

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

**In the matter of an Appeal in terms
of Section 331 (1) of the Criminal
Procedure Act No. 15 of 1979 Read
with Article 138 (1) of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.**

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

CA HCC 123-124/2019

High Court of Colombo
Case No. HC6116/2012

Vs.

Complainant

1. Wanniarachchi Kankanamlage
Susantha Kumara alias
Sudumahaththaya
2. Paravigoda Arunadeepa Prasanna
3. Paravigodage Sudeeshwera Wishwajith
Amarasingha

Accused

AND NOW BETWEEN

1. Wanniarachchi Kankanamlage
Susantha Kumara alias
Sudumahaththaya
2. Paravigoda Arunadeepa Prasanna

Accused-Appellants

Vs,

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

Complainant-Respondent

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

Counsel: Savindra Fernando, P.C., with Rishnie Fernandopulle for the
1st Accused-Appellant

Anuja Premaratna, P.C., with Ishan Gampolage, Avishka
Jayawardane and Emal Gunasekara for the 2nd Accused-
Appellant

Azard Navavi, A.S.G. for the State

Argued on: 28.01.2026

Judgment on: 24.02.2026

Judgment

Amal Ranaraja. J,

1. The Accused-Appellants (hereinafter referred to as ‘the first appellant, second appellant, or appellants) have been indicted in High Court of Colombo in High Court Case No. HC 6116/12.

The charge in the indictment is as follows;

01. On or around the 24th of June, 2006, within the jurisdiction of this court, in *Pethiyagoda*, you along with, now deceased, *Paravigoda Wishwajith*, caused the death of *Dehiwatte Aarachchilage Ranjith Suranga*, thereby committing an offence of murder, punishable under Section 296 of the Penal Code read with Section 32 of the Penal Code.

2. When the matter was taken up for trial, the learned High Court Judge has been informed that the third accused named in the indictment had passed away. Accordingly, steps have been taken to verify the same prior to the commencement of the trial. Subsequently, the trial has proceeded against the appellants and the learned High Court Judge has proceeded to convict the appellants of the charge. Upon being convicted the appellants have been sentenced to death.
3. The appellants being aggrieved by the conviction, disputed judgement together with the sentencing order have preferred the instant appeal to this Court.

Case of the Prosecution

4. On that particular day at about 18.30 hours, as darkness was setting in, the deceased, PW01 and two others have been on a bunt. The first appellant armed with a manna and the third accused, named in the indictment and who has passed away subsequently, armed with a knife have come to the location PW01, together with the others were at and grabbed the deceased by his arms. The third accused has then proceeded to stab the deceased at the instigation of the first appellant.
5. Upon being stabbed, the deceased has made efforts to break free from the control of the first appellant and the third accused. In the ensuing struggle he has fallen to the ground. Simultaneously, the second appellant also has arrived at the scene and attacked the deceased's head with a manna. At that moment, the deceased has slid a short distance down the bunt. The first appellant has then proceeded to where the deceased lay injured and attacked his neck with a manna also. The deceased has succumbed to the injuries.

6. The post-mortem examination has been conducted by PW07 *Dr. K.M.T.B Gunathilake, Assistant Judicial Medical Officer Colombo*. The subsequently prepared post-mortem report has been submitted as evidence and marked *පැ 01*. Dr Gunathilake has opined that the death of the deceased has occurred due to haemorrhage and shock resulting from multiple cut and stab injuries.

Case of the Appellants

7. The appellants have maintained that they did not participate in the assault of the deceased.
8. When the matter was taken up for argument, the learned President's Counsel appearing on behalf of the appellants urged the following grounds of appeal;
 - i. Was PW01 a credible witness?
 - ii. The learned trial Judge has dangerously relied on the evidence of a single eyewitness.
 - iii. The learned trial Judge has also in evaluating the evidence, considered portions of the police statement made by PW01 as well as his evidence at the magisterial inquiry.
 - iv. Did the learned trial Judge err in considering the police statements and the evidence given outside the trial court?
 - v. In all the above circumstances, did the appellants receive a fair trial as guaranteed under the constitution?

9. According to PW01's testimony, the first appellant and the third accused, both named in the indictment have restrained the deceased by his arms. The third accuse has then proceeded to stab the deceased with a knife. In the ensuing struggle, the deceased has fallen to the ground. Immediately thereafter, the second appellant has arrived at the scene and struck the deceased on the head with a manna. As the deceased slid a short distance down the bunt, the first appellant has also approached the former and inflicted an injury to his neck.
10. The post-mortem report has subsequently revealed that the deceased sustained multiple stab injuries and a cut injury to the back of his head. Furthermore, PW05 the investigating officer has testified to inspecting the scene of the incident. During this inspection PW05 has observed a lamp similar to a streetlamp positioned close to the scene. The light emanating from this lamp has sufficiently illuminated the area.
11. These collective observations provide significant corroboration for PW01's narrative specifically, the post-mortem report's documentation of stab injuries aligns precisely with PW01's claim that the third accused stabbed the deceased. Moreover, the report's finding of a cut injury to the head, directly supports PW01's account of the second appellant striking the deceased in that area with a manna

The injuries to the neck align with the claim that the first appellant struck the neck of the deceased with a sharp-edged weapon. PW05's observation of bloodstains at the scene is entirely consistent with a violent altercation as described. Crucially, the presence of an illuminating lamp as noted by PW05, establishes that the scene was adequately lit lending credibility to PW01's ability to clearly observe and accurately recall the sequences of events.

12. Bearing in mind the matters discussed above I shall now consider the contentions of the appellants' counsel presented in argument.
13. The appellants posit, that the first appellant and the third accused had warned the deceased, PW01, and his companions of grave danger as they passed their gathering spot. They further contend that the deceased's subsequent decision to remain at the location despite such a warning is improbable.
14. However, this assertion directly conflicts with the prosecution's narrative. According to the prosecution's narrative no threat whatsoever was communicated to the deceased prior to the assault. Therefore, the premise that the deceased acted improbably by staying put, a premise based on a pre-existing threat, is undermined by the prosecution's narrative. If no threat was made there was no reason for the deceased to perceive a need to vacate the location before the attack.

ප්‍ර : එතකොට උපුල් ඔබ කීවා එහෙම ඉන්නකොට ඉස්සෙල්ලාම බඩා නොහොත් අමරසිංහයි ආයේ කවුද ?

උ : සුදු මහත්තයා.

ප්‍ර : කැළණිය දිහාවට ගියයි කියලා ? කොයි පැත්තේ ඉඳලද ගියේ ?

උ : පැලියගොඩ පොලිසිය පැත්තේ ඉඳලා කැළණිය පැත්තට ගියේ.

ප්‍ර : බන්ට් එක උඩ ඇවිද ගෙන ගියා ?

උ : ඔව්.

ප්‍ර : ඒ යනකොට ආයුධ එහෙම තියෙනවා දැක්කද ?

උ : මාව පාස් කරගෙන යන වෙලාවේ ආයුධ තිබුණේ නැහැ.

ප්‍ර : ඊට පස්සේ ඔබ කිවවා නැවත ආවයි කියලා අමරසිංහයි, සුදු මහත්තයයි, නැවත ආවේ කවුද ?

උ : ඒ දෙන්නම තමයි.

ප්‍ර : කොච්චර වෙලාවකට පස්සෙද ?

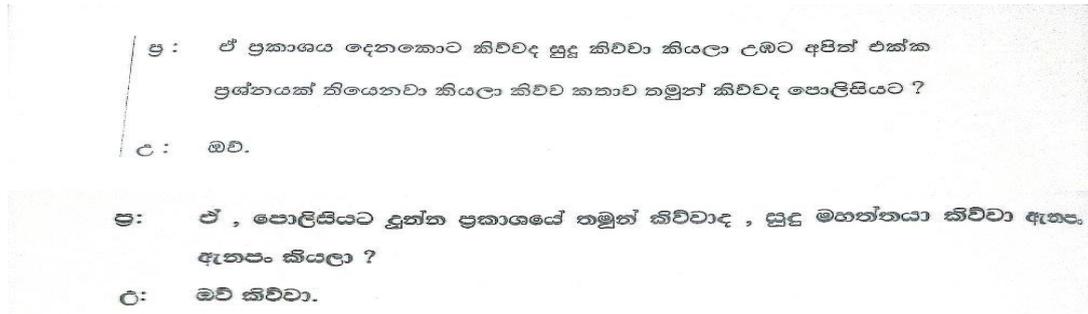
උ : තත්පර ගාණක්වත් ගියේ නැහැ.

ප්‍ර : ඒ කොහොටද ගියේ කියලා දැක්කද ?

උ : මාව පාස් කරගෙන ගියා. මමයි, රංජිත් පියල්නුයි අපි කතාකරමින් හිටියේ. අපේ මාතෘකාවට වෙන භාහිර පුද්ගලයෝ අදාළ වුනේ නැහැ අපිට. මොකද මම අවවාදයක් දුන්නේ රංජිත්ට.

15. The appellants have also contended that PW01 was a physically challenged individual who relied on a wheelchair for mobility. Crucially, PW01's residence was situated midway down the bunt and could only be approached by climbing a flight of stairs. That given these circumstances it was highly improbable that PW01 could have reached the top of the bunt while using his wheelchair. However, the appellants have not deemed it necessary to clarify this material fact during the cross examination of PW01 or the investigating officer for the prosecution. Consequently, the appellants are now barred from introducing this fact to undermine PW01's credibility.

16. The appellants have also drawn the court's attention to inconsistencies in PW01'S testimony. Specifically, PW01's narrative at the trial referred to two purported dialogues. One between the first appellant and the deceased just prior to the attack and another between the first appellant and the third accused.



17. The appellants have contended that these details were absent from PW01's statement to the police. That these omissions having been brought to trial court's attention and recorded, render PW01's evidence inconsistent.

18. Human memory is not a static recording, but a dynamic reconstructive process that gradually loses detail. It becomes vulnerable to suggestion and is reshaped each time the event is recalled. In PW01's case, the eight-year delay would have allowed natural forgetting to erase peripheral details. While conversations with family, exposure to media coverage or the simple retelling of the story, might have also introduced new unintended distortions. Emotional factors such as trauma fear of the courtroom, or the stress of cross examination can further fragment recall causing the witness to mix together separate moments or misremember their sequence.

19. Consequently, apparent inconsistencies should be weighed against this fragility of memory rather than viewed as per se evidence of fabrication.

20. The purported discrepancy concerning the hand with which the third accused held the knife when attacking the deceased has been resolved by the particular witness's explanation. The learned High Court Judge

has deemed such explanation cogent, and the matter has been addressed accordingly in the judgement

14.0 අමරසිංහ නැමති 3 වන විත්තිකරු මරණකරුගේ කොයි අතින් අල්ලාගෙන සිටියේ දැයි යන්න පිළිබඳව හරස් ප්‍රශ්න ඇසීමේදී ප්‍රශ්න කර තිබේ. මදක් පටලවීම නිසා කොයි අතින් අල්ලාගෙන සිටියේද යන්න වරෙක වැරදියට ප්‍රකාශ කළ බවට කියා ඇති පැ.සා.1, අමරසිංහගේ වම් අතින් රංජිත්ගේ වම් අත අල්ලාගෙන සිටි බවටත් අමරසිංහගේ දකුණු අතින් රංජිත්ට ඇත්ත බවටත් ඔහු පසුව පැහැදිලි කර ඇත. දීර්ඝ වශයෙන් විත්තිය වෙනුවෙන් හරස් ප්‍රශ්න ඇසීමේදී එක් වරෙක මෙසේ ප්‍රශ්න කර ඇත. “අමරසිංහ කියන නැනැත්තා ඔහුගේ වම් අතින් තමයි විත්තිකරුගේ බඩව ඇත්තේ” පැ.සා.1 ඊට පිළිතුරු දෙන්නේ, “නැහැ නැහැ විත්තිකරුගේ නෙමේ, මරණකරුගේ බඩව ඇත්තේ. ගරු ස්වාමීනි මටත් ඒ වගේ තමයි වැරදුනේ. ඔය සර්ට වැරදුනා වගේම මටත් වැරදුනා. අමරසිංහගේ දකුණු අතින් තමයි ඇත්තේ. මටත් ඒ දකුණු අතයි වම් අතයි වැරදුනා” යනුවෙනි. මේ අනුව අමරසිංහ නැමති 3 වන විත්තිකරු මරණකරුගේ කුමන අතින් අල්ලාගෙන සිටියේද යන්න වැරදීමකින් වෙනස් ආකාරයට පැ.සා.1 ප්‍රකාශ කර ඇති බව පෙනී යන අතර ඔහු පසුව නිවැරදිව සහ පැහැදිලිව ඒ පිළිබඳව ප්‍රකාශ කර තිබේ. ඒ නිසා දීර්ඝ වශයෙන් එම කරුණ පිළිබඳව හරස් ප්‍රශ්න ඇසුවත් එම සුළු වැරදීම අමතකවීමකින් වූ වරදක් බව පෙනී යන අතර එමගින් පැ.සා.1 ගේ සාක්ෂියේ විශ්වාසනීයත්වයට කිසිඳු බලපෑමක් සිදුවී නැත.

21. Section 134 of the Evidence Ordinance of Sri Lanka established that no particular number of witnesses are required for the proof of any fact, emphasising that evidence must be weighed rather than merely counted. The provision ensures that the strength of evidence lies in its reliability not the quantity of witnesses. The testimony of a single witness can be acted upon by a Court of law is it is cogent and impressive. While not strictly required by law, in circumstances where the witness’s testimony is suspicious or challenged, Courts often look for corroboration.

In the decided case of ***Sumanasena vs Attorney General 1999 3 SLR 137***, Jayasuriya J, has stated

“Evidence must not be counted but weighed and the evidence of a single solitary witness if cogent and impressive could be acted upon by a Court of law.”

In these circumstances, the prosecution has fulfilled its responsibilities, demonstrating a commitment to upholding justice and ensuring a fair trial.

22. In the disputed judgement, the learned High Court Judge has clarified his reasons for reviewing the information book and the non-summary proceedings pertaining to the High Court matter. He has explained that his objective was to independently verify the existence of contradictions noted during the prosecution witness’s testimony and to identify any omissions.

18.0 කෙසේ වුවද සනාථ නොකළත් එම ඌණතා සහ පරස්පරතා එක හෙළාම නොසලකා නොහැරීමට අධිකරණය විසින් තීරණය කරන ලදී. නමුත් ඌණතා සහ පරස්පරතාවයන් ලකුණු කළ පමණින් ඒවා පිළිගත නොහැකි අතර ඇත්ත වශයෙන්ම එවැනි ඌණතා සහ පරස්පරතා පවතීද යන්න අධිකරණය විසින් සලකා බැලිය යුතුය. එම කාර්ය සඳහා පැ.සා.1 ගේ පොලිසියට දුන් කටඋත්තරය සහ මරණ පරීක්ෂණයේ දුන් සාක්ෂිය පරීක්ෂා කිරීමට අධිකරණයට බලය තිබේ. එබැවින් දෙපාර්ශවයටම අගතියක් නොවීම පිණිස සහ සාධාරණ තීන්දුවකට එළැඹීම සඳහා විත්තිය විසින් අවධානයට යොමු කර ඇති ඌණතා සහ ලකුණු කර ඇති පරස්පරතා සලකා බැලීමට තීරණය කරන අතර එසේ සලකා බැලීමේදී එම ඌණතාවයන් සහ පරස්පරතාවයන් ඇත්තවශයෙන්ම පවතීද යන්න පිළිබඳවද සලකා බැලීමට අධිකරණය තීරණය කරන ලදී.

Such practice is legally permissible.

23. In the case of **King v Cooray 28 NLR 74**, where Garvin J held that “A Court is entitled to use the information book to assist it in elucidating points which appear to require clearing up find are material for the purpose of doing justice”.

24. In Sri Lanka, common intention (Section 32 of the Penal Code of Sri Lanka) imposes joint liability on individuals for a criminal act done in furtherance of a shared, pre-arranged or instantly formed intent. It requires active participation or a “criminal act” supporting the main offence, not just presence. When a criminal act is done by several persons in furtherance of the common intention of all, each is liable for the entire act as if it were done by them alone. There must be a common intent, but it can be formed instantly, rather than just long-term premeditation. Standing by is insufficient, the accused must participate, even if that participation is small.

25. Common intention is established by proving a meeting of minds or a shared, pre-arrangement or an on-the-spot plan among two or more persons to commit a criminal act in furtherance of a common purpose. It requires both a mental element (sharing the intention) and a physical element (participation in the act).

This is provided for in Section 32 of the Penal Code of Sri Lanka as follows,

“32. When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

26. Since direct evidence of intent is rare, courts infer it from the conduct of the accused before, during and after the offence as well as nature of the weapons used.

27. The learned High Court Judge has referred the intent of the appellants together with the third accused named in the indictment from their conduct during the offence.

51.0 මෙම අපරාධය සිදුවූ ස්වභාවය සලකා බැලීමේදී 1 සහ 3 විත්තිකරුවන් විසින් මරණකරුව අල්ලා ගත් විට 1 වන විත්තිකරු “ඇනපන් ඇනපන්” කියා පවසා තිබේ. ඒ අවස්ථාවේදී 3 වන විත්තිකරු පිහි පාරවල් දෙක තුනක් ඇත්ත බව කියයි. එසේ පිහියෙන් අනිත විට 1 සහ 3 විත්තිකරුවන් මරණකරුගේ අත් දෙකෙන් අල්ලාගෙන සිට ඇත. එසේ පිහියෙන් ඇත මරණකරු වැටුන විට 2 වන විත්තිකරු දුවගෙන පැමිණ ඔළුවට මන්තයකින් පහරදී තිබේ. මරණකරු බන්ට එක දිගේ ලිස්සාගෙන පහළට යන විට 3 වන විත්තිකරු විසින් නැවතත් මරණකරුට පිහියෙන් ඇත තිබේ. බන්ට එක මැද්දේදී 1 වන විත්තිකරු මරණකරුගේ අතට මන්තා පිහියෙන් පහර දී ඇත. විත්තිකරුවන් විසින් මෙම ක්‍රියාවන් කරන විට 2 වන විත්තිකරු එතන සිටි පැ.සා.1 ගේ රෝද පුටුවට කකුල කියා තල්ලු කර “උඹන් අනිත් එකා” කියා තර්ජනය කර තිබේ. මෙම ක්‍රියාවන් සියල්ල සලකා බලනවිට මරණකරුගේ මරණය සිදු කිරීම සඳහා 1, 2 සහ 3 විත්තිකරුවන් කිදෙනා පොදු වෙතනාවෙන් යුතුව ක්‍රියා කර ඇති බව ඉතා පැහැදිලිව සනාථ වේ.

52.0 එසේම 1 සහ 3 විත්තිකරුවන් එක්ව 3 වන විත්තිකරු විසින් මරණකරුට පිහි පාරවල් දෙක තුනක් ඇතීමෙන් පසුව 2 වන විත්තිකරු ඔළුවට මන්තයකින් පහරදීම අනුවද ඉන්පසුව මරණකරු බන්ට එක දිගේ ලිස්සාගෙන යන විට 3 වන විත්තිකරු නැවතත් පිහියෙන් ඇතීමද 1 වන විත්තිකරු මන්තයෙන් මරණකරුට පහරදීමද යන ක්‍රියාවන් සලකා බලනවිට විත්තිකරුවන් පොදු වෙතනාවෙන් ක්‍රියා කර ඇත්තේ, මරණකරුගේ මරණය සිදු කිරීම සඳහාම බව පැහැදිලිව පෙනී යයි. එනම් විත්තිකරුවන් එක්ව සිදු කළ මෙම ක්‍රියාව ස්වභාවික ක්‍රියාවක් නොව, සාහසික ක්‍රියාවක් බවටත් මරණකරුගේ මරණය සිදු කිරීම මිස වෙනත් කිසිම කාර්යක් සඳහා නොවන බවටත් යන අනුමිතියට එළැඹිය හැකිය.

28. The learned High Court Judge has also examined the case in a holistic manner, rather than analysing the prosecution’s version and the appellant’s version in a watertight compartment. The learned High Court Judge has considered both narratives side by side, testing each item of evidence against the overall factual matrix. This integrated appraisal has avoided the danger of lifting isolated passages out of context and in turn enabled the court to evaluate material inconsistencies, discrepancies and corroborative links across the entire record. Such approach accords with settled judicial principles.

29. In the case of **James Silva Vs. The Republic of Sri Lanka (1980) 2**

SLR 167, Rodrigo J, has stated,

“A satisfactory way to arrive at a verdict of guilt or innocence is to consider all the matters before the Court adduced whether by the prosecution or by the defence in its totality without compartmentalising and, ask himself whether as a prudent man, in the circumstances of the particular case, he believes the accused guilty of the charge or not guilty.”

30. By refusing to compartmentalize the evidence and instead adopting a holistic approach, the High Court has applied the correct methodology and arrived at findings that are both cogent and sustainable.

31. In those circumstances, I am not inclined to interfere with the conviction, disputed judgement and delivered sentencing order and proceed to affirm the same.

32. I dismiss the appeal and make no order regarding costs

Appeal dismissed.

33. The registrar of this court is directed to send a copy of this judgement to the High Court in Colombo for compliance.

Judge of the Court of Appeal

B. Sasi Mahendran, J.

Judge of the Court of Appeal