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

In the matter of an Appeal in terms of the Section 331 of the Code of Criminal Procedure Act No. 15 of 1979 and terms of 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 0438/2019

Vs.

High Court of Colombo
Case No. 1961/04

1. Sinnasaamu Gurusaamy Milton
2. Kaluthandrige Ruwan Ajith alias Aja

Accused

AND NOW BETWEEN

Kaluthandrige Ruwan Ajith alias Aja

Accused-Appellant

Vs.

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

Complainant- Respondent

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

Counsel: Selvaraja Dushyanthan, Assigned Counsel for the Accused-Appellant.

Shanil Kularatne, A.S.G. for the Respondent.

Argued on: 27.08.2025

Judgment 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/1961/2004.

2. The charge in the indictment is as follows;

> That on or about April 12, 2001, within the jurisdiction of this Court, the appellant did commit murder by causing the death of one *Dadayakaara Dewage Panduka Prasadh Wishwantha*

Jayarathne, 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.

4. The appellant aggrieved by the conviction, disputed judgment together with the sentencing order had preferred the instant appeal to this Court.

Case of the Prosecution

5. On the date of the incident, i.e., April 12, 2001, the deceased, the appellant, the first accused named in the indictment and several others have congregated before making their way to St. Mary's School. Upon arriving at the entrance, the deceased, the appellant, the first accused, and PW06 (who has also been among those who congregated) have entered the school premises. Once inside, PW06 has witnessed the appellant and the first accused attacking the deceased with sharp edged weapons (knives).

6. Tragically, the deceased has succumbed to the injuries sustained during the assault.

7. *Dr. S.V.Pathirana, Judicial Medical Officer of Colombo,* has conducted the post-mortem examination and the findings are documented in the post-mortem report, which has been marked as පැ-1.

Case of the Appellant

8. The appellant, along with the first accused, have maintained that though they were in the vicinity, they had no knowledge of the alleged assault.

Ground of Appeal

9. When the matter was taken up for argument, the learned Counsel for the appellant urged the following ground of appeal;

    1. The learned Trial Judge has failed to consider that the evidence of PW06 (eye witness) is not credible in light of the contradictory nature of his evidence.

10. The learned Counsel for the appellant has raised a concern regarding the testimony of PW06 before the High Court. Specifically, that PW06 has stated that he witnessed the first accused and the appellant, assault the deceased with sharp edged weapons (knives).

11. However, the learned Counsel points out that this critical detail has not been mentioned by PW06 during the inquest conducted by the learned Magistrate. But he only stated that he heard the screams of the deceased from the direction to which the deceased was escorted by the first accused and the appellant.

12. Nonetheless, it is important to note that this alleged contradiction, has not been formally marked by the Counsel representing the appellant at the trial.

13. The proper procedure in marking contradictions is set out in section 145 of the Evidence Ordinance No. 15 of 1895.

> "…*This section contemplates that when a witness is to be contradicted his attention must be first drawn to the fact of having made a previous statement, and thereafter, more specifically, to the parts of the statement which are to be used for the purpose of contradicting him. It is only after that, the actual writing with which the witness was contradicted with, can be proved."*
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> *[Vide Gamini Sugathasena and Another vs. The State* [1988] 1 SLR 405*]*

14. Further the post-mortem report marked as ಪಿ-1 indicates that the *Judicial Medical Officer* has identified 26 medical injuries on the body of the deceased. Among those injuries, fifteen has been classified as stab injuries and four as cut injuries. The characteristics of these injuries are consistent with the account provided by PW06, who has stated that the first accused and the appellant attacked the deceased with sharp edged weapons, specifically knives.

15. The Counsel for the appellant has also raised concerns regarding a discrepancy in the testimonies of the witnesses. Specifically, while PW07 has indicated that PW08 was present among those who approached the entrance of the school, PW06 has asserted that PW08 was not at the location during that time. This inconsistency it is argued undermines the credibility of the narrative of PW06.

16. However, it is important to know that the discrepancy in question does not pertain directly to the incident involving the offence itself.

17. Importantly, PW08, does not provide any details regarding the assault on the deceased and does not significantly impact the overall understanding of the events surrounding the incident.

18. In evaluating the various accounts, it is essential to discern, which elements directly influence the core facts of the case. While differing recollections can affect witness credibility, the relevance of such discrepancies must be carefully considered in the broader context of the testimony regarding the offence in question.

19. Further, the prosecution has the latitude to call certain number of witnesses, it is not a fixed requirement. Instead it is a calculated choice aimed at effectively establishing the case.

20. Section 134 of the Evidence Ordinance No.15 of 1895 emphasizes that the number of witnesses required to substantiate a claim or fact is not fixed or premeditated. The principle allows for flexibility in the presentation of evidence. It acknowledges that the testimony of a single witness can be sufficient to establish the truth of a fact, depending on the credibility of that witness. The focus shifts from the quantity of evidence to its quality. A credible witness can provide more compelling evidence than multiple witnesses who may lack reliability.

21. In those circumstances, I am not inclined to interfere with the conviction and the disputed judgment together with the sentencing order.

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

Appeal dismissed.

23. 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