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 Code Act No.15 of 1979 to be read with Article 138(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Democratic Socialist Republic of Sri Lanka

Court of Appeal
Case No.
CA/HCC/0266/23

Complainant

Vs.

High Court of Kaluthara
Case No.
HC 895/2014

Hamburugala Withanage Kelum Sujeewa Abewickrama

Accused

AND NOW BETWEEN

Hamburugala Withanage Kelum Sujeewa Abewickrama

Accused-Appellant

Vs.

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

Complainant-Respondent

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

Counsel: Ershan Ariyaratnam for the Accused-Appellant.

Suharshi Herath, D.S.G. for the Complainant-Respondent.

Argued on: 19.11.2025

Decided on: 09.12.2025

JUDGMENT

AMAL RANARAJA, J.

1. The Accused-Appellant (hereinafter referred to as the "*appellant*") has been indicted in the *High Court of Kaluthara* in High Court case number HCC 895/14.

2. The charges in the indictment are as follows;

> Charge 01
> That on or about July 10, 2011, at *Palatota*, in the district of *Kaluthara*, within the jurisdiction of this Court, the appellant did commit murder by causing the death of one *Dayawathi Kaluarrachchi*, an offence punishable under section 296 of the Penal Code.

Charge 02

That at the same time, place and during the same course of transaction as mentioned in the first charge, the appellant committed the offence or robbery by robbing a gold ring from the possession of one *Dayawathi Kaluarrachchi,* an offence punishable under section 380 of the Penal Code.

3. At the conclusion of the trial, the learned High Court Judge has convicted the appellant of the first charge and acquitted him of the second charge. The appellant upon being convicted of the first charge has been sentenced to death.

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

Case of the prosecution

5. The appellant is the deceased's son. They have resided in the same house until the incident referred to in the first charge. PW01, the deceased's niece, has lived in a nearby house. The deceased has had confided in PW01 about the harassment she was experiencing at the hands of the appellant. She has also revealed to PW01 that she feared for her life due to this harassment.

6. On the date of the incident, PW01 has observed that lights of the deceased's house were unlit. Concerned, PW01 accompanied by PW02, have proceeded to the house of the deceased to investigate. Upon finding

the front door unlocked, they have entered the house. Inside, they discovered the deceased lying on the kitchen floor, having sustained visible injuries to her head and face.

7. PW01 has questioned the deceased, who then has identified the appellant as her assailant [*Kelum hit me*]. The deceased, has been hospitalized following this disclosure and later died while receiving treatment.

8. *Dr. S. S. H. De. Silva* (PW08), the *Additional Judicial Medical Officer*, *Kaluthara* has conducted the post-mortem examination on the deceased. During the examination, *Dr. De Silva* has documented five injuries to the deceased's head and face, along with internal bleeding on the right side of the brain, consistent with the external injuries. He has opined that the cause of death was intracerebral hemorrhage resulting from blunt trauma. The post-mortem report authored by *Dr. De Silva* has been submitted as evidence and marked as ඒ-01.

Case of the appellant

9. The appellant has asserted that on the day in question, the deceased provided him with a ring to pawn, requesting that he use the proceeds to purchase medicine for her. The appellant has complied. When he returned home with the medicine, he has found a crowd that had gathered and has been informed that the deceased had been taken to the hospital. He also maintained that he was subsequently detained by the police.

Grounds of appeal

10. When the appeal was taken up for argument, the learned Counsel for the appellant formulated the following grounds of appeal;

    i. Has the learned High Court Judge failed to consider that the prosecution has not proved its case beyond a reasonable doubt based on circumstantial evidence?

    ii. The learned High Court Judge has failed to consider the dying declaration in its correct perspective.

    iii. The learned High Court Judge has not considered the defence's case.

11. The legal principles of dying declarations have originated in English common law based on the maxim "*nemo moriturus praesumitur mentiri*" (a man will not meet his maker with a lie in his mouth) and is applied today as a recognized exception to the hearsay rule, though with specific conditions in different legal systems.

12. The concept of trustworthiness is rooted in the belief that a person at the point of death with no hope of recovery has a profound spiritual incentive to tell the truth, similar to being under oath. The rational for admitting this type of evidence (despite it being hearsay and not subject to cross examination) is necessity. Often, the victim is the only eye-witness to the crime and excluding his or her declaration might allow a perpetrator to escape justice.

13. The admissibility conditions remain. They are as follows;

    (a) The person who made the declaration must be unavailable as a witness because he is the deceased.

    (b) The declaration must have been made when the declarant believed his death was imminent and had abandoned all hope of recovery.

    (c) The contents of the declaration must relate to the cause or circumstances of what the declarant believed to be his impending death.

14. In Sri Lanka, Section 32(1) of the Evidence Ordinance No.14 of 1895 stipulates conditions under which a declaration made by a deceased individual can be considered relevant in legal proceedings, particularly when it pertains to the cause of death. This provision acknowledges that certain declarations made by a person who is no longer alive can hold significant weight in determining the circumstances surrounding his demise.

15. Section 32(1) of the evidence ordinance is as follows;

> "32. *Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the court unreasonable, are themselves relevant facts in the following cases:-*

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceedings in which the cause of his death comes into question."

16. According to section 32(1) of the Evidence Ordinance a declaration regarding a relevant fact made by a deceased person is admissible, if it directly relates to the cause of death. This provision also plays a crucial role in ensuring that valuable information is not lost due to absence of the declarant, thereby facilitating the pursuit of justice and truth in cases involving death.

17. Absence of cross examination, physical and mental state of the declarant, potential for bias or motive to lie, risk of imagination or suggestions, incomplete or inconsistent statements by the declarant are some of the inherent weaknesses of a dying declaration.

18. In *Ranasinghe vs. AG*, [2007] 1 SLR 218 at page 221, Sisira De Abrew, J, has discussed the above as follows;

"As there are inherent weaknesses in a dying declaration which I have stated above, the trial Judge or the jury as the case may be must be satisfied beyond reasonable

doubt on the following matters. (a) Whether the deceased, in fact, made such a statement. (b) Whether the statement made by the deceased was true and accurate. (c) Whether the statement made by the deceased person could be accepted beyond reasonable doubt. (d) Whether the evidence of the witness who testifies about the dying declaration could be accepted beyond reasonable doubt. (e) Whether witness is telling the truth. (f) Whether the deceased was able to speak at the time the alleged declaration was made."

19. PW01 has testified that when she entered the deceased's house, PW01 has observed the deceased lying on the floor of the kitchen with injuries. PW01 has inquired for the deceased as to who caused the injuries to her. The deceased has uttered "*Kelum hit me*". Consequently, the deceased has been admitted to the hospital for treatment and she has passed away while receiving treatment while at the hospital.

20. It is contended by the learned Counsel for the appellant, that the deceased's capacity to speech would have been significantly impaired by the time PW01 discovered her lying on the floor making it highly improbable that the declaration attributed to the deceased could have been made.

21. It has been established that the deceased possessed literacy and suffered from no known speech impediment. The appellant has identified a *Kalum*, it's the son of the deceased and they have resided together in the same household.

Further, the postmortem examination's findings are critical. The nature of the deceased's injuries precluded neither an instantaneous loss of consciousness nor immediate impairment of her speech capabilities. The attending medical officer has concluded that the deceased would have retained the ability to speak at the time she was confronted by PW01.

Furthermore, the deceased's capacity to identify her assailant is not in dispute, owing to her intimate familiarity with the appellant. This context renders it exceptionally improbable that a mother would, in her final moments, deliberately make a false declaration implicating her own son.

Under those circumstances, the relevant contention of the Counsel for the appellant must fail.

22. PW08, *Dr. De Silva*, has testified that the corresponding internal injury, specifically bleeding on the right side of the brain, was, in the ordinary course of nature sufficient to cause the death of the deceased. Furthermore, in *King vs. Thajudeen*, 6 NLR 16 at page 19, Bonser, J, has held that, "when people cause injuries to another man their intent must be judged by the result of their action".

> "*But it was urged that they did not intend to break the man's rib and therefore they could not be convicted of grievous hurt. No doubt they had not in their mind at the time they struck him their baton and with their fists any definite idea that they were going to break his ribs or any particular rib; but when people cause injuries to a man, their intent must be judged by the result of their action. They must be deemed in law to have intended what they did".*
>
> [*vide King vs. Thajudeen* 6 NLR 16]

23. In light of medical evidence and legal precedent, it can be inferred that the appellant intended to inflict the injury upon the deceased which was, in the ordinary course of nature, sufficient to cause her death.

24. While the learned High Court Judge has not explicitly stated this conclusion in so many words, he has thoroughly referred to the injuries inflicted on the deceased. He has also meticulously examined the medical evidence elicited at the trial and established a clear connection between the injuries and the deceased's death. Consequently, it can be understood that the learned High Court Judge has implicitly concluded that the appellant has committed murder under the third limb of section 294 of the Penal Code.

25. The learned Counsel for the appellant has also submitted that the learned High Court Judge has misdirected himself on the facts, specifically in concluding that the appellant attempted to flee upon being accosted by PW03, after the deceased was hospitalized. It has been contended that the testimony merely demonstrates that the appellant turned away, rather than evidencing an attempt to flee.

26. In convicting the appellant, the learned High Court Judge has not relied solely on the solitary circumstance earlier referred to. Rather the learned High Court Judge has assessed the totality of the evidence on record and found the deceased's declaration to PW01 was consistent with other independent circumstances. Taken together those circumstances have

lent assurance to the reliability of the deceased's declaration and justified the Court's reliance on it.

27. Having considered the matters discussed above, the Court concludes that neither the omission nor the misdirection has occasioned a failure of justice.

Section 436 of the Code of Criminal Procedure Act No.15 of 1979 (as amended) provides,

> *"Subject to the provisions herein before contained any judgment passed by a Court of competent jurisdiction shall not be reversed or altered on appeal or revision on account-*
>
> *(a) of any error, omission, or irregularity in the complaint, summons, warrant, charge, judgment, summing up, or other proceedings before or during trial or in any inquiry or other proceedings under this Code; or*
>
> *(b) of the want of any sanction required by section 135, unless such error, omission, irregularity, or want has occasioned a failure of justice.*

28. Further, the deceased's injuries have been confined solely to her face and head. Notably, no injuries have been observed on her limbs or hip. It is a recognized observation that falls commonly result in injuries to a person's limbs and/or, hip area. Therefore, the absence of such typical fall related trauma to the limbs and hip, coupled with exclusive facial and head injuries allows a Court to infer that the deceased's injuries were not sustained as a result of a fall.

29. In his dock statement, the appellant has asserted that he was not at home at the time of the incident in question but rather was in town. However, it is noteworthy that the appellant has not raised such plea of alibi after the indictment was served with notice to the Attorney General at any time prior to fourteen days of the commencement of the trial [*vide* section 126A of the Code of Criminal Procedure Act] nor has he raised this alibi during the cross examination of the prosecution witnesses. These omissions raise significant questions about the reliability of his claim. Furthermore, the appellant has failed to provide any explanation regarding his activities in town, for the four hour period surrounding the incident, leaving a gap in his narrative that could cast doubt on his credibility.

30. In *Gunasiri and Two Others vs. Republic of Sri Lanka* [2009] 1 SLR 39, Sisira De Abrew, J, has held that,

> *"It is rule of essential justice that whenever the opponent has declined to avail himself of the opportunity to put his case in cross examination, it must follow that the evidence tendered on that issue ought to be accepted. The failure to suggest the defense of alibi to the prosecution witness, who implicated the accused, indicates that it was a false one."*

31. The learned High Court Judge has given particular attention to these discrepancies when evaluating the appellant's dock statement. The learned High Court Judge has considered the statement in a holistic manner taking into account not only the contents of the appellant's case, but also the context, and its implications. He has integrated the alibi alongside the prosecution's testimonies and evidence. However, despite

the appellant's assertions, the learned High Court Judge has found the provided explanation unsatisfactory and lacking in substantiation.

32. Ultimately because of these concerns, regarding the appellant's credibility and the implausibility of his alibi, the learned High Court Judge has not been inclined to give weight to his narrative. The learned High Court Judge has therefore chosen not to act upon the appellant's statement, reflecting a judicial assessment of the evidence presented.

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

34. Accordingly, I affirm the conviction, the disputed judgment together with the sentencing order and dismiss the appeal.

Appeal is dismissed.

I make no order regarding costs.

35. The Registrar of this Court is directed to send this judgment to the *High Court of Kaluthara* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree

Judge of the Court of Appeal