

**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

CA HCC 266/2017

High Court of Negombo

Case No. WP/HCCA/NEG/11/2008

Vs.

Chandana Sri Lal Gurusinghe

Accused

AND NOW BETWEEN

Chandana Sri Lal Gurusinghe

Accused-Appellant

Vs.

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

Respondent

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

Counsel: Harshana Ananda for the Accused-Appellant.

Azard Navavi, A.S.G., for the State.

Argued on: 19.05.2026

Judgment on: 27.05.2026

Judgment

Amal Ranaraja, J.

1. The accused-appellant (hereinafter referred to as the “appellant”) has been indicted in the High Court of *Negombo* in case No. HC 11/2008. The charge in the indictment is as follows;

01. That on or around the 26th of December, 2005, within the jurisdiction of this Court, in *Moarawaththa*, you caused the death of one *Mahamesthrige Iroshan Duminda Silva Gunasekara*; thereby you have committed the offence of Murder, punishable under Section 296 of the Penal Code of Sri Lanka.

2. At the conclusion of the trial the appellant has been convicted of the charge and sentenced to death.
3. The appellant being aggrieved by the conviction, disputed judgement and the sentencing order has preferred the instant appeal to this Court.

Case of the Prosecution

4. The deceased and PW02, have been siblings. On the day of the incident, the deceased, PW02 and another individual named Chaminda have gathered at PW02's house. Chaminda, the third person present, has been painting a three wheel scooter at the premises. After some time, the deceased has left the house and walked along the nearby road. Upon realising the deceased had departed, PW02 has also walked in the same direction. At that moment, PW02 has observed the appellant and another running away, heading out of the village.
5. As PW02 walked further, he has found the deceased lying injured and bleeding on the side of the road. When PW02 inquired about the injuries, the deceased had declared, "Lal." The appellant has been known and referred to as "La" within the village. PW02 assisted by others has transported the deceased to the Ragama hospital. Despite their efforts, the deceased has succumbed to his injuries.
6. Dr. Priyanjith Perera (PW03), a consultant in forensic medicine, has conducted the postmortem examination. The resultant postmortem report has then been produced as evidence and marked *පැ701*. The cause of death is stated as follows;

I have held a Post-Mortem examination on the body of the above named deceased.
I am of the Opinion that the cause of death/probable cause of death is:

Injury to the brain and the brain stem due to a firearm injury to the head following discharge of a rifled firearm in distant range. The direction was downwards, to the left and slightly forward.

(The second injury seen on the trunk has not contributed to death as it penetrated only through the soft tissues of the abdominal wall)

Date: 27/12/2005
Copy to
Inquirer into sudden deaths
I.C. Police Station

Signature
DR. PRIYANJITH PERERA
(M.B.S., D.M., M.D. (Col), F.R.C.S. (Gen), D.M. (Gen))
Consultant in Forensic Medicine
Head of the Department/Senior Lecturer
Department of Forensic Medicine
Faculty of Medicine,
University of Kelaniya,
Ragama.

Vide the Postmortem Report marked *පැ701*

Case of the Appellant

7. The appellant has maintained that he was not involved in the incident that led to the death of the deceased and that he has been falsely implicated

Grounds of appeal

8. When the matter was taken up for argument, the learned counsel for the appellant urged the following grounds of appeal;

- I. The learned High Court Judge has failed to consider the credibility of the dying declaration.

- II. The prosecution has failed to prove the case beyond reasonable doubt.

9. A dying declaration under English law, is generally a statement made by a person on the verge of death regarding the cause of his/her impending demise or the circumstances of the transaction that led to it. These statements are admissible as exceptions to the hearsay rule, based on the principle that someone facing imminent death is unlikely to lie.

10. The concept stems from the maxim *nemo moriturus praesumitur mentiri* - no one at the point of death should be presumed to be lying. The modern foundation in English law was established in *R v Woodcock (1789) 1 Leach 500 to page 502* as follows;

“A general principle on which this species of evidence is admitted is that they are declarations made in extremity when the party is at the point of death and when every hope of this world is gone; when every motive

to falsehood is silenced and mind is induced by most powerful considerations to speak the truth; a situation so solemn and so awful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice”

11. In Sri Lanka, this is covered under Section 32(1) of the Evidence Ordinance No.14 of 1895 as follows;

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

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceedings in which the cause of his death comes into question.

A statement made by a deceased person who is dead is inadmissible in evidence under this subsection, when it does not refer to the cause of his death nor relate to any of the circumstances of the transactions which resulted in his death.

12. Further, the provision in Section 32(1) of the Evidence Ordinance No.14 of 1895 differs from English Law on this matter in the following respects;

- i. Under English Law for a dying declaration to be admissible, the declarant is required to be in imminent danger of death and have completely abandoned all hope of recovery. However, this stringent requirement is immaterial under Sri Lankan law. Section 32(1) expressly states that a declaration is relevant “whether the person who made it was or was not at the time it was made, under expectation of death”.

- ii. The scope of admissibility differs significantly between English and Sri Lankan legal systems. Under English law such declarations are strictly admissible only in cases involving homicide. In contrast Sri Lankan Evidence Law adopts a broader approach allowing for the admissibility of dying declarations in a wider range of cases as exemplified in *R v Samarakoon Banda* 44 NLR 169 as follows,

“We have arrived at this conclusion on what appears to us to be the clear wording of the section. No authority exactly in point was brought to our notice. Crown Counsel, however, cited the case of Lalji Dusadh v. Emperor in which it was held that a statement made by a person who had been robbed, and subsequently killed, regarding the robbery and the assault committed in the course thereof, was admissible in evidence at the trial of the assailant for robbery. In the words of Mullick A.C.J, “the words of section 32 are very wide, and it is not necessary that the charge be one of homicide”. The same view was expressed in Nga Ba Min v. Emperor. As we have indicated, these

cases are not exactly in point, but they are useful as indicating that the Patna and Rangoon High Courts are not prepared to restrict the scope of section 32(1) to the narrow rule of English Law that a dying declaration as to the cause of death is only admissible when the causing of death is the subject of the charge.”

- iii. In English Law the admissibility of a dying declaration in a homicide case is strictly limited; it is only accepted if the declarant is also the victim. Declarations concerning the death of another individual is not admissible. In contrast Sri Lankan law permits a wider application, as it is not mandatory for the declarant to be the individual regarding whose death the legal proceedings have been initiated.

“The accused was charged with the murder of A, in the course of which he also inflicted fatal injuries on B. The accused pleaded the right of private defence.

The Crown put in a dying declaration by B, giving the circumstances in which he met with his death and which also brought A to the scene.

Held, that the dying declaration was admissible under section 32(1) of the Evidence Ordinance.”

Vide R vs Samarakoon Banda 44 NLR 169

Also, E.R.S.R Kumaraswamy in his book “A *TEXTBOOK OF THE LAW OF EVIDENCE IN CEYLON*” at pages 124 and 125, has stated as follows in interpreting the Subsection 32(1) of the Evidence Ordinance;

“In the interpretation of this subsection the following rules may be laid down,

a) The statement (declaration) may be made before the cause of the death has arisen or before the deceased has any reason to anticipate that he would be killed.

b) The cause of death contemplated in the subsection is an external or physical cause accounting for the death it does not therefore, include a case of death by a person’s own hand.

c) There should be a root connection between the alleged cause of death referred to in the statement (declaration) and the immediate cause of death as shown by other evidence.”

d) Dying declarations made in answer to leading questions are nevertheless admissible though their weight as evidence may be affected.

13. A dying declaration is considered substantive evidence, not just corroborative. If the Court is satisfied that the statement is true, voluntary, and not the result of tutoring or prompting, a conviction can be based solely on a dying declaration without any corroboration.

14. PW02 has testified about the declaration made by the deceased as follows;

ප්‍ර: ඊට පස්සේ?

උ: මම දුවගෙන යනකොට මල්ලි බිම වැටිලා සිටියා. තණකොළ බිස්සේ වැටිලා මල්ලි දහල දහල සිටියා.

ප්‍ර: මල්ලිට පෙනෙන්නට තුවාල තිබුණාද?

උ: බෙල්ලෙන් ලේ එනවා දැක්කා මල්ලිගේ. බඩෙන් ලේ එනවා දැක්කා.

ප්‍ර: මල්ලි මොකක්ද ඇදගෙන සිටියේ?

උ: සරමකුයි, ස්කිනි වී ශර්ට් එකකුයි ඇදගෙන සිටියා.

ප්‍ර: ඊට පස්සේ ඔබ මොකද කළේ?

උ: මම ඇහුවා කවුද මේක කළේ කියලා. එතකොට මල්ලි ලාල් ලාල් කියලා කෑ ගැහුවා.

Vide pages 80 & 81 of the Case Brief

15. PW03, *Dr. Priyanjith Perera*, has testified that the cause of death of the deceased was an injury to the brain and brain stem, resulting from the discharge of a rifled firearm. The deceased has sustained two such injuries. One to the scalp and another to the back of the right lower trunk.
16. PW02 has observed the deceased bleeding when first seen. Furthermore, there is no evidence to indicate that the deceased suffered any further injuries subsequently. In these circumstances the deceased, referring to the firearm injuries that led to his death has stated they were caused by the appellant "*La!*".
17. Accordingly, the deceased has made a declaration concerning the circumstances of a transaction which resulted in his death, after the fatal incident occurred. Additionally, there is a connection between the alleged cause of death of the deceased and the opinion of PW03, *Dr. Priyanjith Perera*. The facts being such, the declaration made by the deceased to PW02, is therefore, relevant as per the provisions in Section 32(1) of the Evidence Ordinance No. 14 of 1895.
18. As regards to the contention that the fatal injury would have brought instantaneous death to the deceased, *Dr. Priyanjith Perera* has observed otherwise.

ප්‍ර: පලවන තුවාලය ඇතිවීමෙන් පසු ඔහුගේ මරණය සිදුවීම දක්වා
 ගතවන කාලය සම්බන්ධයෙන් මොනක්ද ප්‍රකාශ කරන්න පුළුවන් ?
 උ: තුවාලවල බරපතල භාවය සඳහා සැලකිය යුතු මරණය ඉතා
 ඉක්මනින් සිදු වී ඇති බවයි, සැලකිය හැක්කේ.
 ප්‍ර: අනෙක් 01 අත්වාරියක වශයෙන් මරණය ගෙන දෙන තුවාලයක්ද?
 උ: අත්වාරියෙක් සාමාන්‍ය තත්වය යටතේ මරණය ගෙන දෙන
 තුවාලයක්. අත්වාරියෙක් මරණය ගෙන දෙන තුවාලයක් මෙසේ
 සලකන්න පුළුවන්.

Vide Page 138 of the Case Brief

He has not excluded the possibility of the deceased surviving the injury for some time before passing away. The appellant has not disputed this fact. Therefore, the appellant’s attempt to portray the death as instantaneous and thus, to argue that the deceased was unable to make a declaration to PW02 must fail.

19. Marking a contradiction, in a witness’s testimony is a core cross-examination technique used to impeach credibility. It involves confronting a witness with his own prior inconsistent statements (such as a previous police statement) to expose irreconcilable differences in his account. Confronting and impeaching a witness by such technique (the marking step) involves the following; the witness’s attention is to be drawn to the exact part of the previous statement that contradicts his current testimony. Quote the specific lines from the prior recorded statements. Ask the witness to explain why his previous statement differs from his current testimony. If the witness denies making the previous statement, the cross examining attorney will officially mark

that specific, inconsistent portion of the previous statement as a Court exhibit.

20. The investigating officer or the person who recorded the statement will later be called to prove it was actually made. However, trivial, minor inconsistencies, rarely impact the core of the case. To successfully discredit a witness, the contradiction must be material to a key fact in the issue;

21. In the case of *Bandara Vs. The State (2001) 2 SLR 63*, Kulathilake J, has stated,

“Our courts have laid down the principle that the discrepancies and inconsistencies which do not relate to the core of the prosecution case ought to be disregarded especially when all probabilities factor echoes in favour of the version narrated by a witness.”

22. In the case of *Agampodi Wijepala de Soya vs Officer in Charge, Ahungalla and Another SC Appeal 159/2018*, decided on 07.07.2021, P. Padman Surasena J, has held as follows,

“...the following mandatory steps must be adhered to, when marking and proving an inconsistency.

Firstly, a cross-examining counsel who intends to show that the evidence of the witness under cross examination is contradictory with a previous statement made by him, must ask questions relevant to such matters in question without such previous statements being shown to him.

Secondly, if such witness comes out with something that is prima facie inconsistent with any part of such statement, it is then only the section allows such counsel to bring such parts of such statement which are to

be used for the purpose of contradicting him, to the attention of such witness.

Thirdly, if such witness has stated something inconsistent with his previous statement and does not distinctly admit making such previous statement, then the cross-examining counsel is under a duty as per sub section 2 of the above section to ask whether or not such witness has made such a previous statement.

Fourthly, it is thereafter only the cross-examining counsel can proceed to prove that such witness has in fact made such previous statement.”

23. The learned counsel for the appellant has contended that PW02 contradicted himself, regarding both the location and the manner in which the declaration was made by the deceased. However, the established procedure for addressing such contradictions has not been followed. Specifically, these alleged inconsistencies have not been itemized as court exhibits. Such an omission means that the existence of these purported *per se* contradictions has not been formally established. Consequently, a Court cannot delve into them to consider whether they are material or whether they impeach the credibility of PW02.

24. Furthermore, the appellant has not disputed that the deceased made such a declaration to PW02. By failing to challenge this point, the appellant has effectively conceded that the declaration was indeed made by the deceased.

25. In the case of *Gunasiri and Two Others vs Republic of Sri Lanka (2009) 1 SLR 39*, Sisira De Abrew J, has held that

“It is a rule of essential justice that whenever the opponent has declined to avail himself of the opportunity to put his case in cross examination,

it must follow that the evidence tendered on that issue ought to be accepted”

26. The learned High Court Judge has also examined the case in a holistic manner, rather than analysing the prosecution’s version and the appellant’s version in a watertight compartment. The learned High Court Judge has considered both narratives side by side, testing each item of evidence against the overall factual matrix. This integrated appraisal has avoided the danger of lifting isolated passages out of context. Such approach accords with settled judicial principles.

27. In the case of *James Silva Vs. The Republic of Sri Lanka (1980) 2 SLR 167*, Rodrigo J has held,

“A satisfactory way to arrive at a verdict of guilt or innocence is to consider all the matters before the Court adduced whether by the prosecution or by the defence in its totality without compartmentalising and, ask himself whether as a prudent man, in the circumstances of the particular case, he believes the accused guilty of the charge or not guilty.”

28. By refusing to compartmentalize the evidence and instead adopting a holistic approach, the High Court has applied the correct methodology and arrived at findings that are both cogent and sustainable.

29. In those circumstances I am not inclined to interfere with the conviction, disputed judgement and the sentencing order and proceed to affirm the same.

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

Appeal dismissed.

31. The Registrar of this Court is directed to send a copy of this Judgement to the High Court in *Negombo* for compliance.

Judge of the Court of Appeal

B. Sasi Mahendran, J.

I agree

Judge of the Court of Appeal