

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

In the matter of an Appeal under and
in terms of the Article 138 (1) of the
Constitution.

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

Complainant

CA Case No: HCC 242/18
High Court Case No: HCT/839/2018

Vs.

1. Naithu Hennathige Nishantha
Jayalath
2. P. Isuru Chaminda Silva
Both of Unit-02, Pankulam,
Morawewa.

Accused

NOW BETWEEN

Naithu Hennathige Nishantha
Jayalath

Accused-Appellant

Vs.

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

Complainant- Respondent

Before: **R. Gurusinghe J.**
&
M.C.B.S. Morais J.

Counsel: Indica Mallawaratchy with Upul Dissanayake for the
Accused- Appellant.
Shanil Kularatne, ASG for the State.

Written Submissions: By the Accused- Appellant – on 25.09.2020
By the Respondent – on 27.01.2021

Argued on: 09.12.2025

Decided On: **06.02.2026**

JUDGMENT

M.C.B.S. Morais J.

This is an application for Appeal against the Judgment of the High Court of Trincomalee dated 23rd of October 2018.

The Accused-Appellant (hereinafter will be referred to as the Appellant) along with the 2nd Accused was indicted before the High Court of Trincomalee on the charge of committing the offence of murder of one ‘Herath Mudiyanseelage Dilhani’ (hereinafter will be referred to as the Deceased) on 27th of June 2010, punishable under Section 296 read together with Section 32 of the Penal Code.

During the trial, the prosecution relied on both direct and circumstantial evidence and led the testimony of several witnesses, including the Mother of the Deceased (PW-01), the Uncle of the Deceased (PW-02), friends and classmates of the Deceased (PW-04, PW-08, PW-14), and certain villagers (PW-03, PW-09, PW-10, PW-12, PW-15). The evidence of expert and official witnesses was also adduced, including that of Government Analysts (PW-17, PW-18), the Judicial Medical Officer (PW-19), representatives from GENETECH (PW-31), a Forensic Expert (PW-33), and several police officers involved in the investigation (PW-20 to PW-27, PW-32).

At the conclusion of the trial, the learned High Court Judge of Trincomalee has discharged the 2nd Accused and having found the Appellant guilty of the indictment has ordered the death sentence be imposed on the Appellant, to be carried out at a place and on a day fixed by His Excellency the President of the Democratic Socialist Republic of Sri Lanka.

Being dissatisfied with the order dated 23rd of October 2018 imposed by the learned High Court Judge of Trincomalee, the Appellant has preferred an appeal dated 25th of October 2018 in the Court of Appeal. The grounds of Appeal are as follows;

“a. The court has failed in evaluating the evidence led by the prosecution

- The court has failed to consider that the prosecution failed to prove the case with the final and conclusive evidence of the murder and beyond the reasonable doubt.*

b) The court has failed to consider the failure of the prosecution in proving the identity of the deceased person.

c) The court has failed to consider that the Accused-Appellant cannot be convicted for the charge of murder without having basic elements of evidence for the murder charge.

d) The court has failed to give answer for the following;

- *Whether the Identity of the deceased was proven with the elements of the Evidence Ordinance,*
- *If so, where is the Death Certificate of the deceased.*
- *Where is the MLE Report to show the ground of the death of a person alleged murdered*

e) The court has failed to consider the legal invalidity of confession of co-accused that is not fully or partly acceptable to the other accused. And failed to fully avoid the confession of the co-accused.

f) The court failed to evaluate the circumstantial evidence is also inadequate in finding the guilt of the charge in this ease.

g) The court has failed to give proper consideration even to the evidence given by the Accused Appellant from the witness box after taking oath. And Accused has given clear answer for all allegation placed against him.

h) The court failed to use the benefit of the doubt in favour of the Accused Appellant.”

Accordingly, the Appellant has prayed for the following;

- “1. Set aside the judgment dated on 23.10.2018*
- 2. Order for an acquittal and*
- 3. Such other further relieves as to the court shall seem meet.”*

Facts and Circumstances of the case

It is stated that the Appellant, the second Accused, and the Deceased had proceeded together to the said location, situated deep within the forest. Subsequent to this event, the Deceased was reported missing by her mother to the Police. Thereafter, villagers discovered what appeared to be burnt human body parts near the said lake and

informed the Deceased's uncle, who in turn notified the relevant authorities. It is material to note that there were no direct eye-witnesses to the occurrence of the alleged incident.

The incident in question is alleged to have occurred on or about the 27th of June 2010, near a lake situated within a jungle area known as Dambagaha Ulpatha in the village of Morawewa. At the material time, a romantic relationship had been subsisting between the Appellant and the Deceased, and the Appellant had frequently visited the Deceased at her residence.

During the month of Poson (June), the Deceased, together with her father and mother, had gone on a pilgrimage to Anuradhapura and returned to their village on the morning of 27th June; on the same day, which was the date of the alleged incident, the deceased had remained at home as she was feeling sleepy, while her parents had gone to work in their paddy field. At approximately 4.30 p.m., when the mother returned home from work, she was unable to locate the Deceased either inside the house or within the surrounding neighborhood.

In the course of her search, the mother discovered a piece of paper inside the house. As she was illiterate, she took it to her mother's house and requested a person named 'Achini', who resided there, to read it. The note stated in Sinhala: “මාම මාගේ නමින් එයා. මම දුර පළාතකට ගියා,” which translates to “Do not look for me. I have gone to a distant area.”

Thereafter, the mother proceeded to the residence of the Accused to inquire about the Deceased. However, she did not receive any satisfactory response. Consequently, she lodged a complaint with the police. A few days later, she received information from her brother that the charred remains of a human body had been discovered in the middle of the forest.

Upon visiting the location, the mother was able to identify several body parts and material, alleged to be those of the Deceased. Subsequently, when she was summoned to the police station to identify several productions; including a piece of cloth, a pair of slippers, and a gold ring with a red stone, she identified all of them as belonging to the Deceased. Further examination of several books found inside a bag revealed handwriting identified as that of the Deceased. The “CR book” contained an envelope with a photograph depicting the Deceased, the Accused, and an unidentified person.

Based on the investigations, the police arrested the Appellant.

After a full trial before the High Court, the learned High Court Judge had convicted the Appellant and imposed the death penalty. Being aggrieved by the said judgment, the Appellant has preferred this appeal. When this is argued, the Appellant has limited his submissions to the following grounds, indicating that the other grounds urged will not be pursued. Accordingly, the pursued grounds are;

1. *Corpus Delicti* has not been proved beyond reasonable doubt.
2. In the backdrop of the Appellant giving evidence on oath, application of the Ellenborough principle is erroneous to the instant case.
4. Items of Circumstantial Evidence are inadequate to draw a necessary, inescapable, irresistible and one and only inference of guilt to the exclusion of a 3rd party that it was the Appellant who committed the crime.
5. Prosecution presenting the case on the last seen theory, has failed to eliminate the possibility of a 3rd party being the perpetrator of the crime namely the 2nd Accused.
6. Trial Court has failed to apply the principles governing the evaluation of Circumstantial Evidence cases.
7. Trial court has flawed by applying the Lucas Principle consequently causing serious prejudice to the Appellant.

8. Relying upon the confession of the 2nd Accused (unconfessionary portions) is wholly unsafe in view of the circumstances under which the said confession was made.
9. Items of evidence favorable to the Appellant have not been considered by the Trial Court thus occasioning in a deprivation of a fair trial.
10. Trial Court has erred in law by casting an additional burden on the Appellant to rebut the evidence of the prosecution thereby reversing the presumption of innocence.

Though these were separately urged, I intend to deal with them together, as they are closely interwoven and intermingled; hence separately dealing would inevitably lead to undue repetition. It must further be borne in mind that, when sitting in appeal, this Court is not called upon to re-appraise the entirety of the evidence adduced before the trial court or to determine the guilt of the Accused afresh. In my view, the duty of this Court is confined to examining the grounds raised by the Appellant and determining those grounds in accordance with settled principles of law. In so doing, this Court exercises a supervisory and corrective jurisdiction, ensuring that the trial process was conducted in conformity with the law and that the judgment rendered is free from material irregularities or misapprehensions of fact and law.

In considering the 1st ground of appeal, on *Corpus Delicti*, or, in other words, the ‘body of the crime’, it simply requires the proof of death and proof that such death resulted from the criminal act of the Accused. This principle, firmly rooted in common law, requires independent evidence of the occurrence of a crime and serves to prevent wrongful convictions founded solely upon extra-judicial confessions, which is not the position in the case before us. It is not necessary, at this stage, to prove the identity of the perpetrator; the focus is on establishing the factual existence of the crime itself. This principle underpins the integrity of the criminal justice system and provides a foundational check against miscarriages of justice.

When analyzing this argument, it is established that certain human body parts, belonging to an individual aged between 14-16 years, were recovered from the scene of the alleged offence. As for the evidence of the mother of the deceased confirms that the age of the deceased corresponded with that of the recovered remains. By the time the trial commenced, more than seven years had elapsed since the disappearance of the deceased, thereby attracting the presumption set out in Section 108 of the Evidence Ordinance.

In her testimony, the mother of the deceased unequivocally identified that the recovered remains as those of her daughter. The defense did not challenge or seek to cast doubt upon this identification. Though there is no certificate of death available, all the circumstances leave no room for doubt that the deceased, namely '**Herath Mudiyanseelage Dilhani Kumari Gunatillake**' has indeed died.

It follows, therefore, that the first ground of appeal, questioning the existence of a *Corpus Delicti*, is without merit. The evidence clearly establishes the death of the deceased as resulting from a criminal act, thereby satisfying the essential requirements of this legal principle.

It is a fact that there were no eyewitnesses to this alleged incident other than the 2nd Accused. The 2nd Accused has made a confession before the Magistrate, which was admitted into evidence in this case. However, it is well-settled that such evidence cannot be used against any co-accused, including the Appellant. In the present case, the learned trial Judge has not relied upon the confession of the 2nd Accused in any manner in relation to the Appellant, nor has it been employed in determining the guilt of the Appellant.

It is evident that the Accused had an affair with the deceased, which has not been denied by him. Torn pieces of a letter written by the Accused were recovered from the

scene of the crime. Burnt fragments of a dress, belonging to the deceased were also found at the scene. Although the Accused testified that he met the deceased on the day prior to the alleged crime, the evidence establishes that the deceased was in Anuradhapura, with her parents at that time.

The Accused has failed to offer a reasonable explanation for several of these material discrepancies, explanations which he could reasonably have provided if he were innocent. His inability or unwillingness to provide satisfactory clarification on these points significantly undermines the credibility of his defense. Furthermore, it is apparent that the Accused has deliberately lied to the Court, as well as to several other witnesses, on numerous and relevant matters thereby casting further doubt on his veracity and overall reliability. The Court is satisfied that the totality of the evidence supports the conclusion that the Accused's version of events is neither credible nor tenable, and that the findings of the trial Court in relation to these matters were fully justified.

The Ellenborough principle is that; while an accused person is not required to explain suspicious circumstances, their refusal to do so when a strong case is made and they have the power to explain can lead to an adverse inference of guilt, suggesting the evidence not offered would be damaging to them. In ***Ranasinghe Arachchige Kapila Nishantha Perera V. AG (S.C. Appeal No. 122/2020)*** decided on 07.10.24, His Lordship Janak De Silva J. sets out;

"Ellenborough Dictum"

In Rex V. Cochrane [1814 Gurneys Report 479] Lord Ellenborough held that:

"No person accused of crime is bound to offer any explanation of his conduct or of circumstances of suspicion which attach to him, but nevertheless, if he refuses to do so where a strong prima facie case has been made out and when it is in his own power to offer evidence, if such exist in explanation of such suspicious circumstances, which would show them to be fallacious and

explicable consistently with his innocence, it is a reasonable and justifiable conclusion that he refrains from doing so only from the conviction that the evidence so suppressed or not adduced would operate adversely to his interest."

*This dictum has been applied in many cases in Sri Lanka. [See **Inspector Arendtz V. Wilfred Peiris** [10 C.L.W. 121 at 123], **R v. Seeder Silva** [41 N.L.R. 337 at 344], **King V. Wickramasinghe** [42 N.L.R. 313], **King V. Peiris Appuhamy** [43 N.L.R. 412 at 418], **King V. Endoris** [46 N.L.R. 498], **Queen V. Seetin** [68 N.L.R. 316], **Chandradasa V. Queen** [72 N.L.R. 160], **Beddavithana V. Attorney-General** [(1990) 1 Sri.L.R. 275 at 278], **Republic V. Ilangathilake** [(1984) 2 Sri.L.R. 38], **Aruna alias Podi Raja V. Attorney-General** [(2011) 2 Sri.L.R. 44]].*

*In **Attorney-General V. Potta Naufer and Others** [(2007) 2 Sri. L.R. 144 at 202], Amaratunge J. rejected the submission that there is no dictum called the dictum of Lord Ellenborough; that the words attributed to Lord Ellenborough is a fabrication by Wills; and that the views expressed by Lord Ellenborough is not a part of the law of Sri Lanka.*

The burden of proving the case beyond a reasonable doubt is on the prosecution. There is no burden on the accused to prove his innocence. The Ellenborough dictum does not oust the burden on the prosecution to prove the case beyond a reasonable doubt. It does not place a legal or a persuasive burden on the accused to prove his innocence. However, where the prosecution is able to establish a strong prima facie case and highly incriminating circumstances, an application of this dictum shifts the evidential burden to the accused to explain away these highly incriminating circumstances when he has both the power and opportunity to do so."

While endorsing the above, I will analyze whether the trial Judge has applied the principle appropriately. The prosecution's version is that the Accused murdered the deceased, and the circumstantial evidence builds a strong case against the Accused.

With regard to Ground of Appeal No. 2 set out above it is true that the Appellant has given evidence on oath before the trial Judge. However, he refrains from offering any reasonable explanation of the proved circumstances, which is inconsistent with his claim of innocence. Such failure is significant, as it undermines the credibility of his testimony and leaves the Court to infer, from the totality of the circumstances, that the Appellant's account is inconsistent with the established facts.

The witness No. 3, 'Nalhandi Samantha Silva', deposed that he saw the Appellant together with the 2nd Accused emerging from the jungle at approximately 2.30 p.m. on the day of the alleged incident, after which the Appellant played Carom. This part of his evidence has never been subjected to cross examination. In contrast, the Appellant had testified that he went to play Carom at 11.00 am and, having played, returned home via the jungle around 2.30 p.m. The learned trial Judge, after carefully considering the evidence, has come to the correct conclusion that the testimony of the Appellant cannot be relied upon.

I see no reason to take a different view. On the contrary, the approach of the learned trial Judge demonstrates a proper appreciation of the principles governing the assessment of credibility, particularly in circumstances where an Accused fails to provide a coherent or plausible explanation for material evidence. Accordingly, I am satisfied that the learned trial Judge, being fully aware of the relevant legal principles, applied them appropriately, and that no interference with his findings is warranted in this appeal.

Similarly, as for the application of 'Lucas Principle', in *Ranasinghe Arachchige Kapila Nishantha Perera V. AG (ibid)* His Lordship Janak De Silva J. continues;

“..... The Lucas principle explains the circumstances in which a lie uttered in or outside Court by an accused may provide corroboration against him.

*As Lord Lane CJ held in **R. v. Lucas** [(1981) 2 All ER 1008 at 1011]:*

“Statements made out of court, for example statements to the police, which are proved or admitted to be false may in certain circumstances amount to corroboration...To be capable of amounting to corroboration the lie told out of court must first of all be deliberate. Secondly it must relate to a material issue. Thirdly the motive for the lie must be a realisation of guilt and a fear of the truth...Fourthly the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent witness. As a matter of good sense it is difficult to see why, subject to the same safeguard, lies proved to have been told in court by a defendant should not equally be capable of providing corroboration.”

The Appellant is found to have deliberately lied on many important and relevant issues, both in court and outside the court, as is amply evident from the record. I am unable to discern any other plausible reason for such conduct, other than an attempt to conceal the truth. These misrepresentations were clearly contrary to the proved facts, which were corroborated by independent witnesses whose evidence remained unchallenged. The trial court has held these witnesses to be reliable and acceptable.

It is well-established that the ‘**Lucas Principle**’ may be applied where an Accused, in the face of incontrovertible evidence, deliberately provides false testimony or misleads the Court. In the present case, all the essential criteria for the application of this principle are satisfied.

The deliberate falsehoods of the Appellant, in direct contradiction to reliable independent evidence, justify the inference that his testimony cannot be accepted. Accordingly, I am satisfied that the learned trial Judge, in applying the 'Lucas Principle', acted fully in accordance with the law, and no impropriety or error is discernible in this regard.

The learned Counsel for the Appellant has drawn attention to the recoveries made under Section 27 of the Evidence Ordinance. The gold-coloured ring containing a red stone (P-2), recovered from the Appellant's house pursuant to a statement made by him, was clearly identified by the mother of the deceased as the ring worn by her daughter on the previous day during their trip to Anuradhapura. The evidence establishes beyond doubt that the ring was recovered from the Appellant's residence on the basis of his statement.

The learned Counsel contended that, in light of the romantic relationship between the Appellant and the deceased, it could be possible that P-2 came into the Appellant's possession innocently, and that he was unaware of it; the Appellant, however, denies that the recovery occurred at all. Further, the pair of slippers worn by the deceased (P-4) was unequivocally identified by her mother as her daughter's. The mother testified that she had purchased the slippers for Rs. 300/= from Anuradhapura on the previous day. These slippers were also recovered by the police from a location adjacent to the scene of the crime, as indicated by the Appellant, although he denies this recovery.

While it is correct that these recoveries, in isolation, do not constitute direct evidence of the commission of the offence by the Appellant, they are nonetheless significant. They serve to demonstrate the Appellant's knowledge of, and connection to, the deceased and the circumstances surrounding the offence. Viewed in conjunction with the other evidence led at the trial, in absence of any reasonable explanation of such these recoveries are material and relevant in evaluating the Appellant's involvement and credibility. Accordingly, I find no error in the manner in which the learned trial

Judge has considered and given due weight to these recoveries in the overall assessment of the evidence.

The Appellant contends that certain items of evidence favorable to him were not considered by the trial Court, thereby resulting in a deprivation of a fair trial. However, the learned trial Judge, having carefully observed the demeanor and deportment of all the witnesses, has arrived at a reasoned and final conclusion. The Appellant has failed to identify any evidence which was favorable to him but allegedly ignored by the trial Judge.

It is well-settled that the factual determinations of a trial Court, particularly those based upon the assessment of witness credibility and demeanor, should not be lightly disturbed by an appellate forum in the absence of any compelling or reasonable cause. A thorough review of the entire record demonstrates that the learned trial Judge has conscientiously considered all the evidence, including that which may have been favorable to the Appellant, and has given it due weight in arriving at his conclusion. Accordingly, there is no basis for this Court to interfere with the findings of the trial Judge in this regard.

Having considered the proved facts and the totality of the circumstances in this case, I am satisfied that there remains no reasonable doubt that the Appellant committed the offence as charged. I find no merit in any of the grounds urged in this appeal that would justify interference with the findings of the learned trial Judge. In the circumstances, the conviction and sentence imposed by the trial Court are hereby affirmed, and the appeal is accordingly dismissed.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree

Judge of the Court of Appeal