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

In the matter of an application for Appeal under and in terms of Section 331 of the Criminal Procedure ACT No. 15 of 1979.

CA/HCC/272/2023

HC/ Vavuniya: 2793/2018

Singaru Sathyaseelan

Accused - Appellant

Hon. Attorney General

Attorney General's Department

Colombo 12.

Respondent

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

Counsel: K. Kugaraja for the Accused-Appellant
Malik Azeez, SC for the Respondent

Written Submission: 07.10.2024 (by the Accused Appellant)
03.09.2025 (by the Respondent)

On

Argued On: 08.09.2025

Judgment On: 16.10.2025

JUDGEMENT

B. Sasi Mahendran, J.

The Accused- Appellant (hereinafter referred to as the Accused), along with another, was indicted before the High Court of Vavuniya on the following counts,

> 1. On or about 2012.01.19, within the jurisdiction of the Court, the Accused, using a deadly weapon and committed the offence of Robbery in respect of gold jewellery in the possession of Kanthiah Muttiah, punishable under Section 383 of the Penal Code, read with Section 32.
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> 2. In the course of the same transaction, on the same date and place, the Accused, using a deadly weapon and committed the offence of Robbery in respect of gold jewellery in the possession of Muttiah Parameshwari, punishable under Section 383 of the Penal Code, read with Section 32.
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> 3. In the course of the same transaction, on the same date and place, the Accused caused the death of Kanthiah Muttiah and thereby committed the offence of Murder punishable under Section 296 of the Penal Code, read with Section 32.

4. In the course of the same transaction, on the same date and place, the Accused caused the death of Muttiah Parameshwari and thereby committed the offence of Murder punishable under Section 296 of the Penal Code, read with Section 32.

The Prosecution led the evidence through eleven witnesses and marking productions from P1 to P19, and thereafter closed its case. The Accused, in their defence, made a dock statement.

Upon conclusion of the trial, the Learned High Court Judge, by judgment dated 01.12.2022, found the 1st Accused guilty on all counts. Accordingly, the Court imposed a sentence of ten years of rigorous imprisonment for each of the 1st and 2nd counts, and the death penalty for each of the 3rd and 4th counts. The 2nd Accused was acquitted of all charges.

Being aggrieved by the afore-mentioned conviction and the sentence, the 1st Accused has preferred this appeal to this Court. The following are the grounds of appeal as pleaded by the Accused;

1. Learned trial judge has seriously flawed with regard to the principles governing Sec. 27 recoveries;

2. Learned trial judge has erred in law by shifting the burden of proof to the Appellant;

3. Items of circumstantial evidence are wholly inadequate to support the conviction;

4. Learned trial judge failed to apply the principles governing the evaluation of circumstantial evidence cases.

The facts and circumstances of the case are as follows,

According to PW 01, Pooranalingam Chandrakala, the daughter of both deceased persons, they owned and cultivated an agricultural land in Pandari Kulam, where they also resided. The witness testified that she has two elder brothers and a younger sister, all of whom are living abroad, while she resides separately with her husband. It was her evidence that her father, deceased, used a mobile phone registered in the name of her younger sister, Sasikala.

According to the witness, approximately one month prior to the incident, the 1st and 2nd Accused had been working on the land belonging to the deceased. She further testified that on the morning of 20.01.2019, a relative informed her that her mother had been murdered and her father was missing. Upon rushing to her parents' residence, she found her mother lying on the floor, deceased. Her father's body was subsequently discovered on her uncle's land.

The witness further stated that her father had been wearing three rings, while her mother possessed four rings, a pair of earrings, a pair of bangles, and a necklace. She testified that she identified all the aforementioned jewellery at the police station.

During the testimony, PW 14, Nagarasa Chandradevi, the sister-in-law of the deceased Muttiah Parameshwari, stated that she visited the deceased's residence daily. She and the deceased would regularly go to a nearby kovil to light a lamp. On 20.01.2019, when the deceased failed to appear at the kovil as usual, the witness proceeded to her residence. There, she found the deceased lying on the floor, already dead, with visible injuries on her body and her jewellery removed by cutting the middle finger.

According to the witness, the deceased Kandiah Muthaiah was not present at the scene, and his body was later discovered on a neighbouring property. The Accused was identified as the individual who had been working at the residence of the deceased.

PW 06, Buddika Dayal, who served as the Officer-in-Charge of the Omanthai Police Station at the time of the incident, was the chief investigating officer in this case. He testified that he received the initial information on 20.01.2019 and proceeded to the scene, which was the residence of the deceased. Upon arrival, he observed the female deceased lying on the floor near the kitchen, already deceased. The body of Kandiah Muthaiah was subsequently recovered from a neighbouring property. He further noted that the ring fingers of both hands had been severed, and the detached fingers were found near the body.

He further testified that one Sellaiah Markandu, the father of the deceased woman, informed him about the two Accused. According to the information provided, on the day of the incident, the deceased Kandiah Muthaiah had received a phone call from a Accused and left the house, stating that he was going pig hunting. As both Accused had previously worked with the deceased, they were arrested on suspicion.an

According to the witness, the call history of the Accused's mobile phone was examined through the relevant service provider, and it was revealed that on the day of the incident, at 5:51 p.m., an outgoing call had been made from the Accused's mobile to the phone of the deceased, Kandiah Muthaiah. The witness testified that, pursuant to the statement made by the Accused, the following items were recovered: three gents' rings, four ladies' rings, two bangles, one necklace, a pair of earrings, two mobile phones, and an axe.

PW 13, Jeevana Sampath Wijerathna, an officer representing the mobile service provider, testified that on the day of the incident, at 7:11 p.m., the deceased received an incoming call from a different mobile number, with a duration of 485 seconds. He further stated that this call occurred approximately one hour and twenty minutes after the call allegedly made from the mobile number attributed to the Accused.

According to the Accused, the police initially searched for him at his residence and found him near a tank while fishing. During the interrogation, he was asked whether he had committed a murder and was subjected to physical assault, which he denied.

He stated that the police did not take him to any location thereafter and further claimed that no formal statements were recorded from him, although his signature was obtained. The Accused asserted that the police did not take him or the others to recover any productions, nor did they handle or possess any such items themselves. Further, the Accused denied any involvement in the alleged murder.

In this case, there is no direct evidence against the Accused. This case is solely based on circumstantial evidence.

Thus, it is pertinent to consider the rules governing the cases of circumstantial evidence.

E.R.S.R. Coomaraswamy, ***The Law of Evidence***, Page 25:

> *"In Sri Lanka, the rule that in order to justify the inference of guilt from purely circumstantial evidence, the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation on any other reasonable hypothesis than that of his guilt, has been repeatedly emphasized and applied by our courts. Thus, in a case based entirely on circumstantial evidence, the fact that the deceased was last seen alive in the company of the deceased would not of itself justify a conviction, where the exact time of death is not established, nor would the fact that the accused subsequently attempted to dispose of a weapon which might have caused the injuries on the deceased. Again, where the only evidence against two accused, indicted for murder, was that they had the opportunity of committing the offence either jointly or individually and that after the discovery of the body, they absconded and were not apprehended for three years, the verdict of guilty was held to be unreasonable."*

In *B.R.R.A. Jagath Pramawansha v. The Attorney Genera*l, CA Appeal No. 173/2005, decided on 19.03.2009, His Lordship Justice Sisira de Abrew held that;

> *"The case for the prosecution depended on circumstantial evidence. Therefore it is necessary to consider the principles governing cases of circumstantial*

evidence. In King v. Abeywicrama, 44 NLR 254, Soertsz J remarked thus: "In order to base a conviction on circumstantial evidence the Jury must be satisfied that the evidence was consistent with the guilt of the accused and inconsistent with any reasonable hypothesis of this innocence."

In King v. Appuhamy 46 NLR 128 Kueneman J held thus: "'in order to justify the inference of guilt from purely circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable-hypothesis the that of his guilt."

In Podisingho v. King 53 NLR 49 Dias J remarked thus: "That in a case of circumstantial evidence it is the duty of the trial Judge to tell the Jury that such evidence must be totally inconsistent with the innocence of the accused and must only be consistent with his guilt."

Having regard to the principles laid down in the above judicial decisions, I hold that in a case of circumstantial evidence, if an inference of guilt is to be drawn, such an inference must be the one and only irresistible and inescapably conclusion that the accused committed the offence. When the evidence adduced at the trial is considered, the one and only irresistible and inescapable conclusion that can be arrived at is that the accused committed the murder of Prema Jayawardwene."

His Lordship Justice Aluwihare, PC, in *Junaideen Mohamed Haaris v. Attorney General*, SC Appeal 118/17, Decided on 09.11.2018, held that:

"Before I consider the facts of the case and the legal issues raised in this appeal, it should be borne in mind that the prosecution relied entirely on circumstantial evidence to establish the charges, for the reason that there were no eyewitnesses to substantiate any of the charges against the Accused-Appellant. Thus, it was incumbent on the prosecution to establish that the

'circumstances' the prosecution relied on, are consistent only with the guilt of the accused appellant and not with any other hypothesis.

Regard should be had to a set of principles and rules of prudence, developed in a series of English decisions, which are now regarded as settled law by our courts. The two basic principles are,

i. The inference sought to be drawn must be consistent with all the proved facts, if it is not, then the inference cannot be drawn.

ii. The proved facts should be such that they exclude every reasonable inference from them, save the one to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct (per Watermeyer J. in R vs. Blom 1939 A.D. 188)"

In light of the above judicial pronouncements, what I understand is that the available evidence should be reliable and the said evidence and the circumstances so proved must form a chain of events from which the only irresistible and inescapable inference that the Court can arrive at is about the guilt of the accused that can be said to be drawn and no other hypothesis against the guilt is possible. The Court must satisfy itself that various circumstances in the chain of events must be such as to rule out reasonable likelihood of the innocence of the Accused. We are also mindful that there is always a duty cast on the Prosecution to prove the case beyond reasonable doubt. That means, in the words of Lord Denning in *Miller vs. Minister of Pensions*, 1947 All England Law Reports, p. 372, "Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The Law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice."

By doing so, the Court will be mindful not to let vague or suspicious circumstances unfairly strengthen the Prosecution's case.

In the present case, the prosecution primarily relied on the evidence of a telephone call initiated by the Accused to the deceased, as well as material recovered pursuant to Section 27 of the Evidence Ordinance, given that there were no eyewitnesses directly implicating the Accused in the death of the deceased.

I am mindful that the deceased had informed one Sellaiah Markandu that the accused had called him to come to the place. This evidence remained unchallenged by the Accused.

Since no contradiction was offered, the evidence remains unchallenged and is treated as uncontradicted evidence.

This concept was considered by Justice **H.N.J. Fernando CJ in *L.Edrick De Silva v. L. Chandrdasa de Silva*, 40 NLR 169:**

"Where the petitioner has led evidence sufficient in law to prove his status, I.E, a factum probandum, the failure of the respondent to adduce evidence which contradicts it adds a new factor in favour of the petitioner. There is then an additional "matter before the Court" which the definition in section 3 of the Evidence Ordinance requires the court to take into account, namely that the evidence led by the petitioner is uncontradicted. The failure to take account of these circumstances is a non-direction amounting to a misdirection in law."

This was corroborated by the call details retrieved from the Accused's mobile phone. I hold that this is evidence that the accused called the deceased to come to his place, similar to the last seen theory. That material point that the Accused called the deceased to come to the land is not challenged in the cross-examination.

The next piece of evidence comprises jewellery recovered following the Accused's statement. These items were identified by PW 01, and further noted that one of the deceased's fingers had been severed to remove a ring.

Our courts have considered the impact of Section 27 of the recovery.

Ariyasinghe and Others V Attorney General, 2004 (2) SLR 357, Gamini Amaratunga, J. Held That;

> *"The facts discovered by the portions of statements of the accused persons and their acts of pointing out the places where G/66 notes were found were that the accused had knowledge that G/66 notes were in the places described and pointed out by them. How did they know that G/66 notes were in those places? In order to find out the answer to this question the learned trial Judge has considered the ways in which the accused could have gained such Knowledge. According to the analysis, there were three ways in which the accused persons could have acquired their knowledge about the places where G/66 notes were found. The following are the three ways.*
>
> *I. The accused himself concealed those G/66 notes found in the place where they were found.*
>
> *II. The accused saw another person concealing the notes in that place.*
>
> *III. A person who had seen another person concealing those notes in that place has told the accused about it."*

Applying the above dictum, the evidence demonstrates that the jewellery belonging to the deceased was discovered from the accused's statement. The Accused, who had been employed by the deceased for cultivation work, had contacted the deceased by telephone and requested him to come. This fact was not denied by the Accused. Moreover, he failed to challenge this material evidence or offer any explanation in response.

We also note that the deceased's fingers had been severed, suggesting that the rings were removed by cutting them off. This supports the inference that the Accused concealed the jewellery himself at the location from which it was later recovered.

Our courts have consistently held that when an accused is shown to have knowledge of items belonging to the deceased—particularly when a witness confirms that the deceased was wearing the jewellery in question prior to death—the court may reasonably infer a connection between the accused and the said items. This inference places a burden on the accused to provide an explanation for his conduct or any suspicious circumstances surrounding him.

In the present case, the accused's dock statement merely asserts that he was fishing when the police arrived, took him to the station, assaulted him, and questioned him. This account, however, fails to raise any reasonable doubt or offer a credible explanation for the incriminating circumstances.

I am mindful of the judgment of the Indian case of **Saundraraj v. The State of Madya Pradesh (1954) 55 Cr. L.J.257**, it has been held that in cases where murder and robbery were shown to be part of the same transaction, recent and unexplained possession of stolen articles, in the absence of circumstances tending to show that the accused was only a receiver, would not only be presumptive evidence on the charge of robbery but also on the charge of murder.

The above said case was referred by Sampath B. Abayakoon, J. in HCC/262/16 *Kumarasinghe Arachchilage Samantha v. Attorney General.*

With the above incriminating evidence, we hold that the inference of guilt must be the one and only irresistible and inescapably conclusion that can be arrived at is that the accused committed the murders of Kanthiah Muttiah, and Muttiah Parameshwari dropped the jewellery which was mentioned in the indictment.

In my opinion, the prosecution has proved the case beyond a Reasonable doubt. For the above-mentioned reasons, I am not inclined to interfere with the judgment of the Learned High Court Judge.

Therefore, I'm upholding the judgment, conviction and sentence of the Learned trial judge dated 01.12.2022.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.
I AGREE.

JUDGE OF THE COURT OF APPEAL