

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an Appeal in terms of 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/0205/2013

High Court of Panadura
Case No: **1711/2003**

Vs

Macklinkan Fernando *alias* Robin

Accused

AND NOW BETWEEN

Macklinkan Fernando *alias* Robin

Accused -Appellant

Vs

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

Complainant-Respondent

Before : **P. Kumararatnam, J.**
Pradeep Hettiarachchi, J.
Counsel : Indika Mallawarachchy with K. Abeyratne Dias for the Accused-
Appellant
: Azard Navai, A.S.G for the Complainant-Respondent
Argued on : 03.06.2026
Decided on : 06.08.2026

Pradeep Hettiarachchi, J

Judgment

1. The Accused-Appellant (hereinafter referred to as “the Appellant”) was indicted before the High Court of Panadura on the count of murder of one Deepa Dilani Wellala, an offence punishable under Section 296 of the Penal Code.
2. Upon the election made by the Appellant for a trial without a jury, the trial against him commenced and proceeded before the Learned Judge of the High Court of Panadura. During the trial, the prosecution led evidence of several lay witnesses as well as of official witnesses, including that of two Judicial Medical Officers and a Government Analyst.
3. When the Trial Court called for the defence, the Appellant made a statement from the dock.
4. In delivering his judgment, the Learned High Court Judge convicted the Appellant of murder, and the Appellant was accordingly sentenced to death.

5. It is against the said conviction and sentence that the Appellant has preferred the present appeal.
6. The prosecution's case was entirely based on circumstantial evidence. The principal contention advanced by the Appellant is that the circumstantial evidence adduced at the trial does not give rise to the only irresistible inference of the Appellant's guilt and, therefore, falls short of the standard required to sustain a conviction.
7. Since the prosecution case is founded entirely on circumstantial evidence, it is necessary to highlight the relevant items of evidence that were presented by the prosecution before the Trial Court.
8. The alleged incident occurred on 21.05.1992 at the matrimonial home of the deceased. The deceased was found burnt to death inside a motor vehicle belonging to her husband, with her body discovered on the driver's seat. At the initial stage, the death was treated as having resulted from an accidental fire, and the body was accordingly buried. Subsequently, upon a complaint lodged by the deceased's father, the CID commenced an investigation into the incident. Pursuant to that investigation, the body of the deceased was exhumed, and further investigations were carried out.
9. The deceased was the wife of the accused, and they resided together at the matrimonial home. At the time of the incident, the deceased, the accused, and their son were present at the house. The motor vehicle in which the deceased was found had been parked in the garage for repairs and was ordinarily used by the accused.
10. Since there were no eyewitnesses to the commission of the offence, the prosecution relied entirely on circumstantial evidence to prove the charge against the Appellant.
11. Accordingly, the Court must consider whether the evidence adduced by the prosecution is sufficient to lead the only reasonable and irresistible inference of the Appellant's guilt, and whether such evidence is inconsistent with any other reasonable inference consistent with the Appellant's innocence.

12. The Appellant's principal contention is that the circumstantial evidence led by the prosecution does not give rise to the only reasonable and irresistible inference of his guilt; it would be appropriate to examine the legal principles applicable to the evaluation of circumstantial evidence in criminal trials.

13. In **King vs. Gunarathne**, 47 NLR 145, it was held that;

"In a case of circumstantial evidence, the facts given in evidence may, taken cumulatively, be sufficient to rebut the presumption of innocence, although each fact, when taken separately, may be a circumstance only of suspicion.

The jury is entitled to draw inferences unfavorable to an accused where he is not called to establish an innocent explanation of evidence given by the prosecution, which, without such explanation, tells for his guilt."

14. In **Don Sunny vs. Attorney General [1998] (2) Sri. L.R. 1**, it was held that;

1. When a charge is sought to be proved by circumstantial evidence the proved items of circumstantial evidence when taken together must irresistibly point towards the only inference that the accused committed the offence.

On a consideration of all the evidence the only inference that can be arrived at should be consistent with the guilt of the accused only.

2. If on a consideration of the items of circumstantial evidence if an inference can be drawn which is consistent with the innocence of the accused, then one cannot say that the charges have been proved beyond reasonable doubt.

3. If upon a consideration of the proved items of circumstantial evidence if the only inference that can be drawn is that the accused committed the offence then they can be found guilty.

The prosecution must prove that no one else other than the accused had the opportunity of committing the offence, the accused can be found guilty only and only if the proved items of circumstantial evidence is consistent with their guilt and inconsistent with their innocence.

15. In **Krishantha De Silva vs. The Attorney General [2003] (1) Sri. L.R, 162**, it was held inter alia that;

“Circumstantial evidence can be acted upon only if from the circumstances relied upon the only reasonable inference to draw is the inference of guilt. If the circumstances are consistent both with guilt and with innocence then the case is not proved on circumstantial evidence.”

Per Edirisuriya, J.

“The hypothesis of innocence must be excluded by the circumstance relied upon and the circumstances must point to one conclusion alone, i.e. the guilt of the accused”

16. In **Premawansha vs. Attorney General (2009) 2 Sri. L.R. 205**, it was held that;

“In a case of circumstantial evidence if an inference of guilt is to be drawn, such an inference must be the one and only irresistible and inescapable conclusion that the accused committed the offence.”

17. When considering a case founded on circumstantial evidence, the Court must bear in mind that the prosecution is required to prove beyond reasonable doubt that the circumstances established at trial point precisely to the guilt of the accused. The circumstantial evidence must be consistent only with the hypothesis of guilt and inconsistent with any other reasonable hypothesis, including that of innocence.

18. At this point, I wish to set out the rules outlined in the case of **Junaiden Mohamed Haaris vs. Hon. Attorney General (SC Appeal 118-2017)** decided on 9.11.2018 by Justice Aluwihare, which are as follows;

“1) The inference sought to be drawn must be consistent with all the proved facts, if it is not, then the inference cannot be drawn.

2) The proved facts should be such that they exclude every reasonable inference from them, save the one to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct (per

Watermeyer J. in R v Blom 1939 A.D.188). The rule regarding the exclusion of every hypothesis of innocence before drawing the inference of guilt was laid down way back in 1838 in the case of R vs Hodges 1838 2 Lew, cc.227). The circumstances must be such as to produce moral certainty to the exclusion of every reasonable doubt.” In the same judgment further reference has been made to the definition of circumstantial evidence in the book by E. R. S. R. Coomarswamy “The Law of Evidence” where it has stated as follows, “The chain or strand of proved facts and circumstances must be so complete that no link in it is missing. If any vital factor which is necessary to make the chain or strand complete is missing or has remained unproved, it must be held that the prosecution has failed to establish its case. A vital link should never be inferred.”

19. With these legal principles in mind, I shall proceed to consider the present appeal.
20. PW2, Malathi Perea, was the first witness to testify for the prosecution. She is a sister of the deceased. According to PW2, on the day of the incident, she received a telephone call from the sister of the accused requesting her to come to the deceased’s house, stating that the deceased’s hand had been burnt. The call was received at approximately 9.30 p.m. Upon receiving the call, PW2 proceeded to the deceased’s house together with her husband. When she arrived at the house, several people had gathered there, and police officers were also present.
21. PW2 was informed that the deceased had been taken to the hospital due to burns sustained to her hand. She testified that the members of the accused’s family were not present at the house at that time. However, she observed the accused lying on the floor in a sleeping position. PW2 then inquired from the accused as to the whereabouts of the deceased, but the accused did not disclose any information regarding the death of the deceased. Subsequently, PW2’s husband informed her that the deceased had already passed away.
22. PW2 further testified that she was informed that the deceased had died after being trapped inside the car when their son had lit a ground spinner (බඹර චක්‍රයක්), which had allegedly caused the fire.

23. Following the death of the deceased, a complaint was made to the CID raising suspicion regarding the circumstances surrounding her death.

24. During the examination-in-chief, it was elicited from PW2 that the relationship between the deceased and the accused was not a harmonious one. PW2 testified that the deceased had expressed certain difficulties relating to her married life, although she did not openly disclose the details of those difficulties. PW2 further testified that the deceased had been facing financial difficulties as well. This evidence suggests that there were issues affecting the matrimonial relationship between the deceased and the accused.

“ප්‍ර: ඔබගේ සහෝදරිය ඔබත් එක්ක ඔවුන්ගේ විවාහ ජීවිතය සම්බන්දයෙන් යම්යම් කරුණු ප්‍රකාශ කර තියෙනවද?

උ: එහෙම එය කියන්නේ නැහැ. මොනවත් ඇහුවට කියන්නේ නැහැ. කෙලින්ම උත්තර දෙන්නේ නැහැ. අපිට ජේනවා එය දුකින් ඉන්නවා කියලා. මම මගේ වුවමනාවට කර ගත්තු නිසා මම ඉවසනවා කියලා කියනවා.

ප්‍ර: ඇය දුකින් ඉන්නවා කියලා අදහස් කළේ කුමක්ද?

උ: එයට ආර්ථික ප්‍රශ්න මොනවා හරි තිබුණා.” (at vide page 148 of the Appeal Brief)

25. Further, it was revealed in evidence that the deceased did not know how to drive and did not possess a driving license at any time prior to her death. This circumstance gives rise to a question as to the reason for the deceased being inside the said vehicle at the time of the incident.

“ප්‍ර: ඔබගේ සහෝදරියට රිය පදවීමේ හැකියාවක් තියෙනවද?

උ: බැහැ.

ප්‍ර: කිසියම් හෝ දිනයක ඇය රිය පදවනවා ඔබ දැක තිබෙනවද?

උ: නැහැ.

ප්‍ර: ඇයට රියදුරු බලපත්‍රයක් තියෙනවද?

උ: නැහැ.” (at vide page 171 of the Appeal Brief)

26. The defence marked certain contradictions in the evidence of PW2. It was suggested that, in her statement to the police, PW2 had stated that the accused inquired of her as

to the whereabouts of the deceased. However, during cross-examination, PW2 testified that she did not remember whether the accused had spoken to her at that time. “මා සමග සෙල්ලම් කළ දිලූ කෝ කියා ඇසුවා.” (2D1, marked in evidence at vide page 178 of the Appeal Brief)

27. The defence further highlighted that PW2 stated in her evidence that she did not speak with the mother of the accused. However, in her police statement, PW2 had stated that she was informed by the mother of the accused that the car had caught fire while the son of the deceased was attempting to light firecrackers. “රොබින්ලාගේ අම්මා කිව්වා.” (2D2, marked in evidence at vide page 180 of the Appeal Brief)

28. It is significant to note that the said contradictions marked by the defence do not go to the root of the matter. The said contradictions are minor and relate only to peripheral matters that do not materially affect the reliability of her evidence.

29. The next witness called on behalf of the prosecution was PW3, Ajith Rohana, the brother of the deceased. According to PW3, on the day of the incident, he received information from his cousin sister that the deceased was in a distressed condition at about 11.00 p.m. Upon receiving that information, PW3 informed his parents and other siblings and proceeded to the house of the deceased.

30. When PW3 arrived at the scene, PW2, her husband, several relatives, and police officers were present at the house. PW3 testified that he met the accused inside his room and observed that the accused appeared to be frightened. The persons gathered at the house informed PW3 that the deceased had been taken to the hospital following a burning incident.

31. PW3 further testified that he was subsequently informed that the son of the deceased had ignited a firecracker while the deceased was inside the vehicle, and that the vehicle had caught fire due to petrol contained therein.

32. Further, PW3 testified that the death of the deceased was suspicious in nature. He testified that, considering the age of the deceased’s son, who was only four years old at the time, it was unlikely that the child could have independently ignited a firecracker

in a manner that resulted in the vehicle catching fire. PW3 also stated that the accused had not made any apparent attempt to rescue the deceased from the burning vehicle.

33. PW3 further testified that, following the incident, the accused appeared reluctant to face the family members of the deceased and that his conduct gave rise to suspicion. According to PW3, the subsequent conduct of the accused after the incident appeared inconsistent with the conduct expected of an ordinary person and raised concerns regarding his involvement in the circumstances surrounding the death of the deceased.

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ප්‍ර: එවිටවත් ඇසුරේ නැද්ද මොකද වුණේ කියා?

උ: එයා යම්කිසි දෙයක් සඟවන බව හැගුනා. ඒ නිසා කිසි දෙයක් අහන්න ගියේ නැහැ.” (*at vide page 237 of the Appeal Brief*)

34. The aforesaid circumstances, when considered cumulatively in their proper perspective, provide a strong indication of the involvement of the Appellant in the commission of the said offence. The suspicious circumstances surrounding the death of the deceased, the improbability of the explanation involving the 4-year-old child, and the subsequent conduct of the Appellant after the alleged incident collectively form part of the chain of circumstances pointing towards the guilt of the Appellant. These circumstances are inconsistent with the innocence of the Appellant and exclude the possibility of the involvement of any other person in the commission of the offence.
35. The next witness called on behalf of the prosecution was PW13, George Martinans, who was an employee of the factory owned by the accused. According to PW13, on the day of the incident, he was informed by another employee that the deceased had been trapped inside the vehicle while it was on fire. Upon receiving that information, PW13 proceeded to the scene, where he observed that police officers and several other persons were present.
36. PW13 further testified that, approximately one month prior to the incident, the said vehicle had been damaged after being struck by a lorry. Thereafter, the accused had instructed PW13 to remove the petrol from the vehicle, place a portion of it in a motorcycle, and store the remaining petrol in containers. However, PW13 was unable

to identify the containers in which the petrol had been stored, owing to the lapse of a considerable period of time. Further, the containers produced at the trial had been damaged due to the heat generated by the fire and, therefore, could not be identified by PW13.

37. PW13 testified that, after the vehicle was damaged, it was not used by anyone. He further testified that, following the incident, he observed the body of the deceased inside the vehicle.

38. Another witness called on behalf of the prosecution was PW16, who was also an employee of the factory owned by the accused. PW16 resided in accommodation provided for employees near the factory premises, which was situated within the same premises where the matrimonial home of the accused and the deceased was located.

39. According to PW16, on the day of the incident, he and some of the other employees had gone to a nearby shop when they heard a sound resembling an explosion. Upon returning to the premises, he observed that the vehicle was on fire and that the deceased was inside the vehicle. PW16 further testified that the accused was attempting to extinguish the fire by using a wooden stick. The manner in which the accused attempted to respond to the incident was relied upon as a circumstance requiring consideration, as such conduct appeared unusual in the circumstances.

“ප්‍ර: මොකක්ද කලේ, කොයි වගේද කලේ වතුර හෝ ගෙනත් තිබුනද, දොර අරින්න උත්සාහ කලද, මොකක්ද උත්සාහ කලා කියන්නේ. අයියෝ අයියෝ කිව්වා විතරයිද?”

උ: ලියක් වගේ එකක් අතේ තියා ගෙන කෑ ගහග සිටියා.

ප්‍ර: ලියකින් ගින්නක් නිවන්න පුළුවන්ද?

උ: ඒ වෙලාවේ එහෙම එකක් අතේ තියාගෙන දිව්වේ.” (at vide page 393 of the Appeal Brief)

40. Evidently, there was a tap connected to a hose inside the garage where the vehicle had been parked. If that were so, why did the Appellant not attempt to extinguish the fire by using water instead of striking the vehicle with a stick? This circumstance casts serious doubt on the Appellant's conduct. Had he genuinely intended to put out the

fire, he could easily have used the hose connected to the tap for that purpose. His subsequent conduct further suggests that he had no genuine intention of extinguishing the fire but merely pretended to do so.

41. However, PW16 did not witness the manner in which the vehicle caught fire or the circumstances that led to the fire. It is also significant to note that, in his examination-in-chief, PW16 testified that he was at a nearby shop at the material time. However, during cross-examination, he stated that he was in his room at the relevant time.
42. Although certain inconsistencies were identified in the evidence of PW16 regarding his presence in the room or at a nearby shop at the material time, such contradictions, by themselves, do not provide a basis to infer that the employees were responsible for the commission of the offence in the absence of any further incriminating circumstances connecting them with the incident.
43. With regard to the possibility of the involvement of a third party in the commission of the offence, there is no evidence placed before the Trial Court to suggest that any of the employees residing within the same premises had any motive or reason to commit such an offence. Further, there was no evidence to establish that they had the opportunity to gain access to the matrimonial home or the garage where the vehicle was parked at the material time. The mere fact that the employees were present within the same land does not, by itself, give rise to a reasonable inference of their involvement in the commission of the offence.
44. At the trial before the High Court, the prosecution primarily relied upon the evidence of PW19, the Judicial Medical Officer (JMO), who conducted the second post-mortem examination of the deceased. At the time PW19 conducted the second post-mortem examination, the deceased's body had already been subjected to an earlier post-mortem examination. The second post-mortem examination was conducted after the body was exhumed.
45. According to the testimony of PW19, he observed a diffuse contusion in addition to the injuries recorded during the first post-mortem examination. He identified this as injury No.6, which was situated on the ankle of the right leg of the deceased. Apart

from this injury, PW19 did not observe any other suspicious injuries on the body of the deceased.

46. PW19 further opined that the said injury could have been caused when the leg of the deceased became trapped between the door and the seat of the vehicle.

“ප්‍ර: එම කොටසේ 2 සහ 3 වශයෙන් ඡේද දෙකක් තියෙනවා.

උ: එහෙමයි. මා දක්වා තියෙනවා 2 වැනි ඡේදයේ පහරදීමක් වැනි සාපරාධි ක්‍රියාවකින් ඇති වූ තුවාල නොමැති බව. 3 වැනි ඡේදයේ තියෙනවා දකුණු කකුලේ තැලීම තුවාලයක්. පුද්ගලයෙකුගේ කකුල මිටි එකට සහ දොරට තදින් තදවීමෙන් මෙම තුවාලය වෙන්න පුළුවන්.” (at vide page 303 of the Appeal Brief)

47. PW19 further testified as to the possible manner in which the said diffuse contusion could have been caused as follows;

“ප්‍ර: ඒ තැලීම මොන විදියට ඇතිවිය හැකිද?

උ: පුද්ගලයෙක් වාඩි වෙන කොට කකුල සම්පූර්ණයෙන් ඇතුල් කිරීමට පෙර දොර වැහුවොත් එම තුවාලය කකුලේ ඇති වෙන්න පුළුවන්. ඒ අවස්ථාවේදී කකුල මිටි එකටයි දොරටයි තදින් තදවෙනවා.

ප්‍ර: දකුණු කකුල

උ: එහෙමයි.

ප්‍ර: වාහනයට නැගලා දොරට තද වෙන්න ඇත්තේ ඔය සිද්ධිය වෙන්න පෙරද?

උ: ඔව්.

ප්‍ර: ඔබට මතයක් ඉදිරිපත් කරන්න පුළුවන්ද පුද්ගලයෙක් වහනයෙන් බහින්න යන කොට බහින්න කලින් යම්කිසි කෙනෙක් වහනයෙන් පිටතින් දොර තදින් තද කළහොත් තැලීම සිදු වෙන්න පුළුවන්ද?

උ: පුළුවන්.” (at vide pages 307-308 of the Appeal Brief)

48. The next witness called on behalf of the prosecution was PW4, Muyurial Wellala, the sister-in-law of the deceased. PW4 testified that approximately three days prior to the incident, while she was at the beach with her children, she observed the accused walking along the beach holding hands with another woman.

“ප්‍ර: ඒ ඩිලානි මිය යන්න දවස් කීයකට කලින්ද?

උ: දවස් 3 ක් පමණ ඉරිදාවක. ඉරිදාට තමයි යන්නේ.

.....

ප්‍ර: මහත්මිය ඒ අවස්ථාවේදී විත්තිකරුව දැක්කද?

උ: ඒ අවස්ථාවේදී තවත් කාන්තාවක් සමග අතින් අල්ලාගෙන එනවා දැක්කා.

ප්‍ර: කවුද එම තැනැත්තිය සමග අතින් අල්ලාගෙන ආවේ?

උ: විත්තිකරු.

උ: කොහෙදිද දැක්කේ?

ප්‍ර: වෙරළේ ඇවිදගෙන එනවා දැක්කේ.” (at vide page 322 of the Appeal Brief)

49. PW4 further testified that, after observing this incident, she contacted the deceased and inquired about the whereabouts of the accused. The deceased informed PW4 that the accused had not yet returned home and that he had gone out in connection with his business activities.

“ප්‍ර: සවස 5.30 ට විතර ඩිලානිට කෝල් එකක් දීලා රොබින් කෝ කියාද ඇසුවේ?

උ: ඔව්.

ප්‍ර: ඩිලානි මොකක්ද කියා සිටියේ?

උ: බිස්නස් වැඩකට ගිය බවටත්, තම ගෙදර ආවේ නැති බවටත් කියා සිටියා.” (at vide page 326 of the Appeal Brief)

50. The evidence of PW4 regarding the conduct of the accused and the circumstances prevailing in the matrimonial relationship between the accused and the deceased provides a possible circumstance relevant to the motive for the commission of the offence.

51. It should be noted that in a prosecution presented on items of circumstantial evidence, the evidence relating to a possible motive on the part of the Appellant also assumes a greater significance than in a case presented on direct evidence.

52. This position was explained in *Hethambi Prabakaran alias Kumara vs. Attorney General SC Appeal No. 169/2019*, decided on 30.01.2026, Achala Wengappuli, J., held as follows;

“But in a prosecution presented on the basis of several items of circumstantial evidence and its cumulative effect on the decision to impose of criminal liability on an accused, any evidence that tends to show a motive entertained by the accused becomes an important link in the chain of circumstances that supports the prosecution case.”

“In this context, it is important to inquire in to the question whether the prosecution presented any evidence indicative of a possible motive entertained by the 1st accused as well as the 4th accused, who were last seen in the company of the deceased, to commit the latter’s murder.”

53. In view of those factors, it could be reasonably inferred that the Appellant was motivated to commit the murder of the deceased in order to get rid of her.
54. Accordingly, in the present case, the evidence placed before the Trial Court established circumstances from which a motive on the part of the accused to commit the offence could reasonably be inferred. The evidence relating to the strained matrimonial relationship between the Appellant and the deceased, together with the other surrounding circumstances, including the medical evidence and scientific evidence, forms an integral part of the chain of circumstantial evidence established against the Appellant. The cumulative effect of these circumstances strengthens the inference that the death of the deceased was not the result of an accident or suicide, but was caused by the deliberate act of the Appellant.
55. PW4 further testified that, approximately two to three months prior to the incident, she observed that the deceased was not happy with her married life. According to PW4, from her conversations with the deceased, she understood that the deceased was not living happily with the accused. This evidence indicates the existence of difficulties and disagreements between the deceased and the accused prior to the incident.

“ප්‍ර: විත්තිකරු සහ ඩිලානි කොයි වගේ පවුල් ජීවිතයක් ගත කළ බවටද මහත්මිය දැනගෙන සිටියේ?”

උ: එයා සමග කතා කලාම තේරෙනවා එයා ඒ තරම් සතුටින් ඉන්නේ නැති බවට.

ප්‍ර: කවුද සතුටින් ඉන්නේ නැත්තේ?”

උ: ඩිලානි.

ප්‍ර: ඒ මිය යාමට කොපමණ විතර කාලයකට පෙරද?

උ: මාස දෙක තුනකට පෙර.” (at vide page 327 of the Appeal Brief)

“.....

උ: පොඩි ප්‍රශ්නයක් තියෙනවා. මම කරගත්තු දේවල් නිසා, මම ඔක්කොම විදගෙන ඉන්නවා කියා කිව්වා.” (at vide page 328 of the Appeal Brief)

56. PW4 further testified that, following the incident, the accused was reluctant to face the family members of the deceased. This evidence is relevant to the subsequent conduct of the accused after the incident.

“ප්‍ර: දැන් ඔය මරණයෙන් පස්සේ විත්තිකරු කොහොමද හැසිරුනේ?

උ: එයා හිටියේ බියගලුකමට. එයා දන්නවානේ එයා වැරදි වැඩේ කළේ කියලා. මට හිතෙන විදියට මගේ දැනීමේ හැටියට.

ප්‍ර: බියගලුකමකින් හිටිය කියලා ඔබ අදහස් කරන්නේ මොකක්ද?

උ: කෙලින් මුහුණ දෙන්න බෑ වගේ නිකම් සිටියේ.” (at vide pages 335-336 of the Appeal Brief)

57. Another material witness called on behalf of the prosecution was PW45, JMO, who had conducted the initial post-mortem examination and prepared the first post-mortem report of the deceased.

58. According to the testimony of PW45, in addition to the extensive burn injuries sustained by the deceased, a diffuse contusion was observed on the ankle of her right leg. PW45 opined that the said injury was consistent with a blunt force impact.

“ප්‍ර: එකී පිළිස්සීම සම්බන්ධ තුවාල වලට අමතරව වෛයදතුමා තවත් තුවාල නිරීක්ෂණය කරලද?

උ: එහෙමයි.

ප්‍ර: ඒ කුමන තුවාලද?

උ: දකුණු කකුලේ පහල කොටසේ ඉදිරිපස සහ ඇතුල් පැත්තට වන්නට සමට යටින් වූ තැලුම් තුවාල දක්නට ලැබුන.

.....

ප්‍ර: එම තුවාල මොන ආකාරයෙන්ද ඇති වෙන්නේ?

උ: මොට බලයක් නිසා ඇති වෙන්න පුළුවන්.” (at vide page 426 of the Appeal Brief)

59. PW45 further testified that the said diffuse contusion on the deceased’s right ankle could have been sustained if her leg had become trapped while she was attempting to alight from the vehicle during the fire and the door was then forcibly closed from the outside.

“ප්‍ර: ඒ අනුව වහනයක් තුළදී මෙම සිද්ධිය සිදු වූන නම් දකුණු කකුල තමා නිරීක්ෂණය කර තිබෙන්නේ. එය වහනයෙන් බැසීමේදී හෝ නැගීමේදී මෙවැනි තත්වයක් ඇති වීමට හැකියාවක් තිබෙනවද?

උ: තිබෙනවා.

ප්‍ර: ගිනි ගැනීම ඇතුළු වූ අවත්තවේදී ම එලියට බැසීම සඳහා කකුල එලියට දැමීමෙන් එය සිදු විය හැකිය.” (at vide page 435 of the Appeal Brief)

60. PW45 further opined that the injury was unlikely to have been self-inflicted. Accordingly, PW45 expressed the opinion that the said injury could not have been self-inflicted by the deceased and was consistent with having been inflicted by another person from outside the vehicle.

“ප්‍ර: කාර් එකට නගිද්දී සිදු වූ දෙයක්ද?

උ: දකුණු කකුල එලියට දමා ගෙන සිටියදී මේ ආකාරයේ තුවාලයක් සිදු වන්න පුළුවන් පිටින් කවුරු හෝ දොර වහන්න ඕන.

ප්‍ර: එසේ නම් දොර වහන්න පුළුවන් තත්වයක් තිබුනද?

උ: එළියෙන් කවුරු හෝ දොර තදින් වැසුවොත් මෙය සිදුවෙනවා. ඇතුළු පැත්තෙන් සහ පිට පැත්තෙන් තුවාල තිබුන.

ප්‍ර: කාරයට නගිද්දී සාමාන්‍යයෙන් පුද්ගලයෙකුගේ දකුණු පස කකුල අසුවෙනවා එතොකොට දොර වහන්න පුළුවන්ද?

උ: මොලයට තල්ලු කිරීමට ප්‍රතිකයක් එවනවා.

ප්‍ර: ඒ එක්කම දොර වැසීමේ තත්වයක් සිදු වෙනවද?

උ: සිතන්න බැහැ.” (at vide pages 435-436 of the Appeal Brief)

61. JMO further opined that based on the pattern and distribution of the burn injuries, the deceased was either seated or had crawled onto the seat at the time of the incident. He further expressed the opinion that the fire had most likely originated from the right side of the deceased's body. Moreover, the JMO opined that, having regard to the burn injuries, the fire had most likely originated from the upper part of the vehicle rather than from its lower part.

“ප්‍ර: විනිසුරුතුමිය ප්‍රශ්න කළ ආකාරයට ගින්න ආරම්භවීම සම්බන්ධයෙන් නැවත වතාවක් පැහැදිලි කරන්න පුළුවන් ද?

උ: තුවාල තිබෙන තත්වය අනුව දකුණු පසින් තමයි ගින්න ආරම්භ වීමට වැඩි ප්‍රවණතාවක් තිබෙන්නේ. ගින්න ආරම්භවීම මගින් දැඩි උෂ්ණත්වයක් සහ පිළිස්සීම් ඇති වෙන්නේ. පිළිස්සීම් වැඩිපුර දක්නට ලැබෙන්නේ ශරීරයේ දකුණු පසින්. දකුණු පසින් ගිනි ගැනීමේ හැකියාවක් තිබෙනවා.” (at vide page 431 of the Appeal Brief)

62. During cross-examination, PW45 explained that, having regard to the nature of the burn injuries, the possibility of the death being suicidal was less likely. He opined that, in a case of self-inflicted fire injuries, a greater extent of burns would ordinarily be expected on the lower parts of the body. However, in the present case, the majority of the burn injuries were observed on the upper part of the body of the deceased, particularly on her hands.

“ප්‍ර: යම්කිසි කෙනෙක් දිවි නසා ගැනීමට, තමන්ගේ ශරීරයට තමන් විසින්ම ගිනි තබා ගැනීමේදී යම්කිසි ද්‍රාවණයක් ඇගට වත් කරගෙන ගිනි තිය ගන්නොත් මේ ආකාරයේ තුවාල සිදු විය හැකිද?

උ: සාමාන්‍යයෙන් පෙට්‍රල් වැනි ද්‍රාවණයක් තමයි ගිනි තබා ගැනීමේදී වත් කර ගන්නේ. එසේ වත් කර ගෙන ගිනි තියා ගන්නා නම් ඒ ද්‍රාවණය වැඩිපුර සාන්ද්‍රණය වන නිසා ඉහලට වඩා පහල ප්‍රදේශයට පිළිස්සීමක් දකිනවා.” (at vide page 444 of the Appeal Brief)

63. The JMO explained that there was a lesser possibility of the contusion on the right ankle of the deceased having been caused while she was struggling inside the vehicle after the fire had commenced. He opined that such an injury was unlikely to have occurred due to movements inside the vehicle during the incident.

“ප්‍ර: කකුලේ තුවාලය වාහනය ඇතුළේ දගලීමේදී ඇති වූ තුවාල ද කියලා ඇහුව?
 උ: එසේ වීමට හැකියාව ඉතාම අඩුයි.” (at vide page 453 of the Appeal Brief)

64. The next important witness called on behalf of the prosecution was PW46, Government Analyst. According to the description given by PW46 regarding the items inside the vehicle which had been affected by the fire, the relevant observations were as follows;

“ප්‍ර: එම අභ්‍යන්තරයේ පිළිස්සුනු කොටස් සම්බන්ධයෙන් විස්තර කිරීමට පුළුවන්ද?
 උ: පුළුවන්. ඊට වඩා නිරීක්ෂණය කර තිබෙනවා. එහි ඇතුළත වාහනයේ පිටුපස ආසනය දැවී ගොස් ඇති බව. එම ආසනය තනි ආසනයක්. එම ආසන දෙකෙහි සිරස් කොටස සම්පූර්ණයෙන්ම සහ වාඩිවෙන තිරස් කොටස් අර්ධ ලෙස දැවී තිබෙන බවට පෙනී ගියා. එහි ඉදිරිපස දකුණු සුක්කානාම සහ මීටරය සහිත පැනලය දැවී ඇති බව, පිටුපස සුළං ආවරණයේ විදුරුව නැති බව, ඉදිරිපස සුළං ආවරණයේ විදුරු කොටසක් පමණක් දැවී ඇති බව, එහි ඇතුළත ලෝහමය බිම් තහඩුව නොදැවී තිබුණු බව හා ඒ මත සුන්බුන් වල අඩක් දැවී උණු වී ගිය රතු පාට සහ කහ පාට ප්ලාස්ටික් භාජන දෙකක් පිටුපසද, සුදු පාට ප්ලාස්ටික් භාජනයක් ඉදිරි වම් පසද තිබුන. ඒවායින් පෙට්‍රල් වාෂ්ප වහනය වූ බවට.” (at vide page 674 of the Appeal Brief)

65. According to the observations made by PW46, three plastic containers were found inside the vehicle. One of those containers was placed near the left side front seat, while the other two containers were found near the rear seat of the vehicle.

66. According to PW46, the fire had not originated due to an electrical short circuit or any mechanical defect in the vehicle. Therefore, the possibility of the fire being caused accidentally due to a technical malfunction of the vehicle could be excluded.

67. PW46 further opined that the fire had originated from the right-side back seat of the vehicle.

“ප්‍ර: ඒ කොතනින්ද ගින්න ඇති වී තිබුනේ?
 උ: ඇතුළේ දකුණු පිටුපස ආසනය අසල. පොලව උඩ නොවේ ආසනය අසල.” (at vide page 680 of the Appeal Brief)

68. According to PW46, three cans containing petrol were found inside the vehicle, one positioned near the front seat and the other two positioned near the back seat. PW46 further opined that the can located near the right-side back seat was in an open condition at the time of the incident.

“ප්‍ර: ඔය කෑන් එක හඳුනාගන්නේ පෙට්‍රල් තිබුණු විධියට?

උ: අපි දෙන්න සුවද වහනය කළා. මෙයින් තමා ගින්න ආරම්භ කළා කියා සිටි සීමාවේ තිබුන කෑන් එක. පිටුපස දකුණු පැත්තේ.

ප්‍ර: එතොකොට නිගමනය කරන්නේ එහි පෙට්‍රල් සුවද වහනය වුන. එහි පෙට්‍රල් තිබුන කෑන් එකක් කියල මුඩිය රහිත?

උ: මුඩිය රහිත පෙට්‍රල් තිබුණු කෑන් එකක්.” (at vide page 684 of the Appeal Brief)

69. The manner in which the petrol cans were placed inside the vehicle is also indicative of prior planning. According to the evidence, one can was placed in the front of the vehicle and two in the rear. If, as suggested by the defence, the fuel tank had been emptied for repair, the cans could reasonably have been kept in the boot of the vehicle instead of being distributed at various locations inside it. This circumstance further militates against the defence theory of an accidental fire and supports the conclusion that the incident was not accidental.

70. In view of the evidence of PW46, a question arises as to the reason why the said petrol can was in an open condition at the material time. If the can had remained open for a considerable period, the petrol contained therein would have evaporated. Therefore, the condition of the can gives rise to an inference that it had been opened shortly before the incident.

71. PW46 further opined that the fire had originated from the rear portion of the vehicle. However, according to the medical evidence, the upper front portion of the body of the deceased had sustained extensive burn injuries. PW46 explained that, although the fire originated from the rear of the vehicle, the flames could not have extended beyond the windscreen area, and this could have resulted in the severe burn injuries observed on the upper front portion of the body of the deceased.

72. According to the final conclusion reached by PW46, the fire had commenced due to the introduction of an ignition source inside the vehicle, either intentionally or accidentally, and thereafter spread rapidly throughout the vehicle.

“උ: ආසනය අසල ඕනෑකමින් හෝ අනපසු වීමකින් හෝ ගිනි ප්‍රභවයක් මං එකට භාවිතා කරන්නේ ජවලන ප්‍රභවයක් කියලා. එවැනි ප්‍රභවයක් ඇතුළු වීම නිසා ආරම්භ වී සිටියෙන් වහනය පුර පැතුරුණු එකක් බව පෙනී යනවා.” (at vide page 692 of the Appeal Brief)

73. As stated earlier, the evidence of PW46 was that the fire originated from the rear portion of the vehicle. If the incident is considered from the perspective of a suicidal act, the possibility of the deceased initiating the fire from the rear of the vehicle appears highly unlikely.

74. Further, PW46 observed that, at the time of the incident, all the windows of the vehicle were closed except for the rear right-side window, which was slightly open.

“ප්‍ර: විදුරු කොහොම තියෙන්න ඇතිද?
උ: වැහෙන්න ඇති. නමුත් අපි එකක් එතැනදී නිරීක්ෂණය කලා. දකුණු පැත්තේ පිටි පස්සේ දොරේ විදුරු තරමක් විවෘත වෙලා තියෙන්න අනෙයි කියලා.” (at vide page 693 of the Appeal Brief)

75. This observation is significant when considered together with the opinion of PW46 that the fire originated from the right rear seat of the vehicle. The fact that the rear right-side window was slightly open gives rise to a question as to whether an external source of ignition could have been introduced through that opening while the deceased was inside the vehicle.

76. PW46 further opined that the fire had originated from an area between the bottom portion of the vehicle and the seat. He also observed that there were no signs of fire damage to the ground beneath the vehicle.

77. PW46 firmly stated that the fire had originated from the petrol can placed near the rear portion of the vehicle, which was found in an open condition at the material time.

“ප්‍ර: කැන් එකෙන් තමයි ගින්න ඇති වුනේ. කැන් එක පතුලේ හිටවලා තියෙද්දී කිසියම් ගින්නක් දැල්වීම නිසා ඔය කැන් එක විවෘතව තියෙද්දී කිසියම් ගින්නක් දැල්වීම නිසා තමයි ගින්න අරඹලා තියෙන්නේ කියන එක ගැන කිසිදු සැකයක් නැහැ?
 උ: නැහැ.” (at vide page 696 of the Appeal Brief)

78. PW46 further excluded the possibility that the fire had been caused by a ground spinner (බඹර චක්‍රයක්), which was the explanation advanced by the accused as the cause of the incident.

“ප්‍ර: බඹර චක්‍රයක් කාර් එකේ දොරෙන් ඇතුල් වෙලා පිටිපස්සට ගිය නම් හෝ කාර් එකේ දොර විවෘත වෙලා තිබුන නම් එයයින් මෙම ගිනි ගැනීම සිදු වෙන්න පුළුවන්ද?
 උ: දොර විවෘත වෙලා නැහැ. දොර සිදුරු වෙලන් නැහැ. බඹර චක්‍රයකට ජනේලයෙන් ඇතුල් වෙන්න පුළුවන් කමක් නැහැ. බඹර චක්‍රයක් පොළොවට සමාන්තර පොළොව දිගේ ගිනි පුපුරු දමමින් ගමන් කරන්නේ. බඹර චක්‍රයක් හයි ජම්ප් කරන්නෙන් නැහැ. ලෝන් ජම්ප් කරන්නෙන් නැහැ.” (at vide pages 704-705 of the Appeal Brief)

79. Further, PW46 ruled out the possibility that the deceased had poured petrol on herself and committed suicide. He arrived at this opinion upon considering the condition of the clothes worn by the deceased and the pattern and distribution of the burn injuries sustained by her.

“ප්‍ර: පෙට්‍රල් ඇගට දැමීම නම් එවැනි දැවීමක් සිදුවෙනවද?
 උ: මෙම සාධක ටික ඇදුම් සමග පරීක්ෂ කරන විට ඇදුම් අර්ධ ලෙස දැවී තිබුන.
 ප්‍ර: ඔලුවෙන් වත්කර ගන්නම සම්පූර්ණයෙන්ම පිවිටී යනවද?
 උ: ඔව්.

 ප්‍ර: මේ අයගේ ශරීරයේ පෙට්‍රල් තිබුනේ නැති බවටද කියා සිටින්නේ?
 උ: ඔව්.” (at vide pages 708-709 of the Appeal Brief)

80. PW46 further explained that, having regard to the circumstances surrounding the incident and the physical evidence observed, the possibility of the deceased having committed suicide was highly unlikely.

“ප්‍ර: මරණකරු වාහනයේ ඉදිරිපස අසුනේ වාඩිවෙලා සිටින කොට මරණකරුගේ පිටුපස ආසනයට ආසන්නව තිබු පැ. 05 මුඩිය රහිත පෙට්‍රල් සහිත බෝතල් වලට දැවීම සඳහා ප්‍රභවයක් දැරීමට මරණකරුට හැකියාවක් තියෙනවද?”

උ: නැහැ.

ප්‍ර: කිසිම හැකියාවක් නැහැ?

උ: නැහැ. (at vide page 710 of the Appeal Brief)

ප්‍ර: ඒ පෙට්‍රල් ඇදුමට දා ගන්නා වෙන්ත බැරිද?

උ: එහෙම නම් අර්ධ වශයෙන් පිළිවෙන්නේ නැහැ. කාලයාගේ ඇවෑමෙන් දහනය වන ඕනෑම දෙයක් දහනය ආරම්භ කලාම වැඩි ගෙන යනවා. ඔක්සිජන් ප්‍රතිශතය තිබෙන නිසා.” (at vide page 733 of the Appeal Brief)

81. While assessing the probative strength of the circumstantial evidence relied upon by the prosecution, I am mindful of the oft-cited observations of Pollock C.B. in **Regina v. Exall at 929**, subsequently approved and adopted by Cannon J. in **King v. Gunarathne at 149**, which provide valuable guidance on the manner in which courts should evaluate a chain of circumstantial evidence.

“It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for them, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the rope might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength.”

82. The Supreme Court of India, in the judgment of **Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 166**, laid down a five-point test, which it described as the “panchasheel of the proof of a case based on circumstantial evidence”, which must be satisfied before a conviction is entered against an accused in such a case. Paragraph 153 of the said judgment states: “[A] close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established;

- i. the circumstances from which the conclusion of guilt should be fully established,

- ii. *the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,*
- iii. *the circumstances should be of a conclusive nature and tendency,*
- iv. *they should exclude every possible hypothesis except the one to be proved, and*
- v. *there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”*

83. Upon a consideration of the totality of the evidence adduced by the prosecution, it is apparent that the circumstances established at the trial form a complete and coherent chain of evidence pointing towards the guilt of the Appellant. The medical evidence and the evidence of the Government Analyst exclude the possibility that the fire was caused by a suicidal act or due to any mechanical defect. Further, the explanation advanced by the Appellant that the fire was caused by a ground spinner (බිබර චක්‍රයක්) was rendered highly improbable in light of the scientific evidence placed before the Trial Court.

84. Further, it should be noted that the prosecution evidence clearly ruled out the possibility of an accidental fire, as suggested by the defence. Accordingly, the only reasonable inference that could be drawn is that the deceased was forcibly pushed into the vehicle and the vehicle was deliberately set on fire.

85. The evidence relating to the open petrol can found near the right-side rear seat of the vehicle, the point of origin of the fire, the suspicious contusion injury on the ankle of the deceased which was unlikely to have been self-inflicted, together with the possible motive on the part of the Appellant, constitute significant links in the chain of circumstantial evidence.

86. Moreover, the Appellant's conduct, both prior to and subsequent to the incident, when considered together with the expert evidence, admits of no reasonable inference other

than his guilt. Furthermore, there was no evidence whatsoever to suggest the involvement of any third party in the commission of the offence.

87. When all these factors, that were individually established by different items of circumstantial evidence, are lined up, it is unquestionable that indeed a strong *prima facie* case has been established against the Appellant. Accordingly, it is my view that the prosecution has succeeded in establishing an unbroken chain of circumstantial evidence which leads irresistibly to the conclusion that the Appellant is guilty of the offence of murder beyond a reasonable doubt.

88. It is apparent that the prosecution has established a strong *prima facie* case against the Appellant. In such circumstances, the Appellant was required to provide an explanation capable of addressing the compelling circumstances established against him by the prosecution, rather than merely denying any involvement in the alleged incident.

89. This position has been consistently recognized in a long line of authorities;

90. In *Seetin and Others vs. The Queen (1965) 68 NLR 316*, held as follows;

“[W]here probable proof is brought of a statement of facts tending to criminate the accused, the absence of evidence tending to a contrary conclusion is to be considered though not alone entitled to much weight, because the burden of proof lies on the accuser to make out the whole case by substantive evidence. But when pretty stringent proof of circumstances is produced tending to support the charge, and it is apparent that the accused is so situated that he could offer evidence of all facts and circumstances as they exist, and show, if such was the truth, that the suspicious circumstances can be accounted for consistently with his innocence and he fails to offer such proof, the natural conclusion is that the proof, if produced, instead of rebutting, would tend to sustain the charge.”

91. Accordingly, the expectation of an explanation from an accused, upon a strong *prima facie* case being established against him by the prosecution, in terms of the principle enunciated in the statement of law, what generally termed as *Ellenborough dictum*, is

neither obnoxious to the long-cherished presumption of innocence nor to his fundamental right to a fair trial, guaranteed under Article 13(3) of the Constitution.

92. In the present case, the trial court was correct to apply the *Ellenborough dictum* in relation to the Appellant, as undoubtedly a strong *prima facie* case had been established by the prosecution against him, a factor that justified the expectation of an explanation entertained by that Court.

93. 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