IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an application under in terms of section 83(2) of the Case of Criminal Procedure Act No. 15 of 1979.

Democratic Socialist Republic of Sri Lanka.

Complainant

Vs.

1. Polwatta Liyanage Nishantha

Accused

Court of Appeal Case No:
CA/HCC/0021/2021

High Court of Galle Case No: **HC-3430/2010**

And now between

Polwatta Liyanage Nishantha

Accused-Appellant

Vs

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

Respondent

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

Pradeep Hettiarachchi, J.

Counsel : Migara Gunarathne for the Accused-Appellant

Azard Navavi A.S.G for the Respondent.

Argued on : 08.09.2025

Decided on : 16.01.2026

Pradeep Hettiarachchi, J

Judgement

1. This appeal arises from the judgment of the learned High Court Judge of Galle dated 19.01.2021, by which the Accused-Appellant (hereinafter referred to as the Appellant) was convicted on the 1st and 2nd counts set out in the indictment and sentenced to rigorous imprisonment for five years and twenty years respectively. The Appellant was further ordered to pay fines of Rs. 5,000.00 on each count, with default sentences of six months' imprisonment on each. In addition, the Appellant was directed to pay compensation in the sum of Rs. 100,000.00 to the victim, with a default sentence of twelve months' imprisonment.

2. Being aggrieved by the said conviction and the sentence the Appellant has preferred the present appeal. Following are the grounds of appeal urged by the Appellant.

    1. The learned High Court Judge has failed to properly assess the credibility and the reliability of the evidence of PW 1, especially in the light of the inconsistencies noted in the evidence of the prosecution.
    2. The Learned High Court Judge has misdirected on medical evidence.

3. The Learned High Court Judge erred in law by misdirecting himself that the Appellant bears the burden of proving the fact mention in the Appellant's evidence and had failed to make the proper assessment of the defence case.

2. The charges preferred against the Appellant were for offences punishable under Sections 443 and 364(1) of the Penal Code. According to the prosecution case, the Appellant forcibly entered the house of PW1 while she was alone, dragged her into the kitchen, and had sexual intercourse with her without her consent. It was further alleged that, while the Appellant was engaged in the said act, the two daughters of PW1 returned home, and upon hearing their voices, the Appellant fled the scene. Thereafter, a complaint was made to the Police.

3. The point most seriously canvassed before this Court on behalf of the appellant was that the solitary testimony of the prosecutrix, without corroboration in material particulars, is insufficient to sustain the conviction of the appellant. It is further contended that the inconsistencies discernible in the evidence of the prosecutrix render the conviction unsafe.

4. According to the evidence of PW1, on the day of the incident, the appellant forcibly opened the front door and entered her house at around 1.00 a.m. Although PW1 shouted, no one heard her as it was raining heavily. When she cried out for a second time, the appellant covered her mouth, held her by the hair, dragged her into a room, and placed her on a bed, whereupon he raped her. Thereafter, upon hearing the voices of her children who had returned home, the appellant broke open the rear door and fled the scene.

5. It may be observed that, in her evidence in chief, PW1 stated that on the day of the incident, at around midnight, when she attempted to close the door, the appellant forcibly broke open the door and entered her house.

6. Although PW1 stated that, when she raised cries, the appellant covered her mouth, held her by the hair, dragged her into her room, and kicked her, the medical evidence does not corroborate this version. It is significant to note that, in the Medico-Legal Report marked X, the Judicial Medical Officer has not recorded any injuries or abrasions compatible with

PW1's assertion that she was kicked and forcibly dragged by the appellant. Thus, the medical evidence does not support this position.

7. Furthermore, PW1 stated that the appellant was completely naked when he entered the house. However, contradicting this version, she later stated that, at the time of committing the alleged act of rape, the appellant's clothes were placed on the kitchen floor, and that when he entered the house, his trousers, T-shirt, and a cap were wrapped around his head.

8. The aforesaid contradictions and inconsistencies in the testimony of PW1 are not minor or trivial in nature. They relate to material aspects of the prosecution narrative, including the manner of entry of the appellant, the alleged use of force, and the circumstances under which the alleged offence was committed.

9. When such inconsistencies are considered cumulatively, they undermine the credibility and reliability of PW1's evidence. In the absence of corroboration in material particulars, it would be unsafe to base a conviction solely on such inconsistent testimony.

10. The prosecutrix further stated that, upon hearing the voices of her daughters, the appellant broke open the rear door and fled the scene. However, it is obvious from the evidence that the prosecutrix had a hearing defect from her school days and had subsequently lost her hearing ability. In such circumstances, it is unclear how the prosecutrix could have known that the appellant fled upon hearing the voices of her children. No plausible explanation was forthcoming in this regard. According to her evidence, she had gone to the police station soon after the incident, accompanied by her elder daughter, her husband's brother, Hemasiri, and one Naleen Himesha.

11. Moreover, PW1 stated that the appellant had threatened her by pointing a knife at her, after which the knife was thrown into the kitchen. During cross-examination, PW1 admitted that she was not on good terms with Hemasiri. It was further suggested to her that she was having an illicit affair with Hemasiri, which she denied.

12. Inconsistencies in the evidence of the prosecutrix are further evident at page 134 of the brief, where she stated that Hemasiri used to visit her. However, she never went to Hemasiri's place, nor did she allow her children to go there. It is significant to note that, according to PW1's evidence, on the date of the incident Hemasiri was not at home, as he

had reported to work at a garage. Nevertheless, she stated that after the incident she went to Hemasiri's house, accompanied by her children, to see whether Hemasiri was there so that he could accompany them to the police.

13. When questioned by the defence counsel as to why she went to Hemasiri's house if she knew he was not at home that day, she failed to provide an answer. At page 137, the inconsistent nature of her evidence is further apparent, as PW1 stated that Hemasiri was not on good terms with her and never visited her, yet she also claimed that when they were in need of money, he used to come and provide financial assistance. She testified as follows:

ප්‍ර : හේමසිරි තමුන්ගෙ ගෙදර ඉඳලා පැනලා දිව්වේ. නමුත් ඒක හොඳටට දන්නවා.

උ : එදා හේමසිරි අපේ ගෙදර ආවේ නැහැ. කවදාවත් එන්නෙ නැහැ අපේ ගෙදරට.

ප්‍ර : තමුන් දැන් මොහොතකට කලින් කිවා හේමසිරි අපේ ගෙදර එනවා අපි යන්නෙ නැහැ කියා.එහෙම කිව්වානේ?

උ : එයා අපේ ගෙදර කවදාවත් එන්නෙ නැහැ. අපි එක්ක තරහයි. සල්ලි බාගේ නැති වුනාම ඇවිත් දීලා යනවා.

Vide Page 137

14. It is also important to note that when she was questioned as to which entrance the appellant had used to enter the house, whether the front door or the rear door near the kitchen, she failed to provide an answer. Furthermore, at page 145, PW1, while contradicting her evidence-in-chief, stated that the appellant was wearing a T-shirt; yet she also claimed that when she entered the house, he was fully naked. In a case of this nature, the evidence of the prosecution is of paramount importance. Such evidence must be trustworthy, reliable, and credible. If it fails to meet these standards, it cannot be strengthened merely by corroborative evidence. In this regard, following authorities would be of great relevance.

15. In ***Premasiri vs A.G. [2006] 3 Sri.L.R 107,*** *The rule is not that corroboration is essential before there can be a conviction in a case of rape but the necessity of corroboration as a matter of prudence except where the circumstances makes it unsafe to dispense with it, must be present to the mind of the judge.*

16. ***Sunil And Another Vs.The Attorney-General [1986] (1) Sri.L.R.230*** it was held that;

Corroboration is only required or afforded if the witness requiring corroboration is otherwise credible. If the evidence of the witness requiring corroboration is not credible his testimony should be rejected and the accused acquitted. Seeking corroboration of a witness' evidence should not be used as a process of inducing belief in such evidence where such evidence is not credible.

It is very dangerous to act on the uncorroborated testimony of a woman victim of a sex offence but if her evidence is convincing such evidence could be acted on even in the absence of corroboration.

17. In ***Director of Public Prosecutions v. Hester [1973] A.C.296, 315 (H.L.); [1973] 3 All ER 1056.***,it was held:

"The essence of corroborative evidence is that one creditworthy witness confirms what another creditworthy witness has said. Any risk of the conviction of an innocent person is lessened if conviction is based upon the testimony of more than one acceptable witness. Corroborative evidence in the sense of some other material evidence in support implicating the accused furnishes a safeguard which makes a conclusion more sure than it would be without such evidence. But to rule it out on the basis that there is some mutuality between that which confirms and that which is confirmed would be to rule it out because of its essential nature and indeed because of its virtue. The purpose of corroborating is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible; and corroborative evidence will only fill its role if it itself is completely credible evidence."

if they find the evidence of the complainant so convincing, they could act on that evidence alone, even in the absence of her evidence being corroborated. I find that this proposition has been succinctly expressed by Salmon, L. J. in the case of ***Rex v. Manning [1969] 53 Criminal Appeal Reports 150, 153.***

"What the judge has to do is to use clear and simple language that will without any doubt convey to the jury that in cases of alleged sexual offences it is really dangerous to convict on the evidence of the woman or girl alone. This is dangerous because human experience has shown that in these courts girls and women do sometimes tell an entirely false story which is very easy to fabricate, but extremely difficult to refute. Such stories are fabricated for all sorts of reasons, which I need not now innumerate,

and sometimes for no reason at all. The judge should then go on to tell the jury that, bearing that warning well in mind they have to look at the particular facts of the particular case and if, having given full weight to the warning, they come to the conclusion that in the particular case the woman or girl without any real doubt is speaking the truth, then the fact that there is no corroboration matters not at all; they are entitled to convict."

18. In ***Ajith vs. Attorney General [2009] 1 SRI.L.R. 24,***
If the prosecutrix in a rape case is not a reliable or believable witness, the evidence seeking to corroborate her story cannot strengthen her evidence. Court should seek corroborative evidence only if the prosecutrix is a reliable witness.

19. PW2, who is one of the daughters of the prosecutrix, confirmed in her evidence that her mother suffers from a hearing defect and could hardly hear. This evidence contradicts the testimony of the prosecutrix, who stated that the appellant fled the scene upon hearing the voices of her children during the night.

20. Apparently, the learned trial Judge has overlooked certain vital inconsistencies discernible in the evidence of PW1. On one occasion, she stated that neither she nor her children ever visited the residence of Hemasiri, as they were not on good terms with Hemasiri's family. However, contradicting her own testimony, she subsequently stated that Hemasiri frequently visited their house and had even provided financial assistance when needed. These contradictory assertions materially affect the credibility of PW1.

21. The evidence relating to the manner in which the appellant allegedly dragged PW1 into a room is also inconsistent and, therefore, doubtful. In her statement to the police, PW1 stated that the appellant pointed a knife at her and led her into a room. However, when this aspect was put to her in cross-examination, she categorically denied that any knife had been pointed at her. This material contradiction goes to the root of the prosecution case and substantially undermines the reliability of PW1's testimony on this crucial aspect.

ප්‍ර : තමුන් පොලිසිහට ගිහිල්ලා කට උත්තරයක් දුන්නානේ?

උ : ඔව්.

ප්‍ර : තමුන් මෙහෙම කිව්වේ නැහැයි කියලද කියන්නේ, නිශාන්ත ආපු ගමන් පිහියක් මට පෙන්නලා යමන් කාමරෙට කියලා ඉස්සරහ දොර වැහුවා. කියලා තිබෙනවා නම් ඒක වැරදියිද, ඒක බොරුද?

උ : ඔව් ඒක බොරු.

ප්‍ර : එහෙම කතාවක් කිව්වේ නැහැ.

("නිශාන්ත ආපු ගමන් පිහියක් මට පෙන්නලා යමන් කාමරෙට කියලා ඉස්සරහ දොර වැහුවා.") යන කොටස වි.01 ලෙස පරස්පරතාවයක් වශයෙන් ලකුනු කරයි.)

Vide Page 162

22. PW1 further testified that the appellant was totally naked at the time he entered the house. However, in her statement to the police, she had stated that after dragging her into the room, the appellant removed his trouser and T-shirt. This inconsistency is material, as it relates directly to the sequence of events surrounding the alleged incident. Such a contradiction cannot be brushed aside as a minor discrepancy, particularly in a case where the prosecution substantially rests on the testimony of PW1.

ප්‍ර : තමුන් පිටුපස්ස කාමරේට ඇඳන් ගිහිල්ලා කරදර කරන්න හදනකොට තමුන් මෙහෙම කිව්වාද පොලීසියට " මාව අතෑරපන් කිව්වාද ?"

උ : ඔව් කිව්වා.

ප්‍ර : "එවිට ඔහු ඇද සිටි රතුපාට කොට කලිසමයි කොළ පාට ටී ෂර්ට් එකයි ගලවලා විසි කළා" තමුන් එහෙම කිව්වා ද?

උ : ඔව්.

ප්‍ර : තමා මෙච්චර වෙලා දිවුරා දිවුරා කිව්වා ගෙට පැන්නේ කිසිම ඇඳුමක් නැතුවයි කියලා ඒක බොරු ?
(පිළිතුරක් නොමැත)

ප්‍ර : කිසිදු ඇඳුමක් නැතුවයි කියපු එක ඇත්ත ?

උ : ඔව්.

ප්‍ර : කරදර කරන්න ඉස්සර වෙලා ගලවන්න කිසිම ඇඳුමක් තිබුණේ නෑ ?

උ : නෑ තිබුණේ නෑ.

ප්‍ර : "එවිට ඔහු ඇඳ සිටි රතුපාට කොට කලිසමයි කොළ පාට ටී ෂර්ට් එකයි විසි කලා. " කරදර කරපු ඇද ළඟ ඉදන් ඔය ඇදුම් ගැලෙව්වා කියලා තිබෙනවා නම් ඒක හරිද වැරදිද?

උ : වැරදියි.

(" එවිට ඔහු ඇඳ සිටි රතුපාට කොට කලිසමයි කොළපාට ටී ෂර්ට් එකයි ගලවලි විසිකලා. " යන කොටස <u>වි.04</u> ලෙස පරස්පරතාවයක් වශයෙන් ලකුනු කරයි.)

Vide page 167, and 168.

23. It is also noteworthy that, during cross-examination, PW1 stated that when the appellant fled from the scene, he was wearing nothing. This assertion stands in stark contrast to her earlier versions regarding the appellant's attire, thereby further compounding the inconsistencies in her testimony. These contradictions, when considered cumulatively, raise serious doubts as to the reliability of PW1's account of the incident and materially weaken the prosecution case. She testified:

ප්‍ර : ඒ වනකොටත් මෙයාගේ ඇඟේ ඇදුම් මුකුත් නෑ නේ ?

උ : නෑ.

ප්‍ර : ඇදුම් ගෙනාවේ නෑ නේ. ආවේ නිකම් නේ?

උ : ඔව් එහෙමයි.

ප්‍ර : දිව්වොත් එහෙමද, ඇඳුම් නැතිවද ?

උ : ඔව් පාර දිගේ දිව්වා. පිටුපස්සේ ගෙවල් වලට.

ප්‍ර : පිටුපස්සේ ගෙවල් තියෙන දිහාට දිව්වා ඇදුම් නැතිව ?

උ : ඔව්.

ප්‍ර : පොලිසියට කිව්වෙත් එහෙමයි.

උ : ඔව්.

Vide Page 170

24. However, in her statement to the police, she stated that at the time he was fleeing, he was wearing his clothes.

ප්‍ර : එහෙම නම් පොලිසියට, " එව්ව ඔහු ඇඳුම් ඇරගෙන ඉක්මනට ඇඳගෙන පැනලා දිව්වා" කියලා තියෙනව නම් ඒක හරිද වැරදිද ?

උ : වැරදියි.

ප්‍ර : එහෙම වෙන්න විදියක් නෑ?

උ : නෑ.

ප්‍ර : එහෙම ලියලා තියෙනවා නම් එක බොරුවක් ?

උ : බොරුවක්.

("ඔහු එවට ඔහුගේ ඇඳුම් අරගෙන ඉක්මනට ඇඳගෙන පැනලා දිව්වා." යන කෙටස <u>වි.07</u> වශයෙන් පරස්පරතාවයක් වශයෙන් සලකුනු කරයි)

Vide page 175

25. The inconsistency in her evidence is further evident during re-examination, when she was questioned as to whether the appellant had come in a state of nudity. Further, at page 172, she stated that the appellant broke the lock of the rear door and fled. However, the police officer who inspected the scene did not observe any such damage. More importantly, at page 187, PW1 refrained from answering two vital questions when the defence suggested that she had been induced by Hemasiri to lodge a false complaint against the appellant. It was further suggested to her that she made a false complaint in order to conceal an illicit relationship with Hemasiri, which her children were about to discover. She did not respond to this suggestion.

26. It is apt to note that PW1 testified almost seven years after the alleged incident and, therefore, cannot be expected to narrate the incident she had faced without any contradictions or omissions. The Court is always mindful of the time gap between the date of the offence and the date of trial and also takes into consideration the age, social background, level of education, and standing in society of the prosecutrix when evaluating her testimony.

27. At the same time, where such discrepancies in the evidence of the prosecutrix go to the root of the case and have the effect of undermining the credibility of the prosecution case, the Court cannot lightly disregard them merely on the basis of the aforementioned considerations.

28. In the present case, the egregious contradictions and material omissions evident in the testimony of the prosecutrix render the conviction of the appellant manifestly unsafe. In prosecutions for rape, it is well recognised that there are often no eyewitnesses other than the prosecutrix herself. While the law does not insist on corroboration as a matter of course, it is equally well settled that the testimony of the prosecutrix must be of such quality as to inspire confidence and be free from material inconsistencies.

29. Where the evidence of the prosecutrix is riddled with contradictions and inconsistencies on material particulars, any purported corroborative evidence cannot cure such fundamental defects or lend credibility to an otherwise unreliable narrative. In such circumstances, reliance on such evidence would amount to a grave miscarriage of justice, and the conviction founded thereon cannot be sustained.

30. The Judicial Medical Officer who examined the prosecutrix testified as PW8. According to his evidence, he examined both the prosecutrix and the appellant. He stated that he observed findings which, in his opinion, were indicative of recent penetration, and further opined that such findings were consistent with sexual intercourse having taken place without the consent of the prosecutrix. In support of this opinion, the doctor stated that the injuries observed in the vagina of the prosecutrix were suggestive of non-consensual sexual intercourse.

31. The same doctor was also called to testify by the defence. It is significant to note that the JMO, while referring to his observations made upon examining the appellant, stated that there was evidence suggesting that the appellant had engaged in sexual intercourse shortly prior to the examination.

32. However, the credibility and reliability of this opinion became questionable when Dr. Kiriella, who testified for the defence, categorically stated that no such observation could be made in respect of a male person. He further testified that, to the best of his knowledge, no such theory exists in any recognized medical literature.

33. It is desirable to emphasize that when an expert expresses an opinion, he must clearly articulate the basis upon which such opinion is formed. In the present case, Dr. Gunarathne merely stated that his opinion in respect of the appellant was based on an external examination of the appellant's genitals. He further asserted that, based on his experience, he could conclude that the appellant had recently engaged in sexual intercourse. I am not inclined to accept this opinion, as the witness failed to disclose any scientific or objective basis upon which such a conclusion could reasonably be drawn.

34. It is also significant to note that Dr. Gunarathne was initially called by the prosecution and gave evidence, during which he was examined-in-chief by State Counsel and cross-examined by defence counsel. Subsequently, the same witness was recalled by the defence, whereupon he was examined-in-chief by the defence counsel and cross-examined by the State Counsel. Such a practice is unhealthy, ethically questionable, and procedurally flawed, and ought not to have been permitted by the learned trial Judge.

35. If the defence intended to elicit evidence favourable to its case, it could and should have done so during the cross-examination of the witness when he was first called by the prosecution. Moreover, the calling of the same witness by both the prosecution and the defence inevitably raises serious concerns regarding the integrity and reliability of the witness's testimony.

36. It could be observed from the judgment that the learned trial Judge accepted the opinion of Dr. Gunarathne in respect of the examination of the appellant in preference to the opinion expressed by Dr. Kiriella. The learned trial Judge accepted Dr. Gunarathne's opinion on the basis that he had examined the appellant, whereas Dr. Kiriella had not.

37. However, it must be noted that Dr. Kiriella's opinion was not concerned with the examination of the appellant. His evidence was to the effect that, in the medical field, there is no method by which it can be determined, by an external examination of a male person, whether he had engaged in recent sexual intercourse. Dr Kiriella testified as follows:

ප්‍ර : දැන් විශේෂඥ අධිකරණ වෛද්‍යවරයෙක් ලෙස ඔබතුමාට කියන්න පුලුවන්ද ලිංගික සංසර්ඝයකින් පස්සේ පුරුෂයෙකුගේ ලිංගික අවයවවල පැය 12 ක් 24 ක් කාලයක තුල රත් පැහැවීමේ ලක්ෂණයක් සහිතව පවතිනවා කියලා වෛද්‍යවරයෙක් මතයක් ප්‍රකාශ කලා නම් ඒ මතයේ සත්‍යතාවය කුමක්ද කියලා ඔබතුමාට කියන්න පුලුවන් ද?

උ : එය කිසිම වෛද්‍ය විද්‍යාත්මක පදනමක් තියෙන ප්‍රකාශයක් නෙමෙයි. මම දන්න තරමින් නම් එය කිසිම පොතකවත් සඳහන්වීමක් නැහැ එලෙස රත්පැහැ ගැන්වීමක් පැය 12ක්වගේ පවතින්න හේතුවකුත් නැහැ. අනික් කාරණය කොහොමත් සාමන්‍යයෙන් ශිෂ්ණය ගත්තාම ඒක ස්වාභාවයෙන්ම මෙලනින් කියන වර්ණකය අඩුයි. එතකොට කොහොමත් එතකාට පේන්නේ රෝස පැහැයක් වගේ තමයි ඒක දිස් වන්නේ. එතකොට ප්‍රාණවත් වෙන කොට ඒක කොහොමත් රතු පැහැයට හුරු පැහැයක් ගන්නවා.

Vide page 445

38. This opinion directly contradicts the opinion expressed by Dr. Gunarathne that there was evidence of recent sexual intercourse on the genitals of the appellant. In these circumstances, the basis upon which the learned trial Judge rejected the opinion of Dr. Kiriella is wholly misconceived.

39. It is also pertinent to note that the Medico-Legal Report issued in respect of the appellant, marked as "Y", does not contain any definite or concrete opinion regarding the condition of the appellant. Dr. Gunarathne merely expressed his opinion in the following terms:

> *"No genital injuries. No extra-genital injuries. History given by the victim cannot be excluded."*

40. It is therefore evident that Dr. Gunarathne's opinion concerning the appellant was based solely on the history provided by the prosecutrix, without any supporting medical rationale or objective findings. In such circumstances, it would be highly unsafe to rely on his opinion in determining the guilt of the appellant.

41. Furthermore, it can be observed from the impugned judgment that the learned trial Judge has relied on the contents of the police statement of PW1 in order to corroborate her testimony. Such reliance is expressly prohibited by section 110(4) of the Code of Criminal Procedure Act, which permits the use of a police statement only for the limited purpose of contradicting a witness, and not for corroboration or to strengthen the prosecution case.

42. It is well settled that a statement recorded by the police during the course of an investigation does not constitute substantive evidence. Therefore, the use of such a statement to corroborate the testimony of PW1 amounts to a serious procedural irregularity and a clear misdirection in law. The learned trial Judge, by treating the police statement as corroborative material, has effectively elevated inadmissible material to the status of evidence, thereby causing grave prejudice to the appellant and vitiating the conviction.

43. The next ground advanced by the appellant is that the learned trial Judge erred in law by misdirecting himself in holding that the appellant bore the burden of proving the facts mentioned in his evidence, and by failing to properly assess the defence case.

44. The learned trial Judge, in his judgment, has stated that the appellant failed to prove the stance taken by him, which, according to well-established legal principles, is erroneous in law. An appellant is not required to prove the truth of the version given in his evidence. It is sufficient if the appellant's evidence creates a reasonable doubt in the prosecution case. Once such reasonable doubt arises, the appellant is entitled to the benefit thereof.

45. In the present case, the learned trial Judge has wrongly reversed the burden of proof by faulting the appellant for failing to establish his version, instead of examining whether the prosecution had discharged its obligation of proving the charge beyond reasonable doubt. This error has caused grave prejudice to the appellant and renders the conviction unsustainable.

46. The Supreme Court has repeatedly held that it is sufficient if the defence evidence, or the case for the defence as a whole, creates a reasonable doubt in the prosecution case, entitling the accused to an acquittal (see *Dharmaratne v. Attorney-General* and

Kularatne v. Attorney-General). Where a trial Judge proceeds on the footing that the accused must "prove" his defence, such an approach amounts to a serious misdirection in law, vitiating the conviction.

47. In ***Pantis v. The Attorney General - (1998) 2 Sri L.R.148***, it was held that "The burden of proof is always on the prosecution to prove its case beyond reasonable doubt and no such duty is cast on the accused and it is sufficient for the accused to give an explanation which satisfies courts or at least is sufficient to create a reasonable doubt as to the guilt".

48. In this regard the following observations of Justice P.R.P. Perera, in ***Karunadasa v OIC, Motor Traffic Division, Police Station, Nittambuwa, [(1987) 1 Sri L.R. 155]*** would be of much reliance.

> *"It is an imperative requirement in a criminal case, that the prosecution must be convincing, no matter how weak the defence is, before a court is entitled to convict on it. It has necessarily to be borne in mind that the general rule is that the burden is on the prosecution, to prove the guilt of the accused. The prosecution must prove their case apart from any statement made by the accused or any evidence tendered by him. The weakness of the defence must not be allowed to bolster up a weak case for the prosecution. This rule is based on the principle that every man is presumed innocent until the contrary is proved, and criminality is never presumed. This presumption is so fundamental and strong that in order to rebut it, the crime must be brought home to the accused, beyond reasonable doubt. There is only one final question in every criminal case; does the evidence establish beyond a reasonable doubt the guilt of the accused?*

49. It is well settled in Sri Lankan criminal jurisprudence that where the conviction is founded primarily on the testimony of a single witness, such evidence must be scrutinized with the greatest care, and if the testimony is tainted with material inconsistencies, improbabilities, or conduct inconsistent with normal human behaviour, it would be unsafe to sustain a conviction. When the evidence of the prosecution witness gives rise to reasonable doubt, the accused is entitled to an acquittal, irrespective of whether the defence version is accepted in its entirety.

50. It must be emphasized that contradictions and inconsistencies which go to the root of the prosecution case cannot be brushed aside as minor discrepancies, and where such infirmities are present, the benefit of doubt must necessarily accrue to the accused.

51. For the reasons stated above, particularly in light of the inconsistencies apparent in the evidence of the prosecutrix, it is unsafe to sustain the conviction of the appellant. Accordingly, the conviction and sentence dated **01.01.2021** are hereby set aside.

52. Accordingly, the appeal is allowed and the appellant is acquitted of all charges.

Judge of the Court of Appeal

P. Kumararatnam,J

I agree,

Judge of the Court of Appeal