

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

In the matter of an Appeal under Section 331 of the Code of Criminal Procedure Act No. 15 of 1979 read with Section 11 of the High Court (Special Provisions) Act No. 19 of 1990 and Section 14 of the Judicature Act No. 02 of 1978.

Democratic Socialist Republic of Sri Lanka

Complainant

Vs

Court of Appeal Case No:
CA/ HCC/0250/2025

High Court of Negombo
Case No: **431/2014**

Mohammed Majud Mohammed Ramesh

Accused

AND NOW BETWEEN

Mohammed Majud Mohammed Ramesh

Accused -Appellant

Vs

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

Complainant-Respondent

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

Counsel : Hejaaz Hisbullah with Chalana Perera and Uvindu
Kuruwitabandara for the Accused-Appellant

: Akila Dalpatadu SC for the Complainant-Respondent

Argued on : 16.07.2026

Decided on : 02.10.2026

Pradeep Hettiarachchi, J

Judgment

1. The Accused-Appellant (hereinafter referred to as “the Appellant”) was indicted before the High Court of Negombo on the count of the murder of one Ranaweera Arachchige Shriyani Ranaweera, 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 Negombo. During the trial, the prosecution led evidence of several lay witnesses as well as of official witnesses, including that of the Judicial Medical Officer.
3. When the Trial Court called for the defence, the Appellant made a statement from the dock and called a witness to testify on his behalf.
4. In delivering her judgment, the learned High Court Judge convicted the Appellant for a lesser offence of culpable homicide not amounting to murder under Section

297, as the evidence showed that the offence was committed on the basis of a sudden fight between the Appellant and the deceased.

5. Consequently, the Appellant was accordingly sentenced to 15 years' rigorous imprisonment and a fine of Rs. 10,000/-, carrying a default sentence of 6 months' simple imprisonment. Further, the learned High Court Judge ordered the Appellant to pay compensation to the aggrieved party of Rs. 500,000/-, in default of which, one years' simple imprisonment.
6. It is against the said conviction and sentence that the Appellant has preferred the present appeal.
7. 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.
8. 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.
9. The alleged incident occurred on 27.11.2012 at the residence of the deceased, where she was subsequently found dead inside her room. PW1, the elder daughter of the deceased, testified on behalf of the prosecution. According to her evidence, the deceased had been in a relationship with the Appellant for approximately one and half years. However, PW1 testified that she did not know whether the deceased had married the Appellant. She further testified that the Appellant frequently visited the residence. However, approximately two weeks prior to the deceased's death, the Appellant and the deceased had an argument, following which the Appellant did not visit the house until the day of the alleged incident.

10. On the day in question, the Appellant arrived at the residence at about 7.00 pm. At the time of his arrival, PW1, her daughter, the deceased, and the mother of the deceased were present in the house. PW1 opened the door for the Appellant and informed the deceased of his arrival. The deceased thereafter came and accompanied the Appellant to the first room of the house, where they ordinarily resided. PW1 testified that the Appellant was wearing a shirt and a pair of trousers, although she was unable to recall the colour or any particular features of the clothing. She further testified that, while entering the house, the Appellant kept one of his hands behind his body throughout the period during which she observed him. However, PW1 testified that she did not see what, if anything, the Appellant was concealing.

11. PW1 further testified that, at about 7.30 pm., when she went to bed with her daughter, she heard an argument between the Appellant and the deceased. She testified that following the Appellant's arrival, she did not open the door for any other person and that, before retiring to bed, she had closed all the doors and windows of the house. However, PW2 did not testify as to whether she had locked the doors of the house so as to prevent any person from entering the premises.

“ප්‍ර: කමුත් නිදා ගන්න යනකොට නිවසේ දොර ජනෙල් වහලද ගියේ?
උ: ඔව්.” (at vide page 57 of the Appeal Brief)

12. The following morning, she discovered that her mother had been killed inside her room. She accordingly called 119, following which the police arrived at the scene. PW1 testified that, by the following morning, the main door of the house was found to be open.

13. During the cross-examination, PW1 testified that she was employed as a receptionist at the Cinnamon Grand Hotel. She testified that her shifts were ordinarily from 1.00 p.m. to 10.00 p.m. and from 6.00 a.m. to 4.00 p.m. It was further elicited in cross-examination that there was a window in the house which was not kept locked and through which a person could easily enter the premises. PW1 testified that on some

occasions, she herself used that window to enter the house after completing a night shift. On the day of the incident, the said window was left open.

“ප්‍ර: ඔය අම්මා රක්ෂිත බන්ධනාගාර ගතව ඉන්න අවස්ථා වලදී ඔබතුමිය ගෙදර එන කොට ගෙදර අයට කරදරයක් නිසා ඇතුල් වෙන තැන වම් පැත්තේ ජනේලේ ඇතුළෙන් අගුල දන්නේ නැතුව තිබුන නේද?

උ: ජනලේ නිතරම ඇරලා තිබුනේ.

ප්‍ර: එක එළියෙන් වහලා තිබුනට ඇතුළෙන් අගුල දාලා තිබුනේ නැහැ?

උ: ඇතුළෙන් අගුලක් දාලා තිබුනේ නැහැ.

ප්‍ර: නිතරම ඇරලා තිබුන කියන එක තමයි ඔබ කියන්නේ?

උ: එහෙමයි.” (at vide page 72 of the Appeal Brief)

14. It was further elicited that the deceased had previously been named as a suspect in several drug-related cases and had allegedly been obtaining money from persons by way of extortion. Further, the deceased had been remanded in connection with those cases.

15. The next witness called by the prosecution was PW4, who was serving in the Civil Security Department. According to his testimony, on the night of the alleged incident, at approximately 11.00 p.m. to 12.00 midnight, he observed a person whom he believed to be similar in appearance to the Appellant, at a location approximately 2 to 2 1/2 kilometers from the residence of the deceased. At the relevant time, PW4 was traveling in a three-wheeler. He testified that he observed the said person standing near a canal and attempting to stop a vehicle. According to PW4, the person was wearing a black coloured T-shirt and a pair of trousers.

16. PW4 further testified that he identified the person as the Appellant by the light emitted from the street lamps situated near the canal. He testified that he was able to identify the Appellant by his beard. However, during cross-examination, PW4 admitted that he had assumed or inferred that the person was the Appellant on account of the beard. It was further elicited that persons of the Muslim community predominantly inhabited the relevant area.

“ප්‍ර: එතකොට නමා ඔබ කිව්වේ මේ වගේ කෙනෙක් දැක්ක කියලා?

උ: ඔව්.

ප්‍ර: ඒ වගේම එම ප්‍රදේශය ඉස්ලාම් භක්තිකයන් විශාල ප්‍රමාණයක් වාසය කරන ප්‍රදේශයක්?

උ: ඔව්.

ප්‍ර: රැවුල වවල තිබුණු පුද්ගලයෙක් නිසා ඔබ ගෙස්ට් කල ඔබ හිතුව මේ වගේ පුද්ගලයෙක් වෙන්න ඇති කියලා ඔබ හිතුවේ එහෙමයි?

උ: ඔව්.” (at vide page 95 of the Appeal Brief)

17. In the circumstances, the evidence of PW4 does not amount to a positive or reliable identification of the Appellant. Significantly, PW4 himself admitted that he merely assumed that the person he observed was the Appellant because of his beard. Accordingly, his evidence cannot safely be relied upon as establishing that the person observed by him was in fact the Appellant.

18. PW6, the Assistant Superintendent of Police, was also called as a witness for the prosecution. According to his testimony, the police received the first information regarding the alleged incident through a 119 call on 27.11.2012 at about 7.50 a.m. He further testified that the police officers arrived at the scene of the alleged offence at about 8.00 a.m. on the same day.

19. PW6 testified that, on 07.12.2012 at about 5.00 hours, he arrested the Appellant at Kadawatha. He further testified that, on 08.12.2012 at about 6.30 hours, pursuant to a statement made by the Appellant, he recovered a black-coloured shirt, a pair of trousers and a knife under and in terms of Section 27(1) of the Evidence Ordinance. According to PW6, the said items of clothing were recovered from the residence of the Appellant's mother, while the knife was recovered from a canal situated near the residence of the deceased. The knife was allegedly concealed beneath Japan Jabara. PW6 testified that at the time of its recovery, there appeared to be blood on the knife, which was produced under PR No. 195/12.

“ප්‍ර: මහත්මය ඒ අනුව මේ පිහිය සොයා ගැනීමක් සිදු කරන්නේ කොයි ස්ථානයෙන්ද?

උ: මුතුරාජවෙල මරණකරියගේ නිවාස ඉදිරිපිට ඇල මාර්ගයේ තිබිලි.” (at vide page 154 of the Appeal Brief)

20. However, during cross-examination, PW6 admitted that he had produced two affidavits before the Trial Court in relation to the said recovery. One of the affidavits did not bear a date or signature, whereas the other affidavit contained both a date and a signature. During cross-examination, PW6 stated that the PR No. assigned to the knife was 195/12, whereas the affidavit dated 11.07.2012 referred to the PR No. 185/12. Further, the affidavit, which bore neither a date nor a signature, stated that the knife had been recovered near the bank of the canal.

“ප්‍ර: ඒ අනුව මහත්මයා ඔබ විසින් භාරයට ගත පිහිය කොයි ආකාරයේ පිහියක්ද?

උ: මීටෙහි තලයෙහි මුල් කොටසේ ලේ දක්නට ලැබුන. අග උල් වූ පිහියක්. මීට ඉරුපාටට හුරු මීට අගල් 4 ක් පමණ දිගට තලය උල්ව තිබූ අතර අගල් 7ක් පමණ දිග සිල්වා පාට පිහියක්.

ප්‍ර: දැන් මහත්මයා ඔබ විසින් ඉන්පසුව භාරයට ගත් පිහිය සම්බන්ධයෙන් ඔබ ගත් පියවර කුමක්ද?

උ: නඩු බඩු කුවිතන්සිපත් අංක 195/12 ට ඇතුළත් කර උපසේවක පො. කො. 30154 රාජපක්ෂට භාර දුන්න.” (at vide page 155 of the Appeal Brief)

21. Thus, the evidence of PW6 gives rise to discrepancies concerning, inter alia, the PR No. assigned to the knife and the precise place from which the knife was allegedly recovered.

22. Further, it is significant to note that the knife allegedly recovered pursuant to the statement of the Appellant was never subjected to DNA analysis to determine whether the identity of the person whose blood was allegedly detected on the knife belonged to the deceased or otherwise connecting the said knife with the alleged offence. Notably, there is no scientific evidence establishing that the blood allegedly found on the knife was, in fact, human blood. Accordingly, the evidentiary value of the recovered knife in connecting the Appellant with the commission of the alleged offence is substantially diminished.

23. The next witness called by the prosecution was PW2, the younger daughter of the deceased. At the time of the alleged incident, PW2 was not residing with the deceased, as she had married and was residing with her husband. However, prior to her marriage, she had lived with the deceased in the same house for approximately eight years. According to her evidence, there was a window in the living room of the house which was not fitted with any grill.

“ප්‍ර: ශ්‍රී ලේ එහෙම දල තිබුනද?

උ: සාලේ තිබුන තැන ගහල තිබුනේ නැහැ. කාමර වල ශ්‍රී ලේ තිබ්බා. අම්මගේ කාමරේ ශ්‍රී ලේ තිබ්බද කියල මතකයක් නැහැ. ඒ වගේ නමා.” (at vide page 113 of the Appeal Brief)

24. PW10, the Judicial Medical Officer who conducted the post-mortem examination of the deceased, was also called as a witness for the prosecution. According to his testimony, he proceeded to the scene of the alleged offence and observed the body of the deceased at approximately 11.30 a.m. on the next day. Based on the condition and nature of the body, he opined that the death could have occurred at least 12 hours, or approximately 12-24 hours, prior to the time at which he examined the body.
25. PW10 identified a total of 15 injuries on the body of the deceased. According to his evidence, the first injury was a cut injury to the neck, which had severed the thyroid gland and the trachea. He further opined that, as a consequence of this injury, the deceased would have been incapable of making any sound. Further, PW10 expressed that the knife produced in evidence was capable of causing all the injuries observed on the body of the deceased.
26. Since this case is entirely based on circumstantial evidence, it is of paramount importance to discuss the established legal principles relating to circumstantial evidence.

27. *Sir Alfred Wills*, in his admirable book “**Wills' Circumstantial Evidence**” (Chapter VI), lays down the following rules specially to be observed in the case of circumstantial evidence:

- “1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum;*
- 2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability;*
- 3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits;*
- 4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the appellant and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and*
- 5) if there be any reasonable doubt of the guilt of the appellant, he is entitled as of right to be acquitted.”*

28. In the case of ***The Queen v Kularatne*** 71 NLR at page 534, the Court of Criminal Appeal quoted with approval the dictum of Whitemeyer, J. In ***Rex v Blom*** stated as follows:

“Two cardinal rules of logic which governs the use of circumstantial evidence in the criminal trial. (1) The inference sought to be drawn must be consistent with all the approved facts. If it does not, then the inference cannot be drawn. (2) The proof of facts should be such that they exclude every reasonable inference from them, save the one to be drawn. If they had not excluded the other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct.”

29. In ***Don Sunny v Attorney General*** [1988] 2Sri LR 1, it was held:

- i. 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 appellant 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 appellant only.

- ii. If on a consideration of the items of circumstantial evidence if an inference can be drawn which is consistent with the innocence of the appellant, then one cannot say that the charges have been proved beyond reasonable doubt.*
- iii. If upon a consideration of the proved items of circumstantial evidence if the only evidence that can be drawn is that the appellant committed the offence then they can be found guilty.*
- iv. The prosecution must prove that no one else other than the appellant had the opportunity of committing the offence. The appellant can be found guilty only if the proved items of circumstantial evidence is consistent with their guilt and inconsistent with their innocence.*

30. In ***Junaiden Mohamed Haaris, vs. Hon. Attorney General, SC Appeal 118/17 SC*** (SC minutes 09/11/2018), the Supreme Court observed that;

“The prosecution relied entirely on circumstantial evidence to establish the charges, for the reason that there were no eyewitnesses to substantiate any of the charges against the Accused-Appellant. Thus, it was incumbent on the prosecution to establish that the ‘circumstances’ the prosecution relied on, are consistent only with the guilt of the accused-appellant and not with any other hypothesis.”

31. In other words, all facts or circumstances proved by the prosecution must inevitably and exclusively point to the guilt of the Appellant, and there should be no circumstances which may reasonably be considered consistent with the innocence of the Appellant.

32. Hence, I shall now consider whether the circumstantial evidence adduced by the prosecution is sufficient to establish the guilt of the Appellant beyond reasonable doubt.

33. It is well established that in a case resting solely on circumstantial evidence, the prosecution must establish a complete chain of circumstances which solely points to the guilt of the accused. The circumstances proved should be consistent only with the hypothesis of the guilt of the Appellant and wholly inconsistent with any reasonable inference of his innocence. It is only when such a chain of evidence is established that the guilt of the Appellant can be said to be proved beyond reasonable doubt.

34. The following authorities provide valuable guidance in evaluating the sufficiency of the circumstantial evidence.

35. In the case of ***King v Abeywickrema***, 44 NLR 254, Soertsz J. remarked thus:

“In order to base a conviction on circumstantial evidence the jury must be satisfied that the evidence was consistent with the guilt of the accused and inconsistent with any reasonable hypothesis of his innocence.”

36. In ***King v Appuhamy*** 46 NLR 128, Keuneman J. held thus:

“In order to justify the inference of guilt from purely circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.”

37. In ***Gunawardena v. The Republic of Sri Lanka*** [1981] 2 Sri. LR 315, it was observed 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 of suspicion. Each piece of circumstantial evidence is not a link in a chain for if one link breaks the chain would fail. Circumstantial evidence is more like a rope composed of several

cords. One strand of rope may be insufficient to sustain the weight but three stranded together may be quite sufficient.

In a case resting on circumstantial evidence the judge in addition to giving the usual direction that the prosecution must prove the case beyond reasonable doubt must give a further direction in express terms that they must not convict on circumstantial evidence unless they are satisfied that the facts proved are (a) consistent with the guilt of the accused; and (b) exclude every possible explanation other than the guilt of the accused.”

38. As observed by Sisira De Abrew J. in ***Samantha v Republic of Sri Lanka [2010] 2 Sri LR 236***;

- i. In a case of circumstantial evidence if an inference of guilt is to be drawn against the accused such inference must be the one and only irresistible and inescapable inference that the accused committed the crime.*
- ii. It is the duty of the trial Judge to tell the jury that such evidence must be totally inconsistent with the innocence of the accused and must only be consistent with his guilt.*

39. In the present case, it is evident that the window in the living room was left open, was not fitted with a grill, and was capable of being used by a person to enter the house, as established through the evidence of PW1 and PW2. Further, the main door of the house was found open on the following morning. The prosecution therefore failed to establish, by positive evidence, that access to the house was confined to the Appellant or that no other person could have entered the premises during the relevant period.

40. Furthermore, the evidence of PW4 cannot be regarded as a reliable circumstance connecting the Appellant with the commission of the offence. Although PW4 testified that he observed a person similar to the Appellant on the night of the incident near the residence of the deceased, he did not positively identify that person

as the Appellant. On the contrary, during cross-examination, PW4 admitted that he merely assumed that the person was the Appellant on account of his beard. Thus, his evidence amounts to no more than an uncertain identification and cannot safely be relied upon as a positive identification of the Appellant.

41. Therefore, the question arises as to whether the evidence presented by the prosecution is sufficient to draw the sole inference of the Appellant's guilt and whether it is inconsistent with any other inference that could suggest his innocence.

42. When these matters are considered cumulatively, the prosecution evidence leaves open a reasonable possibility that a person other than the Appellant could have gained access to the house and committed the offence. In the circumstances, the evidence adduced by the prosecution falls short of establishing that the Appellant's guilt is the one and only irresistible inference that can be drawn from the proved facts. The reasonable possibility of third-party involvement, coupled with the unreliable nature of PW4's identification, therefore breaks the chain of circumstantial evidence relied upon by the prosecution.

43. Furthermore, it should be noted that the learned High Court Judge expressly stated that he did not place significant reliance on the recoveries made under Section 27 of the Evidence Ordinance, as testified to by PW6. Nevertheless, the learned High Court Judge proceeded to conclude that there was no evidence before the court to establish that any person other than the Appellant was responsible for the death of the deceased.

44. The items recovered under Section 27 of the Evidence Ordinance, based on the statement made by the Appellant, cannot be treated as conclusive evidence. They only demonstrate that the Appellant knew the whereabouts of those items.

45. In **H. M. Heen Banda v The Queen** 75 NLR 54, the Court held that:

“Where part of a statement of an accused person is put in evidence under section 27 of the Evidence Ordinance, it is the duty of the trial Judge to explain to the

Jury that such a statement is only evidence of the fact that the accused knew where the article discovered could be found, and nothing more.”

46. Similarly, in ***Ranasinghe v Attorney-General [2007] Sri LR 218***, it was held *inter alia* that:

“.....since discovery is consequence of a section 27 statement only leads to the conclusion that the accused had the knowledge as to the weapon being kept at the place from which it was detected;.”

47. When the evidence is considered in its entirety, it does not, in my view, lead to an irresistible inference of the Appellant’s guilt. This is particularly so in view of the evidence of PW1 and PW2 regarding the possibility of access to the house by a third party. Significantly, the prosecution also failed to establish the time of death with any reasonable degree of precision; the medical evidence only indicates a broad period within which the death could have occurred, thereby leaving a substantial interval between the last occasion on which the Appellant was allegedly seen with the deceased and the discovery of her body.

48. Furthermore, certain notable shortcomings are apparent in the conduct of the investigation. No attempt was made to trace fingerprints at the scene. More significantly, although a knife allegedly recovered pursuant to the statement of the Appellant was never subjected to DNA analysis to determine whether the blood allegedly found upon it belonged to the deceased or any other person. Thus, there is no scientific evidence connecting the alleged blood on the knife to the deceased or otherwise linking the knife to the commission of the offence.

49. The above facts, which render the prosecution’s version doubtful, have escaped the attention of the learned High Court Judge. More importantly, the absence of such evidence regarding the precise time of the death precludes the Court from excluding the possible involvement of persons other than the Appellant. Consequently, the only inference that can reasonably be drawn from the evidence adduced by the

prosecution is not the guilt of the Appellant; rather, it is equally consistent with other inferences pointing to the innocence of the Appellant. Thus, the case is undoubtedly a case of some suspicion, and it is not safe to allow the conviction to stand.

50. Additionally, in this matter, the prosecution placed considerable reliance on the last seen theory, contending that the deceased was last seen in the company of the Appellant prior to the recovery of her body, and that these circumstances constitute an incriminating piece of evidence against him.

51. In ***Sahadevan alias Sagadevan v State represented by Inspector of Police, Chennai (2003) Vol. 1 SCC 534***, the prosecution established the fact that the deceased was seen in the company of the appellants from the morning of March 5, 1985 till at least 5 p.m. On that day, he was brought to his house, and thereafter his dead body was found in the morning of March 6, 1985. In the background of such facts, the Court observed:

“Therefore, it has become obligatory on the appellants to satisfy the court as to how, where and in what manner Vadivelu parted company with them. This is on the principle that a person who is last found in the company of another, if later found missing, then the person with whom he was last found has to explain the circumstances in which they parted company. In the instant case the appellants have failed to discharge this onus. In their statement under Section 313 CrPC, they have not taken any specific stand whatsoever.”

52. The last seen theory comes into play where the time-gap between the point of time when the Appellant and the deceased were seen last alive and when the deceased is found dead is so small that the possibility of any person other than the Appellant being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the Appellant when there is a long gap and the possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the Appellant and the

deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.

53. In the present case, the Appellant was seen with the deceased at around 7.00 p.m. on the day of the incident. The body of the deceased was recovered at approximately 7.00 a.m. on the next morning, lying on the bed inside her room, as testified by PW1. Significantly, the evidence of the JMO provides that the death could have occurred at least 12 hours, or approximately 12-24 hours, prior to the time at which he examined the body.

54. According to PW1, there was a window in the living room of the house which was ordinarily left open and through which a person could enter the premises without encountering any obstruction. This evidence is further corroborated by PW2, who testified that the said window was not fitted with any grill. Significantly, on the following morning, the main door of the house was found to be open. Further, although PW1 testified that she had closed the doors and windows before going to bed, she did not specifically testify that she had locked all the doors and windows of the house so as to prevent access to the premises by any other person. Accordingly, the evidence regarding the accessibility of the premises does not exclude the reasonable possibility of a third party gaining entry to the house.

55. What is discernible from the above evidence is that the house could be accessed through the window in the living room, which was left open and was not fitted with a grill, and the time of death was not established with certainty by the medical evidence. In these circumstances, the possibility of another person gaining access to the house and the deceased cannot be excluded.

56. In *Mavelage Sanjeewa Rajapaksha Vs. Attorney General, CA/HCC/0021/2023*, delivered on 03.10.2025, by R.P. Hettiarachchi, J., it was held that;

“In the present case, the Appellant was seen with the deceased at around 9.00 a.m. on the day of the incident. The body of the deceased was recovered at

approximately 5.00 p.m. on the same day, lying under a bed inside the house, as testified by PW3. Significantly, neither the post-mortem report nor the evidence of the JMO provides any indication of the approximate time of death, and the prosecution did not seek to question the JMO on this crucial aspect. This evidentiary gap prevents any definitive conclusion regarding the time of death.”

“Nonetheless, in the present case, the involvement of a third party is clearly evident, as previously noted. In light of the above evidence, this Court finds it impossible to apply the “last seen” theory, as there existed a considerable time gap between the point at which the deceased was last seen in the company of the Appellant and the subsequent discovery of the body. Additionally, the involvement of a third party cannot be completely ruled out, as there is evidence that the deceased’s stepfather had come in between.”

57. The Indian Supreme Court in ***Digamber Vaishnav & Another v State of Chhattisgarh (2019) INSC 308*** ruled that;

“There must be a reasonable proximity between the time of last seen and the discovery of the dead body. If the time gap is too large, it introduces doubt about the appellant’s involvement.”

58. In ***State of UP v. Satish (2005) (3) SCC 114***, the Supreme Court held that;

“The Last Seen Theory applies when the time gap between the appellant’s last sighting with the victim and the discovery of the victim’s dead body is so small that no third party could have intervened. If the appellant does not provide a satisfactory explanation, an adverse inference can be drawn.”

59. The Indian Supreme Court in the case of ***Surajdeo Mahto vs. The State of Bihar (Cr A 1677 of 2011*** decided on 4th August 2021 – Indian SC) observed that:

“Briefly put, the last seen theory is applied where the time interval between the point of when the accused and the deceased were last seen together, and when

the victim is found dead, is so small that the possibility of any other person other than the accused being the perpetrator of the crime becomes impossible.”

60. The sum total of the above dicta is that when a case is based on circumstantial evidence and the prosecution is relying on the last seen theory, the proof of the exact time of death is of paramount importance. There should be circumstances which establish that the probable time of death is so small and insignificant that it should be at or about the time last seen with the accused. The time period the deceased is found dead should be so small that the possibility of any person other than the accused being the author of the crime is impossible and that, when all circumstances are taken into account, it should be highly improbable that anyone other than the accused could be the perpetrator of the alleged death.
61. Nonetheless, in the present case, the possibility of the involvement of a third party cannot be completely excluded, as previously noted. In light of the above evidence, this Court finds it impossible to apply the last seen theory, as there existed a considerable time gap between the point at which the deceased was last seen in the company of the Appellant and the subsequent discovery of the body. Additionally, the involvement of a third party cannot be completely ruled out, as there is evidence that the window in the living room was left open and the main door was found open the following morning.
62. In these circumstances, there is a substantial time interval between the last occasion on which the Appellant was allegedly seen with the deceased and the discovery of the deceased's body. Significantly, the evidence shows that a window of the house was left open and was not fitted with a grill, thereby providing a possible means of access to the premises by another person during the relevant period. Accordingly, the possibility of another person gaining access to the house and being involved in the commission of the offence cannot be excluded. The evidence therefore does not establish that the Appellant was the person who was necessarily with the deceased at or immediately before the time of her death.

63. Accordingly, the circumstances relied upon by the prosecution do not provide a sufficiently proximate last seen circumstance from which the guilt of the Appellant can safely be inferred in the absence of other cogent and independent evidence connecting him with the commission of the offence. The mere fact that the Appellant was last seen with the deceased at around 7.00 p.m. cannot, in the circumstances of the present case, by itself establish that he was the perpetrator of the crime.

64. For the reasons stated above, I am of the opinion that the Appellant should not have been convicted of the offence of murder. In the circumstances, the appeal of the Appellant is allowed, and he is acquitted.

Judge of the Court of Appeal

P. Kumararatnam, J.,

I agree

Judge of the Court of Appeal