

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

**In the matter of an Appeal from the order
and the sentence of the High Court of
Balapitiya made in terms of Section 331
of the Code of Criminal Procedure Act
No. 15 of 1979.**

The Democratic Socialist Republic of Sri
Lanka

Complainant

CA HCC 194/2024

High Court of Balapitiya
Case No. HCB 1784/15

Vs.

1. Muthuvahandi Ranjith De Silva
alias Muthuvahandi Rajith De Silva
2. Muthuvahandi Nishanka Silva *alias*
Ariyathne *alias* Nishanka Ariyathne
alias Nishanka Ariyathne *alias*
Muthuvahandi Nisanka Ariyathne De
Silva
3. Migel Arachchige Rathnapala Silva *alias*
Ajasaththa

Accused

AND NOW BETWEEN

Muthuvahandi Nishanka Silva *alias*
Ariyathne *alias* Nishanka Ariyathne
alias Nishanka Ariyathne *alias*
Muthuvahandi Nisanka Ariyathne De
Silva

Second Accused-Appellant

Vs,

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

Respondent

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

Counsel: Anuja Premaratna, PC with Imasha Senadeera and Emal
Gunasekara for the 2nd Accused-Appellant.

Shanaka Wijesinghe, ASG for the Respondent.

Argued on: 26.02.2026

Judgment on: 30.03.2026

Judgment

Amal Ranaraja. J,

1. The second accused-appellant (hereinafter referred to as appellant) has been indicted in the High Court of Balapitiya along with two others in High Court Case No. HC-CRI-1784-15. The charge in the indictment is as follows;

01. That on or around the 30th of March, 1996, in *Ambalangoda*, within the jurisdiction of this Court, you, together with the now deceased, *Muthuvahandi Ranjith*, and *Migel Arachchige Rathnapala Silva*, caused the death of *Dadallage Upasena*, thereby committing an offence of murder punishable under Section 296 of the Penal Code read with Section 32 of the Penal Code.

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

Case of the Prosecution

3. On the day of the incident PW04, the nephew of the deceased had been near the alleged shooting location and heard cries from that direction. When he had arrived at the location, PW04 has seen the deceased fallen with injuries. He, along with PW01 (the deceased's wife), had then transported the deceased to the *Ambalangoda* Hospital in a van for treatment.
4. Enroute to the hospital, the deceased has allegedly made two declarations to PW01 and PW04, regarding the cause of his death or the circumstances that resulted in it. The deceased has also reportedly made a similar declaration to the admitting doctor, PW10, *Dr. Piyaratne at the Ambalangoda Hospital.*
5. The prosecution has relied on those declarations, as provided for in Section 32(1) of the Evidence Ordinance No.16 of 1895 to establish its case.

Case of the Appellant

6. Due to the appellant's absence from Court, no evidence has been led on his behalf during the trial. Nevertheless, a written submission has been tendered of him at the conclusion of the trial.

7. When the matter was taken up for argument, the learned President's Counsel urged the following ground of appeal;

i. Did the learned High Court Judge err in concluding that the prosecution had proved its case beyond reasonable doubt?

8. 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.

9. 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 arty 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"

10. 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.

11. 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 for a dying declaration 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.*

12. 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.

13. Courts must carefully scrutinize such declaration to ensure that the deceased was in a fit mental state and was not influenced. If the declaration is suspicious, the benefit of the doubt must be given to the accused.

14. In many homicide cases, the victim is the only eyewitness, in such circumstances, excluding their last words could lead to a miscarriage of justice. As stated earlier, it is believed that a person facing imminent death is unlikely to falsely implicate an innocent person. Further, it can be oral, written or even through gestures.

15. In the case of *Alisandri v The King* 38 NLR 257, Lord Roche stated,

“It is to be observed that in the section the word used is “verbal” and not “oral” which is used elsewhere in the Ordinance, as for example in section 3 and section 119 in reference to evidence given in Court. It is unnecessary to decide whether the question put “Was it Alisandiri?” and the nod of assent would have constituted an oral statement made by the deceased, but their Lordships are clearly of opinion that it constituted a verbal statement made by her. The case under consideration closely resembles the case of a person who is dumb and is able to converse by means of a finger alphabet. Upon proper evidence

proving the words used in a conversation so held their Lordships think that a statement so made would be a verbal statement within the meaning of the section. So here their Lordships think that there was proper and sufficient evidence of a verbal statement by the deceased to the effect that it was the accused who cut her neck.”

16. While there are positives to admitting a dying declaration as substantive evidence, as described above, there are also significant drawbacks to doing so.
17. The inability to cross examine the witness makes it inherently weak in ensuring the truth, creating a risk of convicting an innocent person. The relatives or interested parties may manipulate a dying person into making a statement that falsely implicates someone. If the deceased, was in a state of deep-shock or mentally unfit at the time of the declaration its value is significantly reduced or nullified. If multiple, inconsistent dying declarations are made, the evidentiary value is severely weakened. If the declarant dies before completing the statement, it may be held inadmissible.
18. In *Ranasinghe vs. AG*, [2007] 1 SLR 218 at page 221, Sisira De Abrew, J, has discussed the above as follows;

“As there are inherent weaknesses in a dying declaration which I have stated above, the trial Judge, or the jury as the case may be, must be satisfied beyond reasonable doubt on the following matters. (a) Whether the deceased, in fact, made such a statement. (b) Whether the statement made by the deceased was true and accurate. (c) Whether the statement made by the deceased person could be accepted beyond reasonable doubt. (d) Whether the evidence of the witness who testifies about the dying declaration could be accepted beyond reasonable doubt. (e) Whether witness is telling the truth. (f) Whether the

deceased was able to speak at the time the alleged declaration was made."

19. The deceased has apparently made, three dying declarations on the same day. One has been made to his wife (PW01), another to his nephew (PW04), and the third to *Dr. Piyaratnne* (PW10), who admitted the deceased to the *Ambalangoda* hospital before his transfer to the *Karapitiya* Hospital for further treatment. PW01 has testified that the deceased in his declaration named, the appellant, *Rajitha*, and *Ajasaththa*, as his assailants. PW04 has stated that the deceased declared the appellant and *Rajitha*, being involved in the shooting. However, PW10, *Dr. Piyaratne*, in his testimony has stated that the deceased made a declaration to him identifying *Rajitha* and one other as the shooter.
20. To contradict this the prosecution presented the evidence of PW05, Senior Superintendent of Police. PW05, the investigating officer at the time has recorded a prior statement from PW10 wherein PW10 has mentioned that the deceased in his declaration has named the appellant and *Rajitha* as the persons involved in the shooting.
21. The declarations purportedly made by the deceased to PW01 and PW04 were allegedly uttered in the van while he was being transported to the *Ambalangoda* hospital. During cross examination PW01's attention has been drawn to a specific portion of her prior statement to the investigating officer. In that statement PW01 had asserted that the deceased remained silent throughout the journey to the *Ambalangoda* hospital. PW01 has however, subsequently denied this prior assertion and the relevant part of her statement has been formally marked as a contradiction § 01(4).
22. This marked contradiction significantly, undermines the credibility of the evidence presented by both PW01 and PW04. Specifically, if the

- deceased indeed remained silent during transport a fundamental question arises: Could he possibly have uttered the declarations purportedly made to PW01 and PW04.
23. PW03 in his deposition has stated that on the day of the incident while he was on duty as the rail gate operator near the scene of the shooting, he observed an individual chasing the injured party. This individual has then shot the person being pursued. Following the shooting, the injured individual has been subsequently taken away in a van by other individuals.
24. Thus, according to PW03's eye-witness account only one person had been directly involved in the actual shooting. While a second individual had been present his involvement has been limited to operating the motorcycle used by the shooter to escape the scene. This testimony creates a material discrepancy; with the purported dying declarations of the deceased regarding the number of persons involved in the shooting. This Court deems this discrepancy concerning the number of assailants to be a material issue.
25. It also raises the question whether those purported dying declarations were actually true. Additionally, the deceased has been accompanied by his wife and nephew enroute to the *Ambalangoda* hospital. Such circumstances of proximity creates a scenario where the deceased could have been prompted or coached regarding the identity of the assailants during the journey and the subsequent dying declaration being purportedly made to *Dr. Piyaratne* (PW10).
26. In those circumstances I am inclined to interfere with the conviction, disputed judgement and the sentencing order and proceed to set aside the same.
27. I acquit the appellant of the charge.

I make no order regarding costs.

Appeal allowed.

28. The Registrar of this Court is directed to send a copy of this judgement to the High Court in Balapitiya for compliance.

Judge of the Court of Appeal

B. Sasi Mahendran, J.

Judge of the Court of Appeal