

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA**

In the matter of an Appeal filed under Section 15(b) of the Judicature Act No.2 of 1987, read with Section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

Democratic Socialist Republic of Sri Lanka

**Complainant**

Court of Appeal Case No:

**CA/HCC/0231/2023**

High Court of Colombo Case No:

**HC 1353/2019**

**Vs**

Dinuka Gangabada Arachchi

**Accused**

**AND NOW BETWEEN**

Dinuka Gangabada Arachchi

**Accused – Appellant**

**Vs**

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

**Complainant - Respondent**

Before : **P. Kumararatnam, J.**  
**Pradeep Hettiarachchi, J.**

Counsel : Nalinda Indratissa, PC, with Kasun Sarathchandra for the Accused –  
Appellant.  
: Maheshika Silva, D.S.G for the Respondent.

Argued on : 24.02.2026

Decided on : 04.06.2026

**Pradeep Hettiarachchi, J**

### **Judgment**

1. The Accused-Appellant (hereinafter referred to as “the Appellant”) was indicted before the High Court of Colombo on a count of murder, an offence punishable under Section 296 of the Penal Code. The trial was conducted before the Learned High Court Judge of Colombo without a jury.
2. At the conclusion of the trial, the Appellant was found guilty on the said count and was accordingly convicted and sentenced to death by the Learned High Court Judge. It is against the said conviction and sentence that the Appellant has preferred the present appeal.
3. The Appellant relies on four main grounds of appeal, namely;
  - a. The High Court Judge has failed to consider the contradictions in the evidence of PW1, PW4, and PW8.
  - b. The High Court Judge brought in a name that was neither mentioned in the first information nor led in evidence.

- c. The High Court Judge erroneously placed the burden on the defence to explain the discrepancy relating to the bloodstain depicted in the sketch.
  - d. The High Court Judge has failed to draw the presumption under Section 114(f) of the Evidence Ordinance against the prosecution for its failure to mark sketches D2 and D4.
4. I shall now consider the first ground of appeal, wherein the Appellant contended that the Learned Trial Judge failed to consider contradictions in the evidence of PW1, PW4, and PW8.
5. At the trial before the High Court, the prosecution primarily relied on the evidence of PW1, Suranga Lakmal, the sole eyewitness to the incident. His evidence may be briefly summarized as follows;
6. PW1 was a cousin of the deceased. The deceased was engaged in the cement block business and maintained business premises on Gothami Road and at Wallampitiya.
7. On the day of the incident, PW1 left his residence in his lorry from Gothami Road to take an order of cement blocks towards Wellewatta. At approximately 8.15 a.m. to 8.30 a.m., while travelling along Gothami Road, he observed, through the windscreen of his vehicle, the deceased and the Appellant engaged in an argument. PW1 further testified that there was a three-wheeler stand near the scene of the incident, which served as the main landmark. He also stated that the deceased and the Appellant were brothers.
8. As PW1 proceeded towards the scene of the incident, he observed the Appellant remove a knife from his waist and stab the deceased on the right side of his back. PW1 testified that he witnessed the incident from a distance of approximately 20 feet from his vehicle. Thereafter, having stabbed the deceased, the Appellant fled the scene on his Scotty motorcycle towards Wellewatta.
9. Then, PW1 further testified that, upon sustaining the injury, the deceased fell to the ground and did not move thereafter. Subsequently, PW1 arranged for the deceased to be transported to the hospital in a three-wheeler. According to PW1, while proceeding to the hospital, the deceased did not speak to him. PW1 further stated that the deceased

was admitted to the hospital at approximately 9.15 a.m. to 10.00 a.m., following which he made a statement to the Wallampitiya Police regarding the incident.

10. PW1, in his evidence, testified that there had been a disagreement between the deceased and the Appellant for a long period. And that the Appellant had not attended the funeral of the deceased.
11. During the cross-examination, PW1 was questioned at length regarding the side of the road on which the alleged incident had taken place, with the defence attempting to suggest that PW1 had not in fact witnessed the incident and had arrived at the scene only after the occurrence of the incident.
12. In this regard, PW1 testified that the incident had taken place on the left side of the road, while he was proceeding towards Wellewatta from Gothami Road.

“ප්‍ර: ඔය සිද්ධිය වුණා කියලා ඔබතුම කියන්නේ වම් පැත්තේද දකුණු පැත්තේද?”

උ: වම් පැත්තේ.

ප්‍ර: ගෝතමී පාරේ ඉදල වෙලේවත්ත පැත්තට යනකොට වම් පැත්තේ තමයි සිද්ධිය වුනේ?

උ: ඔව්.” (vide page 62 of the Appeal Brief)

13. Thereafter, the defence questioned PW1 regarding the location of the house belonging to one Kalyanawathi, which was suggested to be situated on the right side of the road. In response, PW1 stated that the said house was also situated on the left side of the road.

“ප්‍ර: දැන් කලානිවෙතේ ගේ තියෙන්නේ දකුණු පත්තෙතේ?”

උ: වම් පැත්තේ. ඔව් ගෝතමී පාරේ තියෙන්නේ වම් පැත්තේ.” (vide page 67 of the Appeal Brief)

14. Furthermore, PW1 firmly maintained that the deceased did not walk anywhere after sustaining the injury.

“ප්‍ර: මහත්මයා දන්නවද ඔබතුමා කියන හැටියට යම් තැනක අනුනානම් එනනම වැටුනා. වෙන කොහෙවත් ගියේ නැහැනේ තුවලකරයා?  
උ: නැහැ එනනමයි.” (vide page 71 of the Appeal Brief)

15. Then, considering the evidence of PW4, the chief investigating officer, he testified to having received the first information regarding the alleged incident on 26.08.2016 at approximately 10.08 a.m. through a telephone call. According to the said information, the deceased had sustained a stab injury inflicted with a knife. Thereafter, PW4 proceeded to commence investigations into the incident. PW4 further testified that he arrived at the scene of the incident at about 12.30 p.m.

16. PW4 further testified that the alleged incident had taken place near the Gothami road, and that three bloodstains were observed on the ground near the junction where the Gothami Road intersected with the main road. Following his observations at the scene, PW4 testified that he commenced a search for the accused, identified in the first information as Sudu *alias* Dhanuka.

17. During the cross-examination, PW4 was questioned regarding an affidavit filed by him before the Court; the defence contended that the name of Dhanuka had not been mentioned therein.

18. The defence further suggested to the witness that the name of Dhanuka had not been mentioned in the investigation notes either, and that such a name had not been disclosed to the Police at the initial stage of the investigation, but had only emerged subsequently. In response, PW4 stated that, at the commencement of the investigation, he had received only the name of Sudu.

19. Thereafter, the defence marked a sketch prepared by PW4 as D2, wherein three bloodstains were marked as X1, 2, and 3. According to PW4, X1 represented the place where the stabbing had occurred, whilst 2 and 3 denoted locations where minor bloodstains were scattered.

20. During the cross-examination, PW4 was questioned as to how he determined that X1 was the location where the stabbing had taken place. In response, PW4 stated that, having regard to the large appearance of the said bloodstain, he concluded that it was the place where the stabbing had occurred. However, PW4 further admitted that he had arrived at such a conclusion on his own, without any statement or confirmation from any witnesses.

“ප්‍ර: එතොකොට ලේ පැල්ලම් තියෙන තැන් තුනක් තිබුණා. ඔබතුමා තීරණය කළා මේක මුලින්ම ඇනපු තැන කියලා අංක 1 යොදන්න තීරණය කලේ ඔබතුමා?

උ: එසේය ගරු මැතිතුමනි.

ප්‍ර: ඒ වන විට කිසිම සක්සිකරුවෙක් පෙන්වා සිටියේ නැහැ මෙම ස්ථානයේ තමයි මෙම අපරාධය සිද්ද වුනේ කියලා?

උ: ගරු උතුමාණනි එම ස්ථානය මා විසින් විමර්ශනය කිරීමේදී කිසිදු සාක්ෂියක් ලැබී තුබුණේ නැහැ උතුමාණනි.” (vide page 99 of the Appeal Brief)

21. Then, PW8 was called to testify on behalf of the prosecution. According to PW8, the SOCO officer had received information regarding the alleged incident from the OIC of the Wallampitiya Police Station by way of a telephone call. Subsequently, PW8 proceeded to the place of the incident together with his team and the necessary equipment.

22. According to the evidence of PW8, the alleged incident had taken place on the right side of the road, while proceeding to Wellewatta from Gothami Road. In this regard, PW8 testified as follows;

“ප්‍ර: දැන් මහත්මයා එම ස්ථානයට ගියායින් පස්සේ සිදු කරපු නිරීක්ෂණ මොනවද?

උ: එම අපරාධය සිදු වෙලා තියෙන්නේ ගෝතමී පාරේ ඉදන් වෙලේවත්ත දිසාවට ගමන් කරන ප්‍රධාන මාර්ගයේ. එම මාර්ගයේ එම ප්‍රදේශයට කියන්නේ කැලණි නදී ගම ගෙවල් සිය පළමු පියවර කියලා එම ප්‍රදේශය හදුන්වන්නේ. එම අපරාධය වෙලා තියෙන්නේ එහි වම් පස පිහිටලා තියෙනවා ඇඩම් ආයතනයක් වන කන්ටේනර් බහාලුම් අංගනයක්. ඊට විරුද්ධ පැත්තට අතුරු පාරක්. ඒ අතුරු පර ආරම්භය තමයි එම අපරාධය සිදු වෙලා තියෙන්නේ.” (vide pages 177-118 of the Appeal Brief)

23. PW8 further testified that the house belonging to the said Kalyanawathi was also situated on the left side of the road. In this regard, PW8 testified as follows;

“ප්‍ර: ගරු අධිකරණයට සඳහන් කරන්න පුලුවන්ද මොනවද කරපු නිරීක්ෂණ කියලා?  
 උ: එම ස්ථානයට ගමන් කරන කොට මම දැක්කේ අතුරු පර හදල තිබුනේ ඉන්ටලොග්  
 අල්ලලා. ප්‍රධාන පාර තර පාරක්. මේ ප්‍රධාන පාරත් අතුරු පාරත් සම්බන්ද වෙන දකුණු  
 පැත්ත කෙලවරේ වැලි තීරුව මත රුධිර පැල්ලමක් තිබුණා. ඊට අමතරව පෙර සඳහන්  
 කළා දකුණු පැත්තට ඇති අතුරු පාරේ පටන් ගැනීම ආසන්නයේම වම් පස තිබෙනවා  
 කලානිවනි කියලා තනන්නියෙක්ගේ අංක 30 දරන නිවාස. ඒ නිවාස ඉදිරිපිට කුඩා  
 ප්‍රමාණයේ රුධිර පැල්ලම් නිරීක්ෂණය කළා.” (vide page 118 of the Appeal Brief)

24. The defence marked the sketch prepared by PW 8 as D4, wherein three bloodstains had been marked. According to the measurements recorded therein, the distance between the first bloodstain and the second bloodstain was 480cm.

25. Although no contradictions and omissions were formally marked in the evidence of PW1 and the investigating officer, there appear to be certain inconsistencies in their testimonies with regard to the side on which the alleged incident occurred, as well as the location of the bloodstains.

26. The defence contended that PW1 testified that the alleged incident had taken place on the left side of the road, whereas PW8 stated that the incident had occurred on the right side of the road. Therefore, the defence contended that, in view of this inconsistency regarding the side on which the incident was alleged to have occurred, it could be inferred that PW1 had not actually witnessed the incident.

27. It is evident that PW1 was cross-examined on the location of the incident in a rather general and imprecise manner, without any clear reference to the specific roads or precise directions in question.

28. It is significant to note that, upon further questioning, PW8 also testified that the house belonging to the said Kalyanawathi was situated on the left side of the road, a position that was similarly affirmed by PW1. In the circumstances, it appears that PW1 may

have been in some confusion regarding the precise side of the road on which the incident occurred. However, such a discrepancy, when considered in the totality of the evidence, does not go to the root of the prosecution's case or materially undermine the credibility of PW1's testimony, particularly in view of the consistency of the core narrative regarding the occurrence of the assault and the presence of bloodstains at the scene as corroborated by the investigating officers.

29. Clearly, PW1 identified and described the location with reference to Kalyanawathie's house. Therefore, his evidence is consistent with D4, which indicates that blood stains were found in front of Kalyanawathie's house. PW1 testified as follows:

*“ඉ: දැන් කලානවතියගේ ගේ තියෙනේන් දකුණු පත්තෙනේ?”*

*උ: වම් පැත්තේ. ඔව් ගෝතමී පාරේ තියෙනේන් වම් පැත්තේ.”* (vide page 67 of the Appeal Brief)

30. It is significant to note that, according to the observations made by PW8, the small bloodstains marked as 2 and 3 were found scattered in front of the house belonging to Kalyanawathi, which was situated on the left side of the road. This position was further corroborated by the evidence of PW1, who, during cross-examination, unequivocally stated that the house of Kalyanawathi was located on the left side of the road.

31. On the other hand, the sketch prepared by PW4 indicated that the large bloodstain was situated on the right side of the road, which PW4 presumed to be the place where the actual stabbing had occurred.

32. However, in my view, the sketch prepared by PW4 carries less probative value, as it was prepared primarily on the basis of his own knowledge and assumptions, rather than upon direct eyewitness account or other cogent evidence.

33. In that context, although the evidence of PW1 regarding the exact side of the road on which the stabbing occurred appears somewhat confused, such inconsistency must be evaluated in light of the totality of the evidence, particularly the evidence of PW8. When so considered, it is apparent that PW1 remains a credible and reliable witness whose testimony is sufficient to sustain the conviction against the Appellant. Minor

discrepancies relating to the precise location of the incident do not, in the circumstances of this case, affect the substance or reliability of his evidence.

34. Furthermore, it is evident from the evidence led at trial that, immediately after the incident, the deceased was placed in a three-wheeler and transported to the hospital. In such circumstances. Bloodstains could naturally have been displaced or spread over different locations. Therefore, it would not be safe to determine the exact place where the stabbing occurred solely on the basis of the location of the bloodstains observed at the scene. Accordingly, the confusion on the part of PW1 regarding the side of the road on which the attack took place does not undermine the credibility of his testimony.
35. Furthermore, PW1's evidence was corroborated by the testimony of the Judicial Medical Officer who conducted the post-mortem examination of the deceased, particularly with regard to the side from which the deceased had been stabbed and the posture of the body at the time of the assault. More importantly, the medical evidence establishes that the deceased could have moved after sustaining the injuries.
36. Moreover, the defence raised issues relating to the location of the bloodstains, while PW8 testified that the distance between the first and second bloodstains was 480cm. In contrast, PW1 maintained that, upon sustaining the injury, the deceased collapsed at the very spot and did not move thereafter.
37. In this regard, since the evidence also indicates that the deceased was subsequently transported to the hospital in a three-wheeler, it is reasonably possible that the additional bloodstains could have been caused either at the point of the stabbing or during the process of moving the deceased into the vehicle. It is further relevant that PW4, in his evidence, stated that he inferred the primary point of attack solely on the basis of the bloodstain pattern, and that the sketch was prepared based on his own assessment rather than on any direct identification or confirmation by witnesses.
38. Therefore, having carefully considered the evidence of PW1, PW4, and PW8, it is evident that the alleged inconsistencies relied upon by the defence relate primarily to peripheral aspects such as the precise side of the road and the interpretation of

bloodstain locations at the scene. These matters, when examined in their proper context, do not amount to material contradictions going to the root of the prosecution's case.

39. In assessing the nature and significance of contradictions and omissions, the following authorities provide valuable guidance.

40. In *The Attorney General vs. Sandanam Pitchai Mary Theresa* [2011] 2 SLR 292, the court held that:

*“Whilst internal contradictions or discrepancies would ordinarily affect the trustworthiness of the witness statement, it is well established that the Court must exercise its judgment on the nature of the inconsistency or contradiction and whether they are true material to the facts in issue.”*

41. In the case of *Mohamed Niyas Nauffer and others vs. Attorney General* (SC. 01/2006 decided on 08/12/2006), the Court observed that;

*“When faced with contradictions in a witness's testimonial, the Court must bear in mind the nature and significance of the contradictions, viewed in light of the whole of the evidence given by the witness.”*

42. In *State of Rajasthan vs. Smt. Kalki & Anr.*, AIR 1981 SC 1390, while dealing with this issue, the Supreme Court observed as under:

*“In the depositions of witnesses, there are always normal discrepancies, however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.”*

43. *“It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, may not prompt the Court to reject the evidence in its entirety. “Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions*

*or contradictions.*” As held by the Supreme Court of India in ***Bhajan Singh alias Harbhajan Singh & Ors. v. State of Haryana, 2011 (7) SCC 421.***

44. Accordingly, the contention that the Learned High Court Judge failed to consider contradiction in the evidence of PW1 and the investigating officer is without merit, as no material contradictions capable of affecting the reliability of the prosecution’s case have been established.
45. I shall now proceed to consider the second ground of appeal, wherein it is contended that the High Court Judge brought in a name that was neither mentioned in the first information nor led in evidence.
46. In this regard, the evidence of PW4 reveals that he received the first information regarding the alleged incident through a telephone call, wherein it was disclosed that the deceased had sustained a stab injury caused by a knife. PW4 thereafter, on the basis of the first information, initiated a search for a suspect referred to therein as “Suda” *alias* “Dhanuka.”
47. Further, it is evident that the affidavit filed by PW4 had not been referred to the name of “Dhanuka.” And that name had not been recorded in the initial investigation notes and had not been disclosed at the inception of the investigation, but had allegedly emerged at a later stage.
48. PW4 clarified that at the commencement of the investigation, he had received only the name “Suda.” However, he further clarified in his evidence that the name of the Appellant was subsequently recorded in his investigation notes as the inquiry.

“ප්‍ර: ඔබතුමාගේ සටහන් යොදල ඉවර වෙද්දී 2016.08.26 වෙනිදා රාත්‍රිය වෙනකොටත් ධනුක කියලා නමක් ඔබතුමාගේ කිසිම සටහනක නැහැ? සුදු කියලා නමක් තමයි තියෙන්නේ?”

උ: එක තැනක වගලත්තරකරු ධනුක ගඟබඩදාරවිච්චි සොයා ගියා කියලා මම සටහන් කරලා තියෙනවා ගරු ස්වාමීනි.

ප්‍ර: ඒ කවද්දේ?

උ: එදිනම ගරු මැතිතුමනි.” (vide page 102 of the Appeal Brief)

49. In these circumstances, it is apparent that the reference to the Appellant was not introduced extraneously by the Learned High Court Judge, but is traceable to the evidence of PW4 himself during the course of the investigation. The contention that an unsupported name was brought in by the Court is therefore misconceived, as the record demonstrates that the identification of the suspect formed part of the investigative narrative disclosed in evidence.
50. I shall now consider the third ground of appeal, wherein it is contended that the Learned High Court Judge erroneously placed the burden on the defence to explain the discrepancy relating to the bloodstains depicted in the sketch.
51. In this regard, it is significant to note that, by the time the police arrived at the scene of the incident, the deceased had already been removed from the location and transported to the hospital. Therefore, nobody was present at the scene when the observations relating to the bloodstains were made.
52. The Learned Trial Judge has correctly observed that the proper manner of clarifying the matters relating to the location and distribution of the bloodstains would have been through a detailed cross-examination of PW1, who was the eyewitness to the alleged incident and who had also participated in transporting the deceased to the hospital. However, it is apparent from the record that the defence neither specifically questioned PW1 regarding the possibility of bloodstains being caused during the transport of the deceased in the three-wheeler nor challenged the prosecution’s case on the basis that the bloodstains depicted in the sketch may have arisen subsequent to the actual attack.
53. Furthermore, the evidence of PW4 established that the markings relating to the bloodstains in the sketch were based substantially on his own observations and deductions. PW4 himself admitted that he inferred the location of the attack on the basis of the appearance and the position of the bloodstain, without any direct confirmation from witnesses. In such circumstances, the evidentiary value of the sketch remains largely circumstantial in nature and cannot outweigh the direct testimony of an eyewitness.

54. Accordingly, it appears that the Learned Trial Judge did not improperly shift the burden of proof onto the defence. Rather, the Learned Trial Judge correctly emphasized that, if the defence intended to rely on discrepancies relating to the bloodstains so as to create a reasonable doubt in the prosecution's case, it was incumbent upon the defence to properly challenge and elicit such matters during cross-examination. Therefore, I find no merit in the contention that the Learned High Court Judge erroneously placed the burden of proof upon the defence.
55. Finally, another ground of appeal argued by the Appellant is that the High Court Judge has failed to draw the presumption under Section 114(f) of the Evidence Ordinance against the prosecution for its failure to mark sketches D2 and D4.
56. The Appellant contended that, despite the availability of two sketches prepared by PW4 and PW8 in evidence, the prosecution failed to produce the same in evidence, and therefore, the Learned Trial Judge ought to have drawn an adverse inference against the prosecution under Section 114(f) of the Evidence Ordinance.
57. PW4, who initially visited the scene as the chief investigating officer, prepared the sketch marked as D2 substantially on the basis of his own observations and deductions, rather than upon any direct and cogent account provided by any witnesses. Thereafter, PW8, in his capacity as the SOCO officer, visited the crime scene and prepared the sketch marked as D4, which included the measurements relating to the bloodstains observed at the location. However, it is significant to note that neither of those sketches conclusively establishes whether the bloodstains had been caused during the actual attack or subsequently during the transportation of the deceased to the three-wheeler.
58. Furthermore, the evidence revealed that both PW4 and PW8 visited the scene only after the deceased had already been removed and transported to the hospital. Consequently, neither officer had the opportunity to observe the original condition of the scene immediately after the occurrence of the incident. In such circumstances, the contents of the sketches, particularly with regard to the location and distribution of the bloodstains, remain legally inferential and circumstantial in nature.

59. Therefore, in the absence of any cogent material demonstrating that the non-production of those sketches caused prejudice to the defence or that the said sketches contained material contradictions affecting the substratum of the prosecution's case, no adverse inference can reasonably be drawn against the prosecution under Section 114(f) of the Evidence Ordinance. On the contrary, the direct eyewitness testimony available before the Court carries greater probative value than the subsequent observations and deductions of the investigating officers regarding the bloodstains at the scene.
60. Accordingly, in the circumstances of this case, the failure of the prosecution to produce the said two sketches does not justify the drawing of an adverse inference under Section 114(f) of the Evidence Ordinance, nor does it create a reasonable doubt sufficient to undermine the prosecution's case.
61. Hence, the failure to mark those sketches in evidence has not, in my opinion, caused any prejudice to the Appellant.
62. Upon consideration of the foregoing analysis of law and facts, I find no merit in the arguments advanced on behalf of the Appellant. Accordingly, there is no basis to interfere with the judgment of the Learned High Court Judge, and the conviction and the sentence are affirmed. Accordingly, the appeal is dismissed.

**Judge of the Court of Appeal**

**P. Kumararatnam, J**

I agree

**Judge of the Court of Appeal**