer who examined the prosecutrix. According to his evidence, the prosecutrix was examined by him at the Kalutara Hospital on 17.08.2001. The prosecutrix had been transferred to Kalutara Hospital from Wettewa Hospital. At Wettewa Hospital, a specimen had been obtained from her, which was subsequently tested and found negative for spermatozoa.
16. It is noteworthy that the prosecutrix, in her evidence, stated unequivocally that all of the accused who raped her had ejaculated. She was examined at the Wettewa Hospital shortly after the incident, and a vaginal swab was obtained and tested for spermatozoa. The test yielded a negative result. This significantly undermines the credibility of her testimony. Likewise, she stated that she had been raped for approximately 45 minutes, yet had sustained no abrasions.
17. Significantly, where the medical evidence is inconsistent with the ocular evidence, and such inconsistency coupled with material discrepancies in the testimony of the prosecutrix, it would be unsafe to rely on such evidence as the basis for sustaining the conviction of the accused.

18. According to the prosecutrix, she was pulled by her hair, pinned against a wall, and sustained abrasions. She further testified that she had pointed out those abrasions to the Judicial Medical Officer, who had observed them. However, according to the evidence of the Judicial Medical Officer, no such abrasions were found upon examination.
19. The credibility of the prosecutrix's testimony was further undermined by the evidence of PW5, who recorded her statement. PW5 testified that he specifically inquired whether she had sustained any injuries, to which the prosecutrix responded in the negative.
20. It is also significant to note that, in his judgment, the Learned High Court Judge made a finding regarding the absence of spermatozoa in the vagina of the prosecutrix without the support of any expert evidence. He observed that, as the prosecutrix had washed her genital area before being produced before the Judicial Medical Officer, no spermatozoa were detected during the examination. However, this conclusion was reached in the absence of any expert evidence to support such an inference.
21. The Learned High Court Judge, on two separate occasions in his judgment, expressed an opinion that was wholly unsupported by the medical evidence adduced at the trial.
22. In the judgment, it is stated as follows:

“පැ. සා. 01 විසින් ඉදිරිපත් කරනු ලැබූ සක්ෂියකට අනුව ඇය මතුගම වෑන්තැව රෝහලට ඉදිරිපත් කළ අවස්ථාවේ ඇය සිය ලිංගෙන්ද්‍රය තමා විසින්ම සෝදා ගෙන තිබුණු බව පිළිගෙන තිබේ. ඇය සිය ලිංගෙන්ද්‍රය එලෙස සෝදා පිරිසුදු කර ගැනීමක් සිදු කර නොතිබුණි නම් ඇතැම් විට කණ්ඩායම් ගැසී සිදු කරන ලද ස්ත්‍රී දූෂණ අපරාධයකදී පුරුෂ ලිංගෙන්ද්‍රයන්ගෙන් නිකුත් කෙරෙන ශුක්‍රානු ඇයගේ ලිංගෙන්ද්‍රයේ හෝ ඒ අවට රැඳී සිටීමට බොහෝ සෙයින් ඉඩක් තිබුණු හෙයින් එවන් පිරිසුදු වීමක් ඇය සිදු කර ගෙන නොතිබුණි නම් 2001.08.15 වන දින වෑන්තැව රෝහලේදී සිදු කරනු ලැබූ පරීක්ෂණයේදී එම රෝහලේ වයිද්වරයා හට පැ. සා. 01 ගේ ලිංගෙන්ද්‍රය හා එහි

අභ්‍යන්තරයේ රැඳී තිබිය හැකිව සැලකෙන පුරුෂ ශුක්‍රාණු අනාවරණය කර ගත හැකිව තිබෙනු ඇත.” (at vide page 352 of the Appeal Brief)

කෙසේ වෙතත් පැ. සා. 01 වැලිපැන්න පොලිසිය විසින් මතුගම වැත්තුව රෝහලට ඉදිරිපත් කරන ලද අවස්ථාවේ එකී රෝහලේ වයිවරයා ඇයව කායිකව පරීක්ෂා කිරීමට ප්‍රථම සාක්ෂිකාරිය විසින් සිය ලිංගෙන්ද්‍රය සෝදා පවිත්‍ර කර ගැනීමක් සිදුකර නොතිබුණි නම් එදින ඇය සමූහ දූෂණයට ලක් වීමේ ප්‍රතිපලයක් ලෙස පැ. සා. 01 ගේ ලිංගෙන්ද්‍රයේහි හෝ එහි අවට පැවැතිවහැකිව තිබූ පුරුෂ ශුක්‍රාණු අනාවරණය කර ගැනීමට වැත්තුව රෝහලේ වෛයිදවරයා සමත් වනු ඇත. පැ. සා. 01 වෛයිදවරයාගේ පරීක්ෂාවට පෙර කිසියම් අපැහැදිලි හේතුවක් මත ඇය විසින්ම සිය ලිංගෙන්ද්‍රය රෝහල් පරිශ්‍රයෙහි කිසියම් ස්ථානයකදී සෝදා පවිත්‍ර කරගෙන තිබූ හෙයින් සමූහ දූෂකයන්ට එරෙහිව ඉදිරිපත් විය හැකිව තිබූ ප්‍රබල සක්ෂිමය පරිවෘත්තයක් ඇය විසින්ම විනාශයට පත් කරගෙන ඇත. (at vide page 368 of the Appeal Brief)

23. PW1 in her evidence, categorically stated that all the accused had ejaculated in her. She was admitted to Wettewa Hospital on the same day, where a vaginal swab was obtained for forensic examination.
24. When she was transferred to Kalutara Hospital, she was examined by the Judicial Medical Officer (JMO). It is to be noted that, in her evidence, the prosecutrix did not state that she had washed her genital area at Wettewa Hospital. It was the JMO who, referring to the history furnished by the prosecutrix, stated that she had washed her genital area while at Wettewa Hospital.
25. However, at no stage did the JMO opine that the absence of spermatozoa could be attributed to such washing. There was no medical opinion to suggest that any washing of the genital area would necessarily result in the disappearance of spermatozoa from the vaginal cavity.
26. Accordingly, the finding of the learned High Court Judge that critical evidence would have been destroyed as a consequence of the prosecutrix washing her genital area is without any evidentiary basis and cannot be sustained. A conviction founded

upon such an unsupported assumption is necessarily flawed and cannot be allowed to stand.

27. Furthermore, the prosecutrix's evidence was that she had been raped by seven persons, one after another. However, no injuries were found on her person. It is well established that the presence of injuries is not an indispensable requirement in a prosecution for rape. Accordingly, the mere absence of injuries on the prosecutrix does not, by itself, negate the prosecution's allegation that force was used in the commission of the offence.
28. However, where the prosecutrix herself asserted that she had sustained abrasions on her elbow and had shown them to the Judicial Medical Officer, but that assertion was contradicted by the Judicial Medical Officer, her credibility is undoubtedly undermined. Further, the investigating officer (PW5) testified that when he inquired from the prosecutrix whether she had sustained any injuries as a result of the alleged acts of rape, the prosecutrix answered in the negative. This inconsistency further casts doubt on the credibility of her testimony.
29. Another instance demonstrating the inconsistency of the prosecutrix's evidence, and thereby undermining its reliability, relates to her identification of the accused. In her examination-in-chief, she testified that all the accused were known to her both prior to and at the time of the incident.
30. It is noteworthy that, during the non-summary inquiry, the prosecutrix testified that she did not know the 1st accused prior to the alleged incident. That portion of her testimony was marked as D7 by way of contradiction. In view of the materially inconsistent nature of PW1's testimony, it cannot safely rely on her evidence regarding the identification of the accused and prior acquaintance with the accused.
31. Furthermore, the factual inaccuracies in the Learned High Court Judge's evaluation of the evidence are apparent from the judgment itself. The Learned Judge observed that the 1st, 5th, 6th, and 7th accused were not known to the prosecutrix prior to the incident and that, in the absence of an identification parade, the prosecutrix merely

identified them in the dock, which did not constitute a proper identification. It is noteworthy that, in her examination-in-chief, the prosecutrix expressly stated that all the accused were known to her prior to the incident and that she identified them at the time of the incident. This material aspect of the evidence was overlooked by the Learned High Court Judge, thereby rendering his finding that the prosecutrix did not know some of the accused prior to the incident plainly inconsistent with the evidence on record.

32. Moreover, the credibility of PW2's testimony is further clouded by the fact that he admitted that the accused had been shown to him while they were in police custody. In his examination-in-chief, PW2 testified as follows:

ප්‍ර: පැමිණි විත්තිකරුවන් 7 දෙනා ඉන්පසු මොකද කළේ?

උ: අපිට පොලිසියෙන් කිව්වා උදේට එන්න, රැට අරන් එන්නම් කිව්වා. එගොල්ලොන්ට පොලිසියට ගෙනත් තියන්නම් කිව්වා.

ප්‍ර: ඔබ ඇතුළු කට්ටිය පොලිසියට ගියද?

උ: ගිය ස්වාමිනි, එතොකොට 7 දෙනෙක් කුඩුවට දල තිබුන.

ප්‍ර: ප්‍රියන්ති අක්කලාගේ ගෙදරට ආපු 7 දෙනවා ඊට පස්සේ ඔබ නැවත දැක්කද?

උ: උදේ දැක්කට පසු දැක්කේ නැහැ, අපි ගෙදර යන්න ගියා

ප්‍ර: ප්‍රියන්ති අක්කලාගේ ගෙදරදී දැක්කට පස්සේ පොලිසියේදී දැක්කා?

උ: ඔව්. (at vide page 237 of the appeal brief)

33. According to the evidence of PW2, he had not seen any of the accused prior to the alleged incident. Surprisingly, no identification parade was held during the course of the investigation. In those circumstances, the dock identification of the accused by PW2 cannot, by itself, be regarded as reliable.

34. It is noteworthy that the Learned Trial Judge himself commented in the impugned judgment on the failure of the police to conduct an identification parade. Nevertheless, he proceeded to hold that the evidence of PW1 was corroborated by that of PW2. In my view, this constitutes a clear misdirection.

35. Where the evidence of the prosecutrix is not sufficiently convincing and stands in need of corroboration, such corroboration cannot be founded upon evidence that is itself unreliable. In criminal trials of this nature, the quality of the evidence is of far greater significance than its quantity. Accordingly, the Learned Trial Judge erred in treating the testimony of PW2 as corroborative of the prosecutrix's evidence, and that finding cannot be sustained in view of the defects referred to above.
36. PW2 further testified that, after the alleged incident, the prosecutrix accompanied them to Shantha's house, where Shantha arrived at around 6.00 p.m. and claimed to be the prosecutrix's husband. This version of events is wholly inconsistent with the testimony of the prosecutrix, who stated that immediately following the incident she went to her aunt's house, disclosed the incident to her aunt, and thereafter proceeded to the police station accompanied by her aunt. This material contradiction further raises a serious doubt regarding the reliability of PW2's account.
37. Unfortunately, the Learned Trial Judge appears to have failed to give due consideration to these material discrepancies arising from the testimonies of PW1 and PW2 when evaluating the credibility and reliability of their evidence.
38. Accordingly, having regard to the foregoing analysis, it is evident that the evaluation of the evidence by the Learned High Court Judge is fundamentally flawed. In those circumstances, it would be unsafe to permit the convictions to stand.
39. In a prosecution of this nature, the evidence of the prosecutrix must be examined with great care. The Court is required to assess the intrinsic probability and reliability of her testimony, particularly in the light of the evidence of the other prosecution witnesses and the totality of the surrounding circumstances.
40. In the present case, Count No. 8 alleged that the accused had robbed jewelry valued at Rs. 15,000 from the prosecutrix. Nevertheless, the prosecutrix, in the course of her testimony, failed to mention any loss of jewelry or any incident relating to such robbery. It is significant to note that the prosecutrix is a married woman with three

children. In those circumstances, there appears to be no reason for her to have misunderstood or failed to accurately describe what transpired on the day in question.

41. This significant omission, particularly in respect of a specific charge contained in the indictment, further affects the credibility of her evidence and casts doubt upon the reliability of her testimony.
42. The Learned High Court Judge acquitted all the accused of that charge, observing that there was no evidence to establish the alleged robbery. Nevertheless, the Learned Judge failed to examine the significance of the prosecutrix's complete omission to refer to the alleged robbery in her testimony and its consequent impact on the credibility of her evidence as a whole.
43. Why did the prosecutrix fail to utter a single word regarding the alleged robbery, which was said to have occurred during the very same transaction? Was it due to a mere lapse of memory, or was it because the alleged robbery had never occurred? If the latter is possible, the question arises as to the extent to which her evidence can safely be relied upon. None of these significant issues were addressed by the Learned Trial Judge in the impugned judgment. This inconsistent approach to the evaluation of the evidence substantially undermines the soundness of the conclusions reached in the impugned judgment.
44. The other significant issue that warrants consideration by this Court is the adequacy of the evaluation of evidence undertaken by the Learned High Court Judge. The impugned judgment largely consists of a narration and reproduction of the evidence, without a proper analysis of the evidentiary material or a reasoned assessment of the findings arrived at. Such failure to evaluate the evidence and provide reasons in support of the conclusions reached is not in conformity with the requirements of Section 283 of the Code of Criminal Procedure Act.

45. Another instance demonstrating the irrationality of the findings of the Learned Trial Judge is found at paragraphs 17 to 19 of the impugned judgment. At paragraph 17, the Learned Trial Judge observed that the prosecutrix's evidence relating to the identification of the 4th, 5th, 6th, and 7th accused created a doubt. However, at paragraph 18, the Learned Trial Judge proceeded to state that, based on the observations of PW2, it had been established that the prosecutrix was raped by the 1st to 7th accused at intervals over a period of one hour. Furthermore, at paragraph 19, the Learned Trial Judge concluded that the prosecution had presented strong evidence against the 1st to 7th accused for committing gang rape.
46. These findings appear to be mutually inconsistent. Having recognized that the prosecutrix's evidence regarding the identification of some of the accused created a doubt, the Learned Trial Judge failed to explain how the evidence of PW2 could cure such a fundamental deficiency or establish the involvement of all seven accused beyond reasonable doubt. The Learned Trial Judge's conclusion regarding the commission of gang rape by all the accused therefore lacks a proper evidentiary basis.
47. Having arrived at the aforesaid findings, the Learned Trial Judge nevertheless proceeded to acquit the 1st, 5th, 6th, and 7th accused of all charges. This inconsistency in the reasoning process clearly demonstrates the lack of a proper analysis of the evidence and the irrational conclusions reached by the Learned Trial Judge.
48. It is also significant to note that the Learned High Court Judge relied upon the dock statement made by the 5th accused, who was subsequently acquitted, to conclude that the Appellants had visited the prosecutrix's house on the day of the incident. Furthermore, the Learned Trial Judge held that, by virtue of the dock statement made by the 5th accused, it had been proved beyond reasonable doubt that the 1st to 7th accused had gone to the prosecutrix's house and remained there for a certain period.

49. This reasoning is, however, fundamentally flawed. A dock statement is not evidence against a co-accused and cannot be relied upon to establish the guilt of another accused. The Learned Trial Judge therefore erred in law by using the dock statement of the 5th accused as substantive evidence against the Appellants. Such a statement was admissible only in so far as it related to the defence of the maker himself and could not properly form the basis of a finding against the remaining accused. Consequently, the conclusion that the Appellants had visited the prosecutrix's house, founded upon the dock statement of the 5th accused, cannot be sustained.

50. In ***Rex vs. Ukku Banda, (1923) 24 NLR 327***, “*A statement made by an accused person from the dock implicating a co-accused is not admissible in evidence against the latter.*”

51. At page 334, it is stated as follows:

“.....that where in a criminal trial two co-accused persons elect not to give evidence, but are content to rely either upon their statements in the Police Court or upon unsworn statements in the dock, the jury should be warned, where such a statement by one prisoner inculcates the other, that it should not be taken into account against him.”

52. A similar decision was taken in ***Monis Appu vs. Heen Hamy et al. (1924) 26 NLR 303***, in a situation where an unsworn statement made by a co-accused from the dock implicating another, Bertram C. J. declared;

“If one prisoner makes a statement implicating himself, this is an admission which may be taken into account. But if one prisoner standing in the dock makes an unsworn statement implicating the other, this is not evidence. It has no more effect than an ejaculation uttered by an auditor in Court.”

53. In light of the foregoing factual and legal analysis, the conclusion reached by the Learned Trial Judge regarding the Appellants' guilt cannot be sustained. In those circumstances, it would be unsafe to allow the conviction to stand.

54. For the reasons stated above, I set aside the convictions and sentences imposed on all the Appellants and acquit them of all charges. Accordingly, the appeal is allowed.

Judge of the Court of Appeal

P. Kumararatnam, J

I agree

Judge of the Court of Appeal