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

In the matter of an Appeal made under Section 331(1) 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 No:
CA/HCC/0123-124/2023
High Court of Puttalam
Case No: HC/40/2019

1. Mansoor Muhammadu Manas
2. Mohommadu Ibrahim Mohammadu Ilyas

ACCUSED-APPELLANTS

Vs.

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

COMPLAINANT-RESPONDENT

BEFORE : **P. Kumararatnam, J.**
R. P. Hettiarachchi, J.

COUNSEL : **Kalinga Indatissa, PC with Waseemul Akram, Rashmini Indatissa, Razana Salih and Vomini Jayasinghe for the Appellants. Shanaka Wijesinghe, PC, ASG for the Respondent.**

ARGUED ON : **10.06.2026**

DECIDED ON : **25.08.2026**

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JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellants (hereinafter referred to as the Appellants) were indicted in the High Court of Puttalam as follows:

- On or about 03.10.2012, being in possession of a gun and thereby committing an offence punishable under Section 22(1) read with Section 23(3) of the Firearms Ordinance No. 33 of 1916 as amended by Act No. 22 of 1996.

The trial commenced before the High Court Judge of Puttalam. The prosecution had called three witnesses and marked productions P1 to P4 and closed the case. At that point, an application on behalf of the Appellants was made under Section 200(1) of the Code of Criminal Procedure Act No.15 of 1979. By order dated 03.08.2021, the Learned High Court Judge had dismissed the said application and called for the defence. The Appellants gave evidence from the witness box and called three witnesses on their behalf and closed their case.

After considering the evidence presented by both parties, the Learned High Court Judge who heard the case at the High Court of Puttalam delivered the Judgement and had convicted the Appellants as charged and sentenced them to life imprisonment.

Being aggrieved by the aforesaid conviction and sentence, the Appellants preferred this appeal to this court. The Learned Counsel for the Appellants informed this court that the Appellants have given consent to argue this matter in their absence. Also, at the time of argument the Appellants were connected via the Zoom platform from prison.

Background of the Case.

In this case the Appellants were arrested on 03.10.2012. The arrest and the investigation were conducted by the officers attached to the Unsolved Crimes Unit of Puttalam Police Station.

PW1, SI/Ranjith was attached to the Puttalam Police Station when the incident had happened. According to him, on the day of the incident as usual left the police station with 03 other police officers to carry out an investigation pertaining to unsolved crimes. They had positioned themselves at Seemavelliya Junction between 4-4.50 hours. While stationed there, a motorbike with two people arrived there from the direction of Seemawelliya to Boraluvala and the police party had checked them. According to PW1, at that time, the light condition was very good. Although there was no lamp post, sufficient light was available at that time.

Upon seeing a motorbike approaching the T-junction from the direction of Seemawelliya, PW3, 79592 Roshen had directed to stop the motor mike. The motorbike had stopped about three meters before the junction and the other officers who went with PW1 had surrounded the motorbike. The rider had threatened PW3 while he was getting down from the motorbike, however, he was brought under control using minimum force. A barrel of a gun was recovered from the rider's possession at the time of his arrest. He was named as the 1st Accused in the High Court case.

Thereafter, the pillion rider was searched and a butt of a gun was found in his possession. He too was arrested and named as the 2nd Accused in the High Court case.

PW2, PS 46076 Bandulasena was called to corroborate the evidence of PW1. The production had been sent to the Government Analyst and according to the report, upon amalgamation, the parts recovered from the Appellants consisted of a repeater shot gun made in the United States of America.

<u>The Appellants had filed the following grounds of appeal</u>:

1. That the Learned High Court Judge failed to appreciate that the prosecution failed to prove the charge on the indictment beyond reasonable doubt.
2. That the Learned High Court Judge failed to appreciate that the indictment was not in conformity with law and therefore, the Appellants had suffered a grave miscarriage of justice.
3. That the Learned High Court Judge failed to appreciate that the prosecution had failed to prove the ingredients of an offence under Section 22 of the Firearms Ordinance and specifically, that this situation is not one that falls within the ambit of Section 22(2).
4. That the Learned High Court Judge failed to appreciate that by concluding that the Appellants had not been misled by the offence not being specifically stated after having observed that such misstatement is defective, has denied the Appellants' right to a fair trial and is

contrary to Section 164 of the Code of Criminal Procedure Act No.15 of 1979.

5. That the Learned High Court Judge failed to properly evaluate the evidence led at the trial.
6. That the Learned High Court Judge failed to properly evaluate the evidence of the Appellants under oath led at the trial.
7. That the judgment is contrary to Section 283 of the Code of Criminal Procedure Act No. 15 of 1979.
8. That the Learned High Court Judge has misdirected herself with regard to the consistency and probability of the prosecution story.
9. That the Learned High Court Judge failed to properly evaluate the inconsistencies and contradictions raised by the evidence of PW1 and PW2.
10. That the Learned High Court Judge failed to appreciate that 'possession' of a gun cannot lead to a sentence of life imprisonment.
11. That the Learned High Court Judge's dismissal of the Appellants Evidence on the basis that they had not mentioned 'Hakeem' in their statements to the police even though they had, is incorrect.
12. That the Learned High Court Judge failed to appreciate that in a case such as the present one, the prosecution has to prove 'sole' and exclusive possession' and the prosecution has failed to do so in this case.
13. The Learned High Court Judge misdirected herself as to the burden of proof by stating that the Appellants are the only people who can offer an explanation pertaining to the gun.
14. The judgement of the Learned High Court Judge is contrary to the evidence that was led at the trial.
15. That the Learned High Court Judge imposed on the Appellants a burden of proof not required by law.
16. That the Learned High Court Judge failed to appreciate the omissions and contradictions in the notes and other observations related to the

raid.

17. That the Learned High Court Judge failed to appreciate that the reasonable doubt as to the place and time of arrest is material to this case and that the benefit of such doubt should be afforded to the Appellants.
18. That the Learned High Court Judge failed to appreciate that the Suspicion created by the failure to properly submit the productions to the Magistrate, should be afforded to the Appellants.
19. That the Learned High Court Judge failed to appreciate that the Prosecution had failed to disprove or affect the credibility of the defence Evidence.

As the appeal grounds are interconnected, all grounds will be considered together hereinafter.

The learned President's Counsel has strenuously argued that that the evidence given by PW1 and PW2 contradict each other with regard to the direction the motorbike arrived to the T-junction. According to PW1, the Accused persons arrived to the junction from the direction of Seemavelliya to Boraluwala. However, according to PW2, the motorbike had come from the direction of Boraluwala to Seeemavelliya. As per the sketch submitted at the commencement of the argument with the copy to the State, the evidence given by PW1 in respect of the arrival direction of the motorbike consists of a major contradiction, as the arrival direction stated by PW1 is the total opposite direction of what PW2 stated in his evidence.

Inter se contradictions refer to major or substantial discrepancies relating to a core material fact, between the testimonies of two or more prosecution witnesses. Such major contradictions would greatly threaten the credibility of that particular evidence, which would essentially force the court to consider the resulting reasonable doubt in the accused's favor.

Such contradictions are distinct from minor or trivial discrepancies which arise due to normal lapses in memory of witnesses. Inter se contradictions would affect the core of the matter, therefore, the portions of evidence which consist of such contradictions would result in the entire testimony being considered unworthy of belief. Courts would have to exercise caution in distinguishing between such foundational conflicts and minor details that do not affect the core of the case.

The *inter se* contradictions become more serious as the prosecution had failed to call an essential witness who was directed to stop the motorbike in which the Appellants arrived. According to the learned President's Counsel, PC 79592 Roshen was the person who stopped the motorbike**,** while being clad in police uniform and with possession of a T56 gun. According to PW2, when PC Roshen stopped the motorbike, the 1st Appellant had intimidated him and the police had used reasonable force to subdue him before his arrest. This was not elicited from the evidence of PW1.

In **The Attorney General v. Sandanam Pitchai Mary Theresa** [2011] 2 SLR 292 the court held that:

> *"Whilst internal contradictions or discrepancies would ordinarily affect the trustworthiness of the witness statement, it is well established that the Court must exercise its judgment on the nature of the inconsistency or contradiction and whether they are true material to the facts in issue".*

In the case of **Joy Devaraj vs The State of Kerala** (2024) INSC 473 it was held:

> "*The appellant was required to demonstrate that the incongruities in the statements of the several eye witnesses shook the roots of their credibility. The threshold for disbelieving a witness is not mere discrepancy or inconsistency but material discrepancy and inconsistency, which renders the account narrated by the witnesses so*

highly improbable that the same may safely be discarded altogether from consideration."

Further, PC Roshen is an essential witness in order to prove the place of arrest and how the Appellant were arrested. The defence had suggested to both PW1 and PW2 that the Appellants were not arrested as suggested by the prosecution but were arrested elsewhere.

Individuals such as police officers who would have the required firsthand knowledge, professional expertise or direct observations necessary for the court to establish facts, reconstruct events or determine the accused's guilt or innocence, would be essential witnesses.

In situations where a party in a criminal trial fails to call an essential witness, the Court may draw an adverse inference that the missing testimony would have been unfavourable to that party, and would therefore weaken their case or create a reasonable doubt relating to the guilt of the defendant.

In **Walimunige John v. The State** 76 NLR 488, it was held:

> *"that the prosecution is not bound to call all the witnesses whose names appear on the back of the indictment or to tender them for cross-examination. Further, it is not incumbent on the trial Judge to direct the jury, save in exceptional circumstances, that they may draw a presumption under section 114 (f) of the Evidence Ordinance adverse to the prosecution from its failure to call one or more of its witnesses at the trial without calling all.*
>
> *The question of a presumption arises only where a witness whose evidence is necessary to unfold the narrative is withheld by the ' prosecution and the failure to call such witness constitutes a vital missing link in the prosecution case and where the reasonable inference to be drawn from the omission to call the witness is that he would, if called, not have supported the prosecution. But where one witness's evidence is cumulative of the other and would be a mere repetition of the*

narrative, it would be wrong to direct a jury that the failure to call such witness gives rise to a presumption under section 114 (f) of the Evidence Ordinance."

In **Republic of Sri Lanka v Udugamage Jayaratne** CA/HCC/0236/2019 dated 31.03.2021 the court held;

"Although section 31 of the Firearms Ordinance provides that any occupier of any house or premises in which any gun shall be found shall for the purposes of the Firearms Ordinance be deemed to be the possessor of the gun unless he proves that he had no knowledge or some other person had the possession, as contended correctly, I am of the view that the provisions of the section becomes applicable only if the Court believes the evidence as to the recovery of the Firearm as stated by the prosecution.
There cannot be any argument that there is a duty cast upon the prosecution witnesses to divulge the full truth as to what happened and not the suppression of facts which they may think that are not favourable to the case of the prosecution.
I find that the prosecution witness Number 01 and 02 was not truthful about the arrest of the appellant which is a matter that goes into the root of the prosecution case against him. I am of the view that a reasonable doubt has been created and a reasonable explanation has been provided by the appellant in this action, which should have been viewed in favour of him by the learned High Court Judge."

As the place of incident was challenged by the defence, I consider calling PW3 Roshen to be very essential in this case. The Learned High Court Judge ought to have considered this suppression in favour of the Appellants.
In this case, when the defence was called, both Appellants opted to give evidence from witness box.

The 1st Appellant, when giving evidence, stated that he is a mechanic by profession. On the date of the incident, the 2nd Appellant came and informed that one Hakeem was looking for him. Hence, both the Appellants had left in a motorbike to meet Hakeem. Both of them had gone to an estate situated on Seemavelli Road. At the estate they had met a person called 'Massina', who had informed him that his services were needed to fix a gun. He knew that the person called 'Massina' used to go hunting with Hakeem. As a screwdriver was not available, the said person had gone to bring a screwdriver, leaving two parcels. He did not open the parcels but waited until the other person brought a screwdriver. At that time, the police had arrived and arrested the Appellants. After the arrest, the police had obtained his signature to a document which was in the Sinhala Language.

The 2nd Appellant also narrated the same in his evidence. He too placed his signature to a document written in Sinhala Language.

The learned President's Counsel argued that since the Appellants had referred to a person called Hakeem, who was claimed to be the owner of the gun, the police had not carried out investigations with regard to Hakeem. Although the 2nd Appellant had referred to the name of Hakeem in his statement, the Learned High Court Judge had stated in her judgment that no reference with regard to Hakeem was made in their statement. Due to this wrong inference, the learned President's Counsel submits that this has caused a great prejudice to the Appellants and deprived them of a fair trial.

In criminal trials, the burden of proof relating to establishing the guilt of the accused would lie entirely on the Crown. This burden would lie on the Crown in relation to every element or essential fact which would make up the offence charged, and would never shift to the accused. The accused would not have an obligation to prove any fact or issue that is disputed. In simpler terms, the accused is not obliged to prove their innocence; rather, the Crown is obliged to sufficiently prove their guilt.

The presumption of innocence is a major principle of the criminal justice system. This would mean that any person charged with a criminal offence would be presumed innocent until the Crown sufficiently establishes the person's guilt beyond a reasonable doubt to a jury.

In **The Queen v. K.A. Santin Singho** 65 NLR 447 the court held that:

> *"It is fundamental that the burden of proof is on the prosecution. Whether the evidence the prosecution relies on is direct or circumstantial, the burden is the same. This burden is not altered by the failure of the appellant to give evidence and explain the circumstances".*

In **Miller v. Minister of Pensions** (1947) 2 All E.R. 372 the court held that:

> *"…the evidence must reach the same degree of cogency as is required in a criminal case before an accused person is found guilty. That degree is well settled. It need not reach certainty, but it must carry high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, "of course it is possible, but not in the least probable," the case is proved beyond reasonable doubt, but nothing short of that will suffice".*

In **The King Vs. W. P. Buckley** 43 NLR 474, it was stated by Howard, C.J.:

> "*In arriving at a verdict of guilty, the majority of the jury must have viewed the evidence in sections accepted and convicted the appellant on those parts that were satisfactory and disregard those facts that pointed to the improbability of the story put forward by the Crown. The jury should have*

viewed the evidence as a whole. If they had done so, we are of opinion that they must have had a reasonable doubt as to the guilt of the appellant. The verdict is in our opinion, unreasonable, in as much as taken as a whole the evidence does not support the conviction."

In the case of **Officer - In - Charge, Police Station Udu Dumbara Vs. U.G. Sunil and Others** (SC/APPEAL/27/2019), decided on 05.06.2024 it was noted:

"It has been firmly established that, in a criminal case, that the charges against the Accused should be proved beyond reasonable doubt. Proof beyond a reasonable doubt generally means the Court must carefully consider the entirety of admissible evidence to such scrutiny to see whether the ingredients of the charges are proved. If the Court is not satisfied the accused person must be acquitted."

One extremely important metric in assessing the fairness of a trial would be the observance of the principle of equality of arms, by both the defence as well as the prosecution. Equality of arms refers to both parties being treated equally, in a manner which ensures their procedural equality throughout the trial.

In this case PW1 and PW2 are the key witnesses. If their evidence is clear, cogent, and unambiguous, the court could without any hesitation rely on their evidence and convict the Appellants in the absence of any corroboration. However, due to the reasons discussed above the evidence given by PW1 and PW2, in my view, has not passed the probability test. It is tainted with much ambiguity and uncertainty, which definitely affects the root of the case. Further, the prosecution has failed to call PW3, who is, in my opinion, a very essential witness in this case.

As the prosecution had failed its duty to prove this case beyond a reasonable doubt, I set aside the conviction and sentence imposed by the Learned High

Court Judge of Puttalam dated 31/05/2023 on the Appellants. Therefore, they are acquitted from this case.

Accordingly, the appeal is allowed.

The Registrar is directed to send this judgment to the High Court of Puttalam along with the original case record.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL