

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

**In the matter of an Application under
Section 331 of the Code of Criminal
Procedure Act No. 15 of 1979.**

Democratic Socialist Republic of
Sri Lanka.

Complainant

Court of Appeal
CA HCC 0202/2020

Provincial High Court of Colombo
HC 7659/2014

Vs.

Sandra Marakkala Sadamali
Wickramasinghe

Accused

AND NOW BETWEEN

Sandra Marakkala Sadamali
Wickramasinghe

Accused-Appellant

Vs.

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

Respondent

Before: **B. Sasi Mahendran, J.**
 Amal Ranaraja, J.

Counsel: Lakshman Dias with Diani Gunaratna and Yashodara
Illangasinghe for the Accused-Appellant.

Suharshi Herath, D.S.G., for the Respondent.

Argued on: 03.09.2025

Decided on: 29.09.2025

JUDGMENT

AMAL RANARAJA, J.

1. The accused-appellant (hereinafter referred to as the “Appellant”) has been indicted in the High Court of Colombo in High Court case no. HC 7659/2014.

The charge in the indictment is as follows;

That on or about April 2008 in the district of *Colombo* within the jurisdiction of this Court the accused being a servant employed as a bursar, at *Alethea International School*, did commit criminal breach of trust in respect of a sum of Rs. 3,055,764.15 entrusted to her in her capacity as such servant; and thereby committed an offence punishable under Section 391 of the Penal Code.

Case of the Prosecution

2. The appellant has entered *Alethea International School* as a student. Thereafter, upon leaving school she has been employed by the school. While being employed she has functioned in different positions related to the administration of the school. As the appellant appeared to have had an inborn talent for accounting and being trustworthy, PW01 has assigned the appellant with the position of the “bursar”. The appellant has held such a position for four to five years. In April 2008, PW01 has noticed the appellant making personal investments and purchases which appeared to be beyond the appellant’s means. PW01 feeling suspicious has directed PW02, PW05 and others attached to the accounts department of the school to check the registers maintained by the appellant.
3. The investigation has divulged that the appellant had misappropriated funds of the school by not handing over the days’ collection in full on some days to PW02, to be banked.
4. When the management of the school had confronted the appellant in February 2009 with the findings of the investigation, she has undertaken to pay back the amount due in installments.
5. Thereafter, the appellant has been interdicted and PW01 has proceeded to make a complaint to the *Criminal Investigation Department*. The *Criminal Investigation Department* has subsequently investigated the first complaint and at the conclusion of the investigation forwarded the extracts to the Attorney General.

Case of the Accused

6. The appellant has maintained that she did hand over the days’ collection to PW02. Hence, she did not have any cash in hand which she could utilize for her own use. When confronted about the occasions she had not handed over

to PW02 the due amount in full, the appellant has claimed that they were either calculation errors or mistakes and that they did not make an impact as PW02 has acknowledged receipt of the days' collection handed over to her by the appellant in the income book.

7. Upon the appellant pleading not guilty to the charge, the matter has been taken up for trial and at the conclusion of the trial, the Learned High Court Judge has found the appellant guilty of the charge, convicted and sentenced her to three years' rigorous imprisonment and also imposed a fine of Rs. 100,000 with a default term of 3 months' rigorous imprisonment.
8. The appellant being aggrieved by the judgment and the sentencing order has preferred the instant appeal to this Court. The appellant has prayed that the judgment and the sentencing order dated February 27, 2020 be set aside and that the appellant be acquitted of the charge.

Grounds of Appeal

9. The appellant has urged the following grounds of appeal:
 - i. Has the Learned High Court Judge decided the case based on evidence of partial or biased witnesses?
 - ii. Has the failure of the prosecution to call the most important and independent witnesses whose evidence is vital for the case to explain the real monetary transaction has caused prejudice to the appellant?
 - iii. Has the Learned High Court Judge not considered the necessary ingredients that needs to be constituted for the proof of the offence?

iv. Is the decision of the Learned High Court Judge that the prosecution has proved its case beyond a reasonable doubt erroneous?

v. Has the Learned High Court Judge failed to analyze and assess the evidence placed before him, but solely depended on the entries of the books marked “X”, “Y” and “Z” when in fact all witnesses gave evidence with regard to the existence of parallel ledgers maintained by the accounts division?

vi. Has the appellant been denied a fair trial?

10. The appellant has maintained three cash registers when she functioned as the bursar. The registers maintained by the appellant are as follows;

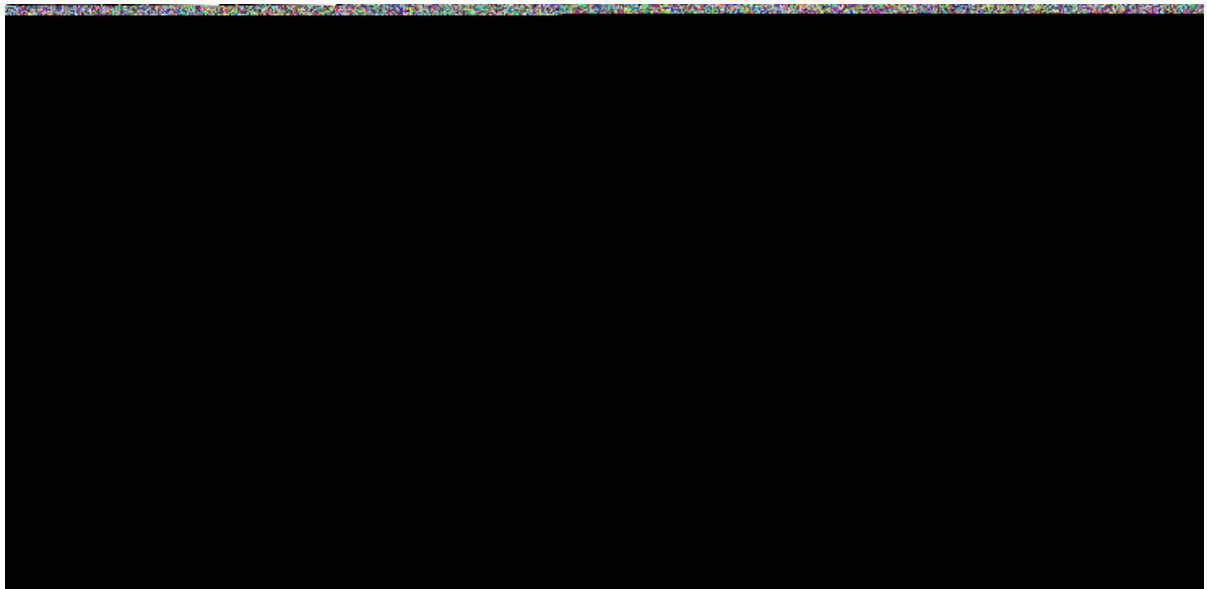
- i. The cash register for school fees of students studying for the local exams in the English medium, marked “පී-X”.
- ii. The cash register for students studying in the Sinhala medium, marked “පී-Y”.
- iii. The cash register for facility fees of all students, marked “පී-Z”.

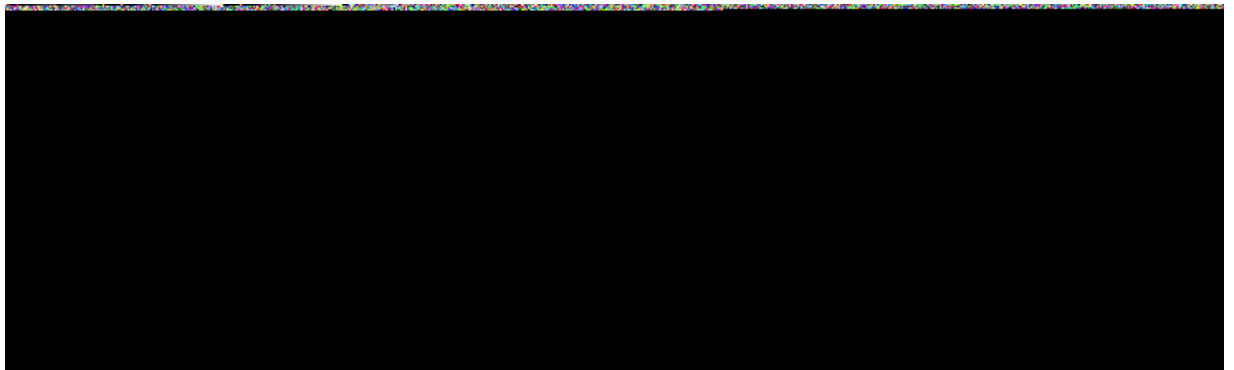
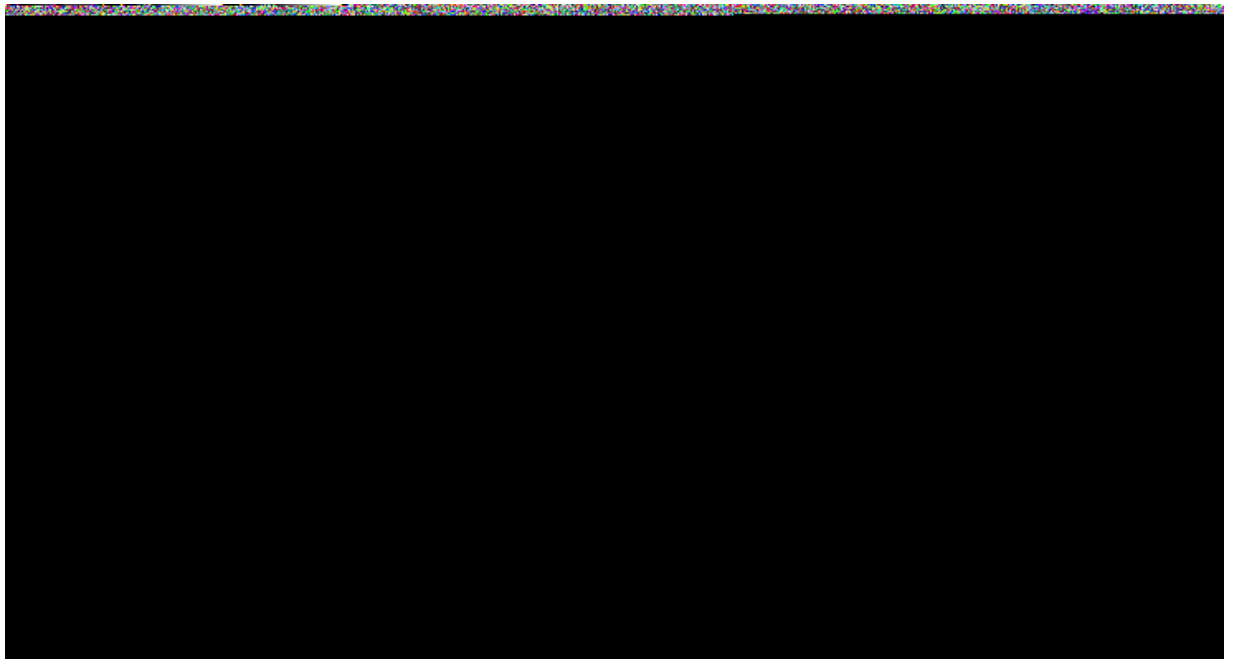
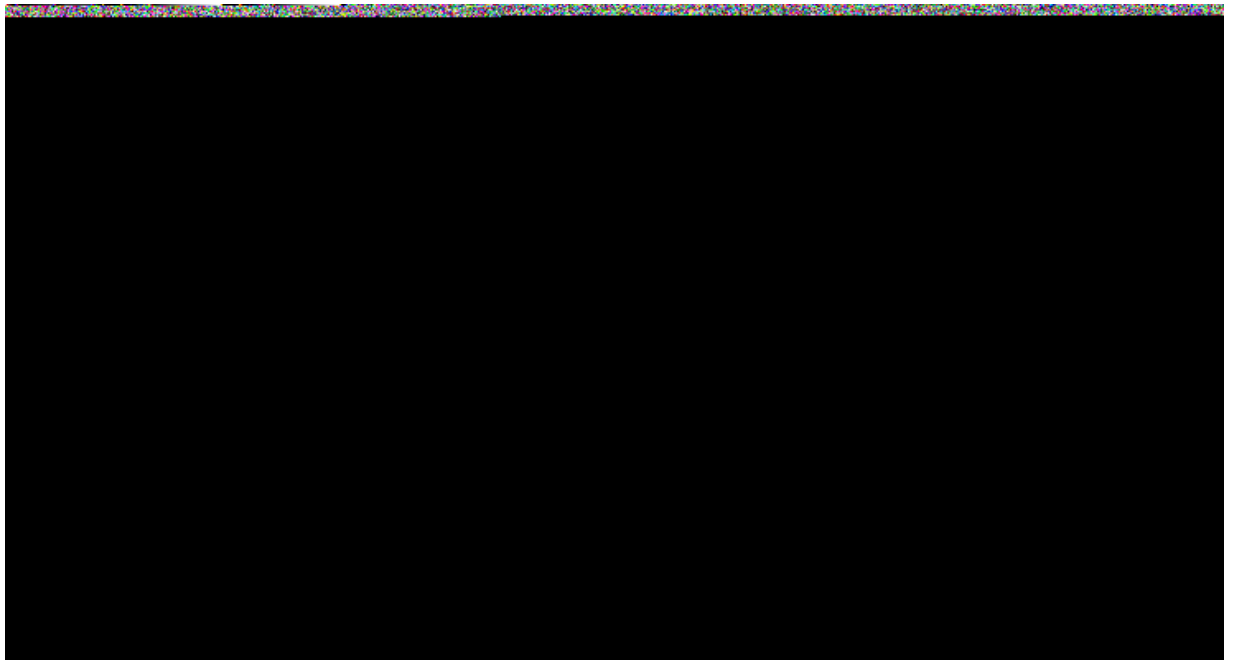
11. The appellant has been tasked with collecting fees from the parents/guardians of the students, to issue receipts and enter the particulars of payments made to her in the relevant cash register. At the end of each day the appellant has had to hand over the days’ collection in money and cheques to PW02 to be banked. When the days’ collection was handed over to PW02 she had counter-signed the relevant registers and accepted the money and cheques that have been handed over to her by the appellant. The appellant has also been tasked with the balancing of the registers maintained by her. Initially, the appellant has balanced the registers weekly, however, after some time, she has taken a longer time to do so. At the time the registers maintained by the appellant were checked, it has been revealed that the appellant has balanced those registers once a month only.

12. PW05, the internal auditor, has conducted an audit on the cash registers maintained from 2003 to 2008. He has observed inconsistencies in the entries made in the cash registers and the monies relevant to those inconsistent entries misappropriated by the appellant beginning April 2008, the period in which the appellant functioned as the bursar. PW05 has also checked the cash registers marked B_L-X, B_L-Y and B_L-Z and highlighted the inconsistencies in those registers itself. Such inconsistencies in the cash registers marked B_L-X, B_L-Y and B_L-Z have been due to the following reasons:

- i. Omitting the entry of sums received and of the receipt numbers issued in respect of such payment.
- ii. Understating the fees received and the balances
- iii. Not stating the total collection handed over to PW02 etc.

The inconsistencies and the monies relevant to those inconsistent entries misappropriated by the appellant have been highlighted in the registers marked B_L-X, B_L-Y and B_L-Z by PW05 as follows;





13. The appellant has contended that the inconsistencies highlighted in the cash registers marked B-X, B-Y and B-Z are either calculation errors or mistakes and that they did not have an impact; as the money and the cheques collected by her were handed over to PW02 and PW02 had acknowledged receipt by making a note in a register termed the “income book”. She has also contended that PW05, the internal auditor has referred to the contents of the register termed the “income book” and if such register was produced at the trial, the contents of the same would have revealed the fact that the appellant had handed over the money/cheques collected by her to PW02 at the end of each day. The appellant has also contended that monies deposited directly in the bank account of the school would have also been inserted in the register termed the “income book” hence, further revealed that the appellant had not set apart any money for her use. Therefore, the prosecution by not producing the register termed the “income book” has failed to prove its case beyond a reasonable doubt.
14. PW02 in cross-examination has confirmed that a register termed the “income book” did not exist in the accounts department of the school. PW02 has also stated that she endorsed the respective cash register maintained by the appellant when she accepted the day's collection handed over to her by the appellant.
15. PW04, the assistant accountant has corroborated the same and stated that there was no register termed the “income book”. PW11, the officer who investigated the first complaint of PW01 has also stated that the investigations conducted by the criminal investigation department did not reveal the existence of a register termed the “income book” and the registers marked B-X, B-Y and B-Z were the only cash registers revealed at the investigation. PW05, the internal auditor of the school being a foremost witness of the prosecution has not been questioned about the existence of a register termed the “income book” in cross examination.

In *Sarwasingh vs. State of Punjab (2002) AIR Supreme Court 3652 at 3655* the Indian Supreme Court has held;

“It is a rule of essential justice whenever the opponent has declined to avail himself of the opportunity to put his case in cross examination it must follow that the evidence tendered on that issue ought to be accepted”.

In *State of Himachal Pradesh vs. Thakur Dass (1983) 2 Criminal Law Journal 1694 at 1701*, V. D. Misra, C.J. (as he was then) held,

“Whenever a statement of fact made by a witness is not challenged in cross examination it must be concluded that the fact in question is not disputed”.

16. Due to the aforesaid reasons, it is my view that the Learned High Court Judge has not misdirected himself when he concluded that a register termed the “income book” did not exist in the accounts department of the relevant school.

17. PW01, the managing director of the school, PW02 the accountant, PW04 the assistant accountant, PW05 the internal auditor and PW11, W.I.P of the criminal investigation department have testified on behalf of the prosecution; PW11 is an external and independent witness. PW05 an auditor with many years of experience. In fact, PW05 has been auditing the accounts of the school since 2003. In those circumstances, it is apparent that PW05 had no reason to be biased against the appellant. The evidence of PW01, PW02 and PW04 is corroborated by the evidence of PW05 and PW11. The credibility and the consistency of the prosecution witnesses’ have not been disputed. The appellant being assigned to a position though she did not have the necessary qualifications, depicts the fact that the entire accounts department of the

school has functioned as a family and that PW02 has placed trust on the appellant to a point that the management nor the accounts department of the school had a reason to wrongly implicate the appellant. In those circumstances, the evidence of the prosecution witnesses are reliable and creditworthy.

18. The appellant has also contended that the prosecution should have necessarily called the external auditor and the parents of the students named at the back of the indictment to establish the case of the prosecution beyond a reasonable doubt.
19. PW02 and PW04 being attached to the accounts department of the school have testified regarding the functions of the accounts department and the procedure followed when engaging in the day to day affairs of the department. They have also testified with regard to the responsibility of each individual associated with the accounts department, including those of the appellant. The appellant has had an opportunity to cross examine PW02 and PW04, **but has** failed to mark a contradiction or draw the attention of Court to an omission in their evidence. PW05, the internal auditor also testified with regard to the inconsistencies in the registers maintained by the appellant. As such the prosecution has established through cogent evidence that the appellant has upon making inconsistent entries misappropriated the monies relevant to those fraudulent/omitted entries which is a sum of money equivalent to the sum stated in the charge in the indictment.

In *Walimunige John vs. State* 76 NLR 488, G.P.A. de Silva, S.P.J has stated,

“...no particular number of witnesses shall be required for the proof of any fact. The adequacy of one witness to prove a fact in terms of the section 134 of the Evidence Ordinance will hold good in a case where only one witness is available to the party desiring to establish a fact, and where only one witness is called even though others are also available.”

20. The prosecution has called its foremost witnesses whose testimony was vital and sufficient to manifest its case beyond a reasonable doubt.

21. The Learned Counsel for the respondent has also contended that the ingredients necessary to prove criminal breach of trust have not been substantiated by the prosecution at the trial.

The ingredients necessary to be established by evidence to prove criminal breach of trust is as follows:

- (a) Entrustment with property or dominion over property, and either*
- (b) i). dishonest misappropriation or conversion to his own use, or*
 - ii). dishonest use or disposal, or*
 - iii). wilfully suffering any other to do b (i) or b (ii).*

22. Those being the ingredients necessary to prove the offence of criminal breach of trust, the entrustment of property is undisputed as the prosecution witnesses as well as the appellant herself has admitted that she was entrusted with the task of collecting the fees of the students. The monies so collected had been vested in the appellant until or unless the appellant handed over the same to PW2. The prosecution has also established by evidence that the appellant has misappropriated part of the money entrusted to her by placing 16 different inconsistent entries in the cash registers marked B_L-X, B_L-Y and B_L-Z maintained by her. The appellant making purchases and investments beyond her means, sending her siblings overseas for studies, matters which she has not disputed, manifest the fact that the money misappropriated by the appellant have been converted to her own use with the intention of causing wrongful loss to the school.

23. Further, when I peruse the disputed judgment I am convinced that the Learned High Court Judge has analyzed/assessed the evidence placed before him properly and proceeded to convict the appellant.
24. Further, the learned High Court Judge has diligently ensured that the appellant's right to retain and communicate effectively with her counsel has not been impeded. Throughout the proceedings, the learned High Court Judge has conducted the hearings in a manner that is both accessible and understandable for the appellant, demonstrating a commitment to transparency and fairness in the judicial process. The learned High Court Judge has also made an effort to expedite the proceedings, thereby minimizing unnecessary delays.
25. Careful review of the Court proceedings reveals that the appellant's Counsel has not at any point raised any objections regarding a lack of time for preparation. This silence on the part of the Counsel suggests the level of satisfaction with the resources provided and the time allocated for proper preparation. It also implies that both the Counsel and the appellant have been granted an opportunity to present their case effectively.
26. In *The Attorney General vs. Segulebbe Latheef and Another*, 2008 (1) S.L.R. 225, J. A. N. De Silva, J, as he was then, discussing the concept of the right of an accused to a fair trial has stated as follows;

“ The right of an accused person to a fair trial is recognized in all the criminal justice systems in the civilized world. Its denial is generally proof enough that justice is denied.”

(2) Like the concept of fairness, a fair trial is also not capable of a clear definition.

The right to a fair trial amongst other things includes the following:-

- 1. The equality of all persons before the court.*
- 2. A fair and public hearing by a competent independent and impartial court/tribunal established by law.*
- 3. Presumption of innocence until guilt is proven according to law.*
- 4. The right of an accused person to be informed or promptly and in detail in a language he understands of the nature and cause of the charge against him.*
- 5. The right of an accused to have time and facilities for preparation for the trial.*
- 6. The right to have a counsel and to communicate with him.*
- 7. The right of an accused to be tried without much delay.*
- 8. The right of an accused to be tried in his presence and to defend himself or through counsel.*
- 9. The accused has a right to be informed of his rights.*
- 10. If the accused is in indigent circumstances to provide legal assistance without any charge from the accused.*
- 11. The right of an accused to examine or have examined the witnesses against him and to obtain the evidence and examination of witnesses on his behalf under the same conditions as witnesses against him.*

12. *If the accused cannot understand or speak the language in which proceedings are conducted to have the assistance of an interpreter.*

13. *The right of an accused not to be compelled to testify against himself or to confess guilty.”*

27. Due to the reasons stated above, I am not inclined to interfere with the disputed judgment together with the sentencing order and proceed to dismiss the appeal.

Appeal dismissed.

28. The Registrar of this Court is directed to send this judgment to the *High Court of Colombo* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree.

Judge of the Court of Appeal