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

In the matter of an appeal made under Section 331 of the Code of Criminal Procedure Act No. 15 of 1979, read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No: **CA/HCC/345/2017**

High Court of Vavuniya
Case No: **HCV/2641/16**

Democratic Socialist Republic of Sri Lanka

Complainant

Vs

1. Veeraiah Raveendra Jothi
2. Nesarajah *alias* Raaji
3. Kumar

Accused

AND NOW BETWEEN

Veeraiah Raveendra Jothi

Accused – Appellant

Vs

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

Complainant - Respondent

Before : **Amal Ranaraja, J.**

Pradeep Hettiarachchi, J.

Counsel : I.B.S. Harshana for the Accused – Appellant.

: Suharshi Herath, D.S.G. for the Respondent.

Argued on : 09.02.2026

Decided on : 30.04.2026

Pradeep Hettiarachchi, J

Judgment

1. In this case, three Accused were indicted before the High Court of Vavuniya on two counts of murder and robbery as follows;

    a. On or about 19.06.2005, committed robbery of bus No. 227-5813 and thereby committed an offence punishable under Section 380 read with Section 32 of the Penal Code.

    b. In the course of the same transaction, and on the same date and place, committed murder by causing the death of one Mohammad Mihal Thuwan Ihem and thereby committed an offence punishable under Section 296 of the Penal Code.

2. As the 2nd and 3rd Accused were absconding, steps were taken under Section 241(1) of the Code of Criminal Procedure Act, and the Court ordered that they be tried in absentia. The 1st Accused was present and was duly represented. The trial was conducted before the Learned High Court Judge without a jury. At the conclusion of the trial, the Learned High Court Judge acquitted all three Accused on count 01 but found them guilty on count 02. Accordingly, all three Accused were sentenced to death.

3. Being aggrieved by the said conviction and sentence, the 1st Accused (hereinafter referred to as "the Appellant") has preferred the present appeal. The grounds of appeal advanced by the Appellant are as follows:

    a. The items of circumstantial evidence are wholly inadequate to support the conviction;
    b. The Learned Trial Judge failed to consider the doubtful nature of the medical evidence of PW7;
    c. The evidence of PW1 is contradictory to that of PW7;
    d. The judgment of the Learned High Court Judge is vitiated by material infirmities; and
    e. The Appellant was denied the right to a fair trial.

4. The first witness to testify for the prosecution was PW7, who conducted the post-mortem examination of the deceased. The post-mortem report dated 21.06.2005 was marked in evidence as P1.

5. According to the evidence of PW7, she conducted the post-mortem examination on 21.06.2005 at approximately 11.30 a.m. at the mortuary of the General Hospital, Vavuniya. The post-mortem report, marked as P1, indicates that the death of the deceased occurred on 19.06.2005. Notably, the report does not specify the time of death.

6. In the said post-mortem report, PW7 has recorded five injuries on the body of the deceased. The condition of the body at the time of the examination was described as follows:

    a. The corpse was decomposed, and there were injuries found on many parts of the body caused by ants. Meanwhile, maggots and flies were found all over the body.
    b. The skin of the corpse had turned greenish. The skin was lacerated and peeled off in many parts of the body.
    c. Internal injuries could not be identified exactly because of the above changes.

7. In relation to the injuries observed, the fourth injury was located on the neck of the deceased. According to the post-mortem report, the mark around the neck resembled a ligature mark consistent with a rope, measuring approximately 4.2 cm in width. The fifth category of injuries was observed on both sides of the dorsal region; however, these injuries could not be clearly identified, as the skin had peeled off in several areas of the body.

8. PW7 further stated that the death could have occurred at least two days prior to the date on which the post-mortem examination was conducted. However, the time of death was not determined by reference to accepted medico-legal methods. Instead, PW7 stated that she recorded the date of death based solely on information provided by the relatives and friends of the deceased. This significantly undermines the reliability of her opinion regarding the time of death.

> *"Q: Witness, when was this particular person said to have died?*
> *A: They had mentioned that he died on 19.06.2005*
> *The time of the death had not been mentioned.*
> *Q: By whom was this date given to you?*
> *A: Nothing is mentioned in this, I presume that the date should have been given by either the brother, or a friend of the deceased, or by the police." (vide pages 48-49 of the Appeal Brief)*

9. With regard to the injury to the neck, PW7 testified that there was a fracture associated with the structure in the neck region, accompanied by a small crack, and that death could have been caused by bleeding resulting from that injury. She ultimately opined that the cause of death was asphyxia, possibly due to strangulation by a tape-like material, which would have prevented normal breathing.

10. However, PW7 also conceded that such a condition could arise in circumstances where a person strangles himself, although she was unable to state with certainty whether the death was the result of suicide.

"Q: Death had been caused due to asphyxiation. That is the decrease in the supply of Oxygen to his body that is he was unable to breath since he had been strangled with a tape-like material.
A: Can this happen when someone is strangling himself?
Q: Having examined the corpse of the particular person, can you say how this death could have taken place?
A: It cannot be certainly said that it was a suicide.
Q: Can death occur when a person strangles himself?
A: Yes. It could happen." (vide page 52 of the Appeal Brief)

11. The medical evidence of PW7, when carefully examined, reveals several material uncertainties which detract from its conclusiveness. Although PW7 opined that the cause of death was asphyxia, possibly due to strangulation by a tape-like material, her evidence on crucial aspects relating to the time, manner, and mechanism of death is not based on definitive medico-legal findings but largely on assumptions and external information.

12. In particular, PW7's admission that the date of death was recorded on the basis of information provided by relatives and friends of the deceased, rather than through accepted scientific methods of post-mortem estimation, significantly weakens the reliability of her opinion as to the time of death. The absence of a scientifically determined time of death creates a material lacuna in the prosecution's case, particularly where the chronology of events assumes significance, as in the present matter, which is found upon the last seen theory.

13. Further, the injuries noted on the neck, though described as resembling a ligature mark, were not conclusively established as being the result of homicidal strangulation. PW7 herself conceded that similar findings could, in certain circumstances, be consistent with self-inflicted injury, although she was unable to definitively rule out suicide. This level of uncertainty introduces reasonable doubt as to the precise manner in which death occurred.

14. Moreover, the inability to clearly identify certain injuries due to post-mortem decomposition further diminishes the evidentiary value of the medical findings. Where

the physical condition of the body prevents precise observation and classification of injuries, the resultant medical opinion must necessarily be treated with caution.

15. In these circumstances, the medical evidence does not provide an unequivocal or consistent foundation to support the prosecution's version. Instead, it leaves room for alternative inferences which are consistent with the innocence of the Appellant. Consequently, PW7's evidence is not sufficiently reliable to prove the manner of death beyond a reasonable doubt, even when considered in its entirety.

16. In the present case, certain aspects of the medical evidence appear to be inconsistent with the version advanced by the prosecution. The Learned Trial Judge does not appear to have adequately addressed these discrepancies or evaluated their impact on the overall credibility of the prosecution's case. This omission diminishes the reliability of the findings reached at trial.

17. It is pertinent to observe that the medical evidence adduced by the JMO was marked by a degree of uncertainty, and that conclusions as to both the time and cause of death were reached without adherence to scientifically established methods. This materially diminishes the probative value of such evidence, gives rise to reasonable doubt in the prosecution's case, and renders any inference as to the guilt of the Appellant unsafe. In the circumstances, this court is of the view that it would be unsafe to sustain the conviction on the basis of such doubtful and unscientific medical findings, and that the benefit of the doubt must accordingly be extended to the Appellant.

18. I shall now proceed to consider the evidence of PW1, who claimed to be a driver, testified that he lent his lorry to the deceased on 20.06.2005 after receiving a call about a hire to Mannar. The deceased left with three others, including the Appellant, and was not seen again by PW1. The following day, PW1 was informed of the deceased's death, travelled to Chettikulam, and identified the body lying on the ground. He later identified the Appellant at an identification parade as one of the individuals last seen with the deceased.

19. It is significant to note that PW1 was not certain about the date of the alleged incident that took place. It was suggested to PW1 that the lorry was handed over to the deceased on 20.06.2005, and he accepted it was the date of the alleged incident.

> *"Q: When did the particular incident take place?*
> *A: in 2005*
> *Q: Do you remember the date?*
> *A: It might be the 5th month. I do not exactly remember." (vide page 72 of the Appeal Brief)*
> ………………………
> *"Q: Is it correct if it is said that you handed over your lorry to Mihal Thuwan on 20.06.2005?*
> *A: Yes. It is. But there is a different in the name that you mentioned." (vide page 75 of the Appeal Brief)*

20. It is of considerable significance that PW1 was unable to state with certainty the date on which the alleged incident occurred. His evidence reveals that he did not independently recollect the relevant date; rather, it was only upon a suggestion being put to him in examination-in-chief that the lorry had been handed over to the deceased on 20.06.2005 that he assented to the same. This lack of independent certainty as to a material particular, namely the date of the incident, substantially undermines the reliability of his testimony.

21. Further, according to the evidence of the JMO, who opined that the death of the deceased could have occurred approximately two days prior, such medical opinion stands in direct contradiction to the version advanced by PW1. This inconsistency between the medical evidence and the testimony of PW1 assumes considerable significance, as it undermines the prosecution's attempt to establish a coherent and reliable timeline of events. In the absence of a consistent chronology, the evidentiary foundation of the last seen theory is materially weakened, thereby giving rise to a reasonable doubt as to the guilt of the Appellant.

"Q: Witness, when you subjected the corpse of the deceased to examination, were you able to guess as to how many days before he had been dead?

A: Death could have occurred before 2 days." (vide page 51 of the Appeal Brief)

22. It is further contended that the evidence of PW1 is at variance with that of PW7. Where material contradictions exist between key prosecution witnesses, particularly on matters going to the root of the case, such inconsistencies must be carefully scrutinized.

23. In the instant case, the contradictions between the evidence of PW1 and PW7 are not minor or peripheral, but relate to material aspects of the prosecution narrative. The failure to reconcile or adequately consider these inconsistencies raises serious doubts as to the credibility of the prosecution's case.

24. I shall now proceed to consider the principles governing the evaluation of circumstantial evidence by a court. It is well settled that where a conviction is sought to be founded on circumstantial evidence, such evidence must be of a conclusive nature and tendency, and the chain of circumstances must be so complete as to exclude every reasonable hypothesis consistent with the innocence of the accused. Each circumstance relied upon by the prosecution must be clearly established, and all such circumstances, taken cumulatively, must point irresistibly to the guilt of the accused.

25. In evaluating and assessing the strength of circumstantial evidence, the following authorities provide critical guidelines for ensuring that such evidence is sufficient to sustain a conviction.

26. In ***Hanumant Govind Nargundkar vs. State of M.P., AIR (1952) SC 343,*** it was observed thus;

> *"It is well to remember that in case where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with*

the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

27. In ***State of U.P. vs. Ashok Kumar Srivastava, (1992) Crl LJ 1104,*** it was pointed out that great care must be taken in evaluating circumstantial evidence, and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established, and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

28. In ***C. Chenga Reddy vs. State of A.P., [1996] 10 SCC 193,*** wherein it has been observed thus:

"In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."

29. In ***Padala Veera Reddy vs. State of A.P., AIR (1990) SC 79,*** it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(1) The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;

(2) Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

30. 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 are 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."

31. 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."

32. 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."

33. 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."*

34. In the present case, a careful evaluation of the evidence reveals that the circumstances relied upon by the prosecution do not form such a complete and unbroken chain. There exist gaps and inconsistencies that weaken the probative value of the evidence and render it unsafe to base a conviction solely upon such material.

35. At the outset, the evidence of PW1 is itself fraught with uncertainty, particularly as to the date of the alleged incident. This uncertainty assumes greater significance in light of the JMO's opinion that the death could have occurred approximately two days prior, thereby creating a direct inconsistency in the timeline advanced by the prosecution.

36. The evidence of PW4 (Subramanium Gunasekaran) does not advance the prosecution's case in any material particular. Although he claimed to have seen the lorry on the morning of 20.06.2005 and assisted in towing it, he was unable to identify the individual near the lorry or connect such person to the Appellant. Significantly, PW1 expressly stated that none of the persons present in the court were at the location when he arrived. This evidence clearly fails to implicate the presence of the Appellant and thereby weakens the prosecution's narrative.

37. Moreover, the testimony of PW3 (Kanagaratnam Suman) reveals that he transported an individual known as "Rajee" along with family members to Vavuniya. He was also unable to identify the Appellant and admitted that he only came to know the Appellant upon attending court.

38. PW2 (Gajendran Anjaladevi), who is the sister of the Appellant. Her testimony does not establish any direct involvement of the Appellant in the present matter. The evidence of PW12 (Police Sergeant) merely relates to the discovery of the nylon rope and four buttons near the body. This evidence is purely formal in nature and does not connect the appellant to the commission of the offence.

39. When the totality of this evidence is considered, it becomes evident that the prosecution has failed to establish a consistent and reliable chain of circumstances. The evidence does not exclude other reasonable hypotheses consistent with innocence, nor does it irretrievably point towards the guilt of the Accused.

40. Additionally, a judgment must reflect a careful and reasoned evaluation of all the evidence placed before the Court, including both inculpatory and exculpatory material. The Appellant contends that the judgment of the Learned High Court Judge is vitiated by material infirmities.

41. Further, in the impugned judgment, the Learned Trial Judge has failed to advert to the doubtful nature of the medical evidence, and the Learned High Court Judge has erred in relying upon such doubtful and unscientific medical evidence as independent corroboration of the version of PW1.

42. It is further apparent that the impugned judgment is devoid of a proper summary and critical analysis of the evidence adduced by the prosecution witnesses, resulting in a failure to duly appreciate the inherent weaknesses and inconsistencies in the prosecution’s case.

43. Upon examination, it appears that certain significant aspects of the evidence, particularly those favorable to the defence, have not been given due consideration. Further, the reasoning does not sufficiently address the inconsistencies and improbabilities in the prosecution's case. These deficiencies undermine the soundness of the conclusions reached by the Learned Trial Judge.

44. The right to a fair trial is a fundamental principle of criminal justice. Any failure to ensure fairness in the conduct of the trial would vitiate the conviction.

45. In the present case, the cumulative effect of the deficiencies identified, namely, the inadequate evaluation of evidence, the failure to address material contradictions, and the reliance on inconclusive circumstantial evidence, raises concerns as to whether the Appellant received a fair trial in accordance with established legal principles.

46. When the above factors are considered cumulatively, it becomes evident that the prosecution has failed to establish the guilt of the Appellant beyond a reasonable doubt. The gaps in the chain of circumstantial evidence, the inconsistencies in the prosecution's case, and the shortcomings in the evaluation of evidence render the conviction unsafe.

47. Accordingly, the Appellant is entitled to the benefit of doubt. The impugned judgment of the High Court of Vavuniya, which imposed the said conviction and sentence on the Appellant, is hereby set aside, and the Appellant is acquitted of the charge.

48. Accordingly, appeal allowed.

Judge of the Court of Appeal

Amal Ranaraja, J

I agree,

Judge of the Court of Appeal