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.

The Hon. Attorney General
Attorney General's Department
Colombo-12

COMPLAINANT

Court of Appeal Case No:
CA/HCC /0193/2020
High Court of Colombo
Case No. HC/8232/2016

Rajapathirage Ajith Rohan Perera

ACCUSED

AND NOW BETWEEN

Rajapathirage Ajith Rohan Perera

ACCUSED-APPELLANT

Vs.

The Hon. Attorney General
Attorney General's Department
Colombo-12

COMPLAINANT-RESPONDENT

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

R. P. Hettiarachchi, J.

COUNSEL : **I.B.Sachitra Harshana for the Appellant.**

Shanaka Wijesinghe, PC, ASG for the Respondent.

ARGUED ON : **23/02/2026**

DECIDED ON : **22/05/2026**

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JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted in the High Court of Colombo under Section 296 of the Penal Code for committing the murder of Rajapathirage Gamini Philipian Perera on 30.12.2013.

The trial commenced before the High Court Judge of Colombo as the Appellant had opted for a non-jury trial. After the conclusion of the prosecution case, the Learned High Court Judge had called for the defence

and the Appellant made a dock statement from the dock and closed his case. After considering the evidence presented by both parties, the Learned High Court Judge had convicted the Appellant as charged and sentenced him to death on 30.11.2020.

Being aggrieved by the aforesaid conviction and sentence, the Appellant preferred this appeal to this court.

The Learned Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence. Also, at the time of argument the Appellant was connected via the Zoom platform from prison.

The Learned Counsel for the Appellant raised only one ground of appeal on behalf of the Appellant. He contended that the circumstantial evidence led at the trial is insufficient to convict the Appellant for the charge of murder.

Background of the case is *albeit* as follows:

The deceased is the brother of the Appellant. He was unmarried and had lived in the same house (an apartment) of the Appellant. But the Appellant had chased him out and the deceased had been sleeping outside, in the corridor of the apartment.

According to PW1, Nishantha, on 31.12.2013, he had seen the deceased lying fallen with bleeding injuries at the corridor of the second floor of the apartment. He had lodged the first complaint to the police at 6.37am. According to him a dispute had existed between the Appellant and the deceased regarding the ownership of the apartment where both lived. After being chased out from the house by the Appellant, the deceased used to sleep in the corridor of the flat, which the Appellant did not like.
PW3 Sriyani Perera is the sister of the deceased, and the Appellant and PW4 Kalum a neighbor also confirmed the existence of a property dispute between

the deceased and the Appellant, and both had seen the deceased lying fallen with injuries at the corridor of the second floor of the apartment.

PW2, Chamara Sampath, the son of the Appellant, also confirmed the existence of a dispute over the apartment between his father and the deceased. Additionally, he revealed that his Accused-father always threatened the deceased that he was going to assault the deceased. This had happened on the previous night as well.

As per the witnesses, the Appellant after hearing about the death of the deceased, without inquiring or trying to assist anybody, simply went down from the flat. He had not taken any plausible steps to assist the police.

Police had arrived at the crime scene at 7.30am and had arrested the Appellant at 12.00pm. PW8, SI/ Weerasinghe had recovered a mamoty under the bed of the Appellant upon the statement of the Appellant, which was marked under Section 27(1) of the Evidence Ordinance.

As the Mamoty contained blood stains and two pieces of hair shafts, the same was sent for DNA analysis to Genetech, Colombo. According to the report provided by PW14, Dr. Illeperuma, he confirmed that the blood found on the Mamoty and the blood sample obtained from the deceased's body has matched perfectly.

According to PW13, Dr. Rasanjalee, then JMO who held the post mortem examination submitted that the deceased had sustained 21 injuries and the injury No.10 which caused the death of the deceased, could be by a blunt weapon such as a Mamoty which had been recovered upon the statement of the Appellant.

The Learned Counsel for the Appellant contended that the Learned High Court Judge has failed to appreciate that the circumstantial evidence led at the trial is insufficient to convict the Appellant for the charge of murder.

In this case the witness PW2, and PW3 in their evidence divulged the questionable conduct of the Appellant in committing this murder.

The behavior or conduct of an accused person, would be of extreme importance and relevance in criminal proceedings, as such conduct could serve as circumstantial evidence which would be necessary to secure a conviction. The conduct before and after the commission of an alleged crime would have to be assessed, and as per Section 8(2) of the Evidence Ordinance, the conduct would be admissible if it is influenced by, or if it influences, a fact in issue.

In the case of **S.C. Appeal No. 118/2022,** decided on 16.05.2025 it was reaffirmed by the Supreme Court that:

> *"When considering a case on circumstantial evidence, Court has to bear in mind that the prosecution must prove beyond reasonable doubt that the circumstantial evidence led at the trial must only be consistent with the guilt of the appellant and not with any other hypothesis."*

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

> *"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.*
>
> *Regard should be had to a set of principles and rules of prudence, developed in a series of English decisions, which are now regarded as settled law by our courts.*

The two basic principles are-

- *(i) The inference sought to be drawn must be consistent with all the proved facts, if it is not, then the inference cannot be drawn.*
- *(ii) The proved facts should be such that they exclude every reasonable inference from them, save the one to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct (per Watermeyer J. in R vs. Blom 1939 A.D. 188)*

The rule regarding the exclusion of every hypothesis of innocence before drawing the inference of guilt was laid down way back in 1838 in the case of R vs. Hodges (1838 2 Lew. cc.227). The circumstances must be such as to produce moral certainty to the exclusion of every reasonable doubt."

In the case of **Kusumadasa v. State** (2011) 1 Sri L.R. 240 it was held:

"In a case of circumstantial evidence, if the proved facts are compatible with the innocence of the accused, he cannot be convicted of the offence. Further if the proved facts are not consistent with the guilt of the accused, he cannot be convicted for the offence. In a case of circumstantial evidence, 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. 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.

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 and only if the proved items of circumstantial evidence is consistent with their guilt and inconsistent with their innocence."

The evidence given by PW2, and PW3 clearly establish that a dispute had existed between the Appellant and the deceased. According to PW2, the Appellant had used to tell that he was going to attack the deceased. In fact, he had mentioned the same on the previous night. This evidence would highly incriminate the Appellant, as it was divulged by his son.

Although it is necessary for the prosecution to prove the mens rea of a defendant in the commission of a crime, in order to secure a conviction in a criminal case, they are not required to prove the reason why the defendant actually did it. In other words, it is not a requirement to prove the motive to secure a conviction in a criminal case. However, if a motive can be established, it would serve as crucial circumstantial evidence which would assist in proving the identity or the intent, especially in situations where other evidence is not strong enough.

E.R.S.R. Coomaraswamy in his book The Law of Evidence Vol 1 at 224 discusses the relevancy of the motive in the following manner;

> "Though motive is not a necessary fact, the presence of motive is intensely relevant, as tending to establish either the actus reus or mens rea, or both, except perhaps in certain statutory offences. If a substantive case as to the motive has been put forward, the evidence must be considered. The existence of motive may explain facts which would be otherwise difficult to explain. It is also relevant and important on the question of intention"

In this case the prosecution had presented evidence of the existence of a dispute between the Appellant and the deceased. The evidence given by PW2 and PW3 had clearly established the existence of a motive.

Further, although a Counsel was represented, the defence had failed to cross examine PW1, PW2, PW3 and PW4 whose evidence went into the proceedings uncontested. A plethora of judgements both delivered in Sri Lankan as well as in Indian courts endorsed the fact that absence of cross examination of prosecution witnesses of certain facts leads to inference of admission of that fact.

In the case of **Premawansha v. Attorney General** [2009] 2 SLR 205 it was held:

> *"Absence of cross examination of prosecution witness of certain facts leads to inference of admission of that fact."*

In the case of **Sarwan Singh v. State of Punjab** AIR 2002 SC 3652, the Indian Supreme Court held:

> *"It is the 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.'"*

In the case of **Himachal Pradesh v. Thakur** Dass (1983) 2 CrL L.J. 1694 at 1983 held:

> *"Whenever a statement of fact made by a witness is not challenged in cross examination, it has to be concluded that the fact in question is not disputed.' 'Absence of cross-examination of prosecution witness of certain facts leads to an inference of admission of that fact."*

In the case of **Wannaku Arachchilage Gunapala v. AG** 2007 (1) SLR 273 it was held that:

> *"No questions were asked from him in cross examination as to the nature or the type of the weapon used. It appears that the nature or the*

type of the weapon was not put in issue instead the Counsel for the defense had challenged this witness only on the basis that the witness did not see the incident or the weapon that was used in the commission of the crime. Therefore, we find that it is not in the mouth of the accused now, to take up all these objections that were not raised at the trial."

As per Section 27 of the Evidence Ordinance of Sri Lanka, information given by an accused in police custody would be admissible if it directly leads to a relevant fact being discovered. The specific portion of the statement in relation to the discovery is admissible, which is an exception to prohibitions on confessions made to the police.

In the case of **Somaratne Rajapakse and Others v. Attorney General** (2010) 2 SLR 113 it was held:

"A discovery made in terms of Section 27 of the Evidence Ordinance discloses that the information given was true and that the accused had the knowledge of the existence and the whereabouts of the actual discovery. Therefore, as has been adopted by T. S. Fernando, J. in Piyadasa v. The Queen following the Indian decision in Kottaya v. Emperor, that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true'. It was therefore held that such information could be 'safely allowed to be given in evidence"

In this above-mentioned case, the case which analysed the rationale underlying this proviso, **Thurtell v. Hunt (1825)** Notable British Trials, 145 was cited, which held:

"A confession obtained by saying to the party, "you had better confess or it will be the worse for you' is not legal evidence. But, though such a confession is not legal evidence, it is everyday practice that if, in the

course of such confession, that party states where stolen goods or a body may be found and they are found accordingly, this is evidence, because the fact of the finding proves the truth of the allegation, and his evidence in this respect is not vitiated by the hopes or threats that may have been held out to him."

In the case of **Nandasena v. Republic of Sri Lanka** (1978–79) 2 SLR 235 it was held:

"Section 27 is based on the doctrine of confirmation by sub sequent facts. Even though evidence relating to confessional or other statements made by a person, whilst in the custody of a police officer, is tainted and therefore inadmissible, if the truth of the information given by him is assured by the discovery of a fact, it may be presumed to be untainted and is, therefore, declared provable in so far as it distinctly relates to the fact thereby discovered. Only that portion of the information can be proved which relates distinctly to the facts discovered."

In this case, a Mamoty was recovered upon the statement given by the Appellant. Although this recovery only imputes the knowledge of the Appellant, with the other evidence lead by the prosecution had certainly strengthened the prosecution case.

Notably, PW8 had not been cross examined on whether he used any threat or duress when recording the Appellant's statement. Further, it has been noted that neither the ingredients of the 27(1) recoveries nor the chain of custody for the items recovered, had been cross examined or highlighted. Further, as per the evidence of PW14 the blood sample found on the head of the mamoty is compatible with the blood samples taken from the deceased's body. This, together with the incriminating evidence against the Appellant such as the Appellant's conduct, the actual recovery of the weapon on the

Appellant's statement and the injuries on the deceased's body. Such evidence would therefore make the prosecution's case more substantial.

Under Section 45 of the Evidence Ordinance, DNA (Deoxyribose Nucleic Acid) can be admitted as expert evidence, and such evidence has been accepted as seen in Sri Lankan case law, in situations such as to identify perpetrators in criminal cases or to establish paternity. Many notable cases in this regard would be the Hokandara murder, the Sarath Ambepitiya murder and the Royal Park murder, where the use of DNA profiling assisted in corroboration of circumstantial evidence or in the identification of suspects.

In the case of **Commission to Investigate Allegations of Bribery or Corruption v. Indiketiya Hewage Kusumdasa Mahanama and Another** SC TAB 1A & 1B/2020 decided on 11 January 2023 it was observed in detail:

> *"Additionally, admission of evidence of novel sciences for the purposes of identification is not a foreign experience for Sri Lankan Courts. For instance, the leading of evidence as to identification through DNA typing and fingerprints in the Sajeewa Alias Ukkuwa and Others V. The Attorney General (Hokandara Case) (2004) 2 SLR 263 as early as 1999 made history as the first case to consider DNA evidence in Sri Lanka. Thereafter, the use of DNA evidence as corroborative evidence in the case of The Attorney-General V. Potta Naufer and Others (Ambepitiya Murder Case) (2007) 2 SLR 144, with extensive elaboration of the methodology and science supporting the use of DNA typing, are both instances of leading expert evidence for the purposes of identification. Given the technological advancement, especially with the use of personal devices as smartphones and personal computers, the outlook on technological evidence must be altered significantly, making room for modern realities which could not have been contemplated by legislators at the time of the enactment of certain legislation effecting such*

evidence. It is evident that the evolution of technology has outpaced the parallel development of law, and oft it has been demonstrated in cases as the above, that practical necessity being demonstrated in cases, leads to the opinions of courts preceding and influencing eventual legislative amendments encompassing such opinions.

The identification of individuals, earlier being a selected few methods has undeniably advanced during the current millennia. For instance, the development of biometric technology for identification, including methods as facial and retinal recognition, have drastically increased in accuracy.

However, in terms of legal admissibility of evidence based on novel sciences, it is entirely dependent on factors that include those considered above and is undeniably subjective to each individual circumstance, the science concerned, the specific methodology used, and the error margin involved. In the instant case, applying all the above tests and taking the expert evidence into account, with due regard to the methodology used in this specific circumstance, we find that "Voice Analysis" in the manner conducted by Witness Gunathilake, is in fact a "Science" which falls under Section 45 of the Evidence Ordinance."

In the case of **Weerasinghe v Jayasinghe** (2007) 2 SLR 50 it was held:

"(1) In cases where parentage (paternity) is in issue the most cogent evidence is likely to be obtained by blood tests in general and DNA tests in particular. Such tests may be used either to rebut the presumption or allegation of paternity or to establish marriage".

(2) DNA profiling can establish parentage with a virtual certainty; DNA tests are also known as genetic finger printing could by matching the alleged father's DNA bands with that of the child's bands after excluding

such bands that match the mother's would make positive finding of paternity with virtual certainty.

(3) The DNA test could be used by the appellant to rebut the allegation of paternity."

In this case in order to find the Appellant guilty of the charge, all the circumstances must point at him that he is the one who committed the murder of the deceased and not anybody else. It is the incumbent duty of the prosecution to prove the same beyond reasonable doubt.

The Learned High Court Judge had expressly mentioned that he had applied the principles governing the evaluation of circumstantial evidence, and had considered all the circumstances to come to his conclusion. The Learned High Court Judge had correctly narrated all the witnesses who gave evidence in his judgment.

In the case of **C.Chenga Reddy and others v. State of A.P**.(1996) 10 SCC 193 the court held that:

"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 guilt of the accused and totally inconsistent with his innocence".

In the case of **McGreevy v. Director of Public Prosecution [1973] 1 W.L.R.276** the court held that:

"There is no requirement, in cases in which the prosecution's case is based on circumstantial evidence that the judge direct the jury to acquit unless they are sure of the facts proved are not only consistent with guilt but also inconsistent with any other reasonable conclusion. The question

for the jury is whether the facts as they find them to be_drive them to the conclusion, so that they are sure, that the defendant is guilty".

In the case of **Attorney General v. Potta Naufer & others [2007) 2 SLR 144** the court held that:

"When relying on circumstantial evidence to establish the charge of conspiracy to commit murder and the charge of murder, the proved items of circumstantial evidence when taken together must irresistibly point towards the only inference that the accused committed the offence".

In **Premawansha v. Attorney General [2009] 2 SLR 205** the court held that:

"In 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".

Guided by the above-mentioned judgments, I conclude that the items of circumstantial evidence led in this trial are sufficient to arrive at the conclusion that the Appellant is the person who committed the murder of the deceased.

As discussed under the only appeal ground raised, the prosecution had adduced strong and incriminating circumstantial evidence against the Appellant. The Learned High Court Judge had very correctly analyzed all the evidence presented by both parties and concluded that the Appellant is guilty of the charge of murder.

As the Learned High Court Judge had rightly convicted the Appellant for the charge of murder, I affirm the conviction and dismiss the Appeal of the Appellant.

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL