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

In the matter of an Appeal under and in terms of Section 331(1) of the Code of Criminal Procedure Act No. 15 of 1979 as amended read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Democratic Socialist Republic of
Sri Lanka

Complainant

Court of Appeal
Case No. **CA HCC 98/23**

Vs.

High Court of Anuradhapura
Case No. **HC 39/2014**

Disanayake Mudiyanselage Jayantha
Bandara

Accused

AND NOW BETWEEN

Disanayake Mudiyanselage Jayantha
Bandara

Accused-Appellant

Vs.

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

Complainant-Respondent

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

Counsel: Amila Palliyage with Sandeepani Wijesooriya, Savani Udugampola, Subaj De Silva, Lakitha Wakishta Arachchi for the Accused-Appellant.

Jayalakshi De Silva, S.S.C. for the Respondent.

Argued on: 18.03.2025

Decided on: 30.04.2025

JUDGMENT

AMAL RANARAJA, J.

1. The Accused-Appellant (hereinafter referred to as the "appellant") has been indicted in the *High Court of Anuradhapura* in High Court case no. HC 39/2014.

2. The charge in the indictment is as follows;

   That on or about 30.05.2013, at *Anuradhapura*, within the jurisdiction of this Court, you did commit murder by causing the

death of one *Wedhahenalage Premadasage,* and that you have thereby committed an offence punishable under section 296 of the Penal Code.

3. At the conclusion of the trial, the Learned High Court Judge has convicted the appellant of the charge and sentenced him to death. The appellant aggrieved by the conviction and the sentencing order has preferred the instant appeal to this Court.

Case of the prosecution

4. The appellant has been residing in a house located on a land behind that of PW02 on 30.05.2013. At approximately 03.30 pm, PW02 has gone to fetch water from the tube well situated in the appellant's garden. During her visit, she has witnessed the appellant strike the deceased twice in the face and arm with the appellant's hand. Later around 04.30 pm when PW02 returned to fetch water a second time, she has heard the deceased pleading with the appellant. At that moment, PW02 has heard the appellant utter the words "ටික ටික ගහලා මරන්නෙ", indicating that the deceased would be killed gradually. On the third visit of PW02, there had been a stark silence.

5. On 31.05.2013, PW04 has visited the appellant's house on the request of an acquaintance to transport a patient to hospital. At that time, PW04 has observed the appellant and a third individual consuming alcohol while the deceased was lying on a mat inside the house. The deceased has had injuries on his face and a knee. Upon inquiry, PW04 had been informed by the third individual that the deceased has had a fall. Following their consumption of alcohol, the appellant and the third individual with PW04 driving has transported the deceased to the hospital in a three-wheel scooter.

6. The deceased while receiving treatment as an indoor patient has passed away around 1.30 pm on 31.05.2013.

Case of the appellant

7. The appellant has maintained that he has no connection to the alleged circumstances surrounding the death of the deceased.

8. When the appeal was taken up for argument, the Learned Counsel for the appellant, urged the following grounds of appeal;

i. Did the Learned Trial Judge err in law by failing to consider that the items of circumstantial evidence elicited at the Trial are not sufficient to draw an adverse inference that it was the appellant who committed the murder?

   a. That the Learned Trial Judge had even failed to identify that this case is a case of circumstantial evidence.

ii. Did the Learned Trial Judge err in law by failing to consider that the prosecution had failed to exclude the possibility of a third party committing the offence in this case and thus a reasonable doubt is cast on the case?

iii. Did the Learned Trial Judge err in law by failing to consider that the appellant should not have been convicted for murder as that the prosecution has failed to prove murderous intention beyond reasonable doubt?

9. Upon the body of the deceased being identified by the nephew and the sister-in-law of his to be that of the deceased, PW11, Dr. *B. L. Waidyarathne,* Specialist Judicial Medical Officer, attached to the *Teaching Hospital in Anuradhapura* at

that time has conducted a post-mortem examination on June 02.2013 at the *Medico-Legal Morgue Teaching Hospital Anuradhapura*.

10. PW11 has observed a total of 30 different injuries on the body of the deceased. He has proceeded to identify those injuries as abrasions, contusions, and lacerations. Additionally, he has observed fractures including a fracture of the hyoid bone, a fracture of the right greater horn of the thyroid cartilage and fractures of the second to eight ribs on the left side. The examination has also revealed acute subdural hemorrhage, subarachnoid hemorrhage and cortical contusions which were associated with the external injuries.

11. Based on his findings, PW11 has expressed the opinion that the cause of death was due to multiple injuries sustained to the head and the chest, likely resulting from an assault with blunt objects, most probably, involving hands and feet.

12. The narrative provided by PW02 indicates that she saw the appellant strike the deceased twice. Once in the face and once in the arm. However, she has not witnessed the appellant strike the deceased on the head or stamp on him while he was lying on the ground. Therefore, it is evident that the appellant has had

no opportunity to cause the external injuries associated with the hemorrhage and the fractured ribs that were observed.

13. Consequently, it is clear that the injuries that were sufficient in the ordinary course of nature to cause the death of the deceased have been inflicted subsequently. PW04 has reported seeing a third individual present at the scene where the deceased lay with such injuries. In the light of the absence of evidence suggesting otherwise, the prosecution has failed to eliminate the possibility that this third individual could have struck the deceased and inflicted the injuries that were sufficient in the ordinary course of nature to cause the death of the deceased.

14. As a result the prosecution has relied on suspicious circumstances, rather than concrete circumstances, thereby, failing to meet the burden of proof in establishing that the appellant inflicted the injuries that were sufficient in the ordinary course of nature to cause the death of the deceased. The establishment of suspicious circumstances alone is generally not sufficient to meet the burden of proof to establish an accused guilt beyond a reasonable doubt. Suspicion may arise further questions but it does not equate to proof of guilt.

15. In ***Munirathne And Others vs. The State*** **2001 2 SLR page 382 at page 394**, Justice Kulathilaka has stated as follows;

> *"In the attendant circumstances of this case, we are tempted to reiterate the wise observations made by Basnayake, CJ, in The Queen vs. M.G.Sumanasena[7]. It is to the following effect.*
>
> > *"Suspicious circumstances do not establish quilt. Nor does the proof of any number of suspicious circumstances relieve the prosecution of its burden of proving the case against the accused beyond a reasonable doubt and compel the accused to give or call evidence....The burden of establishing circumstances which not only establish the accused's guilt but are also inconsistent with his innocence remains on the prosecution throughout the trial and is the same in a case of circumstantial evidence as in a case of direct evidence".*

16. Circumstantial evidence refers to evidence that relies on an inference to connect it to a conclusion of fact, in contrast to direct evidence which proves a fact

directly i.e. like a witness testifying that he saw a crime occur, circumstantial evidence requires a series of facts or circumstances that lead to a conclusion.

To prove a case through circumstantial evidence, one typically need to gather various pieces of circumstantial evidence that are relevant to the case. Thereafter, clearly demonstrate how those pieces of evidence connect to each other and lead to a reasonable inference about the facts of the case. Argue against other reasonable inferences that could be drawn from the same evidence and combine all pieces of evidence into a compelling story that makes the case more convincing. Ultimately, the strength of secondary evidence can lie in its ability to paint a broader picture when combined with other evidence making a case more persuasive to a judge.

17. In ***Bandara Deegahawathura vs. Attorney General*** **CA No. 61/2001** decided on 02.08.2005, Justice Sisira Abrew discussing the nature of the inferences that could be drawn from circumstantial evidence and how such inferences could be drawn has stated as follows;

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

In the case of King Vs Abeywickrama 44 NLR 254 Soertsz J remarked as follows. "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 reasonably hypothesis of his innocence".

In King Vs Appuhamy 46 NLR 128 Keuneman J held that "in order to justify the inference of guilty 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 than that of his guilt".

In Podisingho Vs. King 53 NLR 49 Dias J held 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."

In Emperor Vs Browning (1917) 18 Cr. L.J.482 court held "the jury must decide whether the facts proved exclude the possibility that the act was done by some other person, and if they have doubts, the prisoner must have the benefits of those doubts."

Having regard to the principles laid down in the above judicial decisions I hold that in a case of circumstantial evidence in order to base a conviction on circumstantial evidence the jury or the trial judge as the case may be must be satisfied on following grounds. (a) Proved facts must be consistent only with the guilt of the accused (b) Proved facts must point the finger of guilt only to the accused (c) Proved facts must be incompatible and inconsistent with the innocence of the accused. (d) Proved facts must be incapable of any other reasonable explanation than that of his guilt. In a case of circumstantial evidence, if two decisions are possible from the proved facts, then the decision which is favorable to the accused must be taken. In a case of circumstantial evidence, if the circumstances found to be as consistent with the innocence as with the guilt of the accused; or if an innocent explanation is found from the evidence of the prosecution, no inference of guilt should be drawn. Therefore if the prosecution seeks to prove a case purely on circumstantial evidence, the prosecution must exclude the possibility that the proved facts are consistent with the innocence of the accused".

18. The circumstantial evidence gathered in this case leads to inconsistent and inconclusive inferences. It does not rule out the possibility that a third individual committed the act referred to in the charge. Furthermore, the inferences drawn do not exclusively point out to the guilt of the appellant, therefore, the interpretation that favors the appellant must be prioritized. This creates a challenge in establishing the appellant's guilt regarding the charge in the indictment.

19. This particular offence has been committed in the year 2013. 12 years have passed since then. Therefore, this Court finds that it does not seem just to call upon the appellant to defend himself again after such an unconscionable lapse of time.

In ***Queen vs. G. K. Jayasinghe*** **69 NLR 314 at page 328**, Sansoni, J, has stated,

> *"…we have considered whether we should order a new trial in this case. We do not take that course, because there has been a lapse of three years since the commission of the offences, and because of our own view of the unreliable nature of the accomplice's evidence on which alone the prosecution case rests.*

We accordingly direct that the judgment of acquittal be entered".

20. Hence, this is not a fit case to order a re-trial.

21. Due to the circumstances set out above, I am inclined to interfere with the disputed judgment and hereby set aside the conviction together with the sentencing order. Accordingly acquit the appellant from the charge in the indictment.

Appeal allowed.

22. The Registrar of this Court is directed to communicate this judgment to the *High Court of Anuradhapura* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree.

Judge of the Court of Appeal