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.

Court of Appeal Case No:
CA/HCC/0281/2023
High Court of Kilinochchi
Case No. NP/HC/KN/12/2022

Nagarasa Ketheeswaran alais Thileepan

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

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

R. P. Hettiarachchi, J.

COUNSEL : **N. Srikantha with S. Panchadsaram for the Appellant.**
Sheshan Bahboob, SC for the Respondent.

ARGUED ON : **02/06/2026**

DECIDED ON : **16/07/2026**

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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 Kilinochchi under Section 296 of the Penal Code for committing the murder of Ramalingam Raja Sulochana on or about 12th April 2014.

The trial commenced before the High Court Judge of Jaffna as the Appellant had opted for a non-jury trial, after pleading not guilty. After leading several witnesses before the High Court of Jaffna, this case was transferred to the newly established Kilinochchi High Court on 19.05.2022. Trial continued in the High Court of Kilinochchi after adopting the proceedings already recorded before the High Court of Jaffna.

After the conclusion of the prosecution case, the Learned High Court Judge had called for the defence and the Appellant gave evidence from witness box and closed his case. After considering the evidence presented by both parties, the Learned High Court Judge had convicted the Appellant under section 296 of Penal code and sentenced him to death on 09/11/2023.

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.

Background of the Case

According to the evidence led in the trial, the deceased was expecting to marry the Appellant as he is her cousin. The parents of the deceased had been opposed to this, as the Appellant had no permanent employment.

According to PW2, Rasamma the mother of the deceased, three days before the incident, the deceased had informed her that the Appellant had requested her to come to meet her personally and that therefore, she wants to go to Kilinochchi. She also requested her mother not to tell anyone in the family about her departure to Kilinochchi. Accordingly, the deceased had left for Kilinochchi on 12.04.2014 at about 10.00am from Pitakande Estate, Matale despite the resistance of PW2. She had identified the hand bag which was last carried by the deceased and her clothes that she had last worn.

PW1, Ramalingam is the father of the deceased. He too confirmed about the relationship the deceased had with the Appellant and his disapproval due to the fact that the Appellant was not having a permanent job. On 13.04.2014, he had received a call from the Appellant, who pretended it was a wrong number. However, the name of the Appellant was displayed on his phone and it was identified that it was the Appellant who had called him.

PW3 Mahendran and PW5 Ajith Kumar got alerted after seeing a dog barking unusually in the land belonging to PW4 Sribalan. When they entered the land, they had seen some blood marks and a blood-stained shawl there. Upon passing this information to PW4, the owner of the land had arrived and he too confirmed the evidence given by PW3 and PW5. Additionally, he had said that the land in which the incident had happened contained several trees, a well and a small house. Upon inspection of the house, he had found a Shalwar top and a shalwar bottom on a bed. According to him, the said clothes did not belong to them.

PW6 Jagath Kumara, PW8 Antony Newton, PW10 Chandra Kumara and PW14 Viraj Fernando are officers attached to the Civil Defence Force Unit. Upon receiving information, they had extended their fullest support to discover the body from the well. PW13, Kantharooban confirmed that the Appellant was attached to the Civil Defence Force Unit as a member of their Karate team. He confirmed the presence of the Appellant in the said camp on 12.04.2014 until he left the camp in the evening.

PW15, PC 81170 Sandakelum attached to the Police Cannel Division was dispatched to the scene of crime with a sniffer dog on 13.04.2014 by the Officer-in-Charge of the Kilinochchi Police Station. The sniffer dog was given the blood-stained shawl recovered at the scene of crime to pick up the scent. The dog had then headed towards the Civil Defence Force Unit Camp and stopped near a room. The witness noted that the Civil Defence Force Unit Camp is situated 200 meters away from the camp.

PW27, IP/Farooq was the Acting Officer-in-Charge of the Kilinochchi Police Station. Upon receiving information, he had gone to the place of incident, recovered the production through PW24, SI Sudusingha and fished out the deceased's body from the well. The dead body was found with 2 bags attached containing stones, preventing the body being floating. Upon examination, a piece of paper with a phone number, name and address written on it, was found inside the bag. With the help of that number, the identity of the deceased was established and the information was passed to the deceased's family.

Upon information, the Appellant was arrested on 16.04.2014 at the Paranthan Junction and a short statement was recovered inside the jeep at 11.50am. Upon his statement, a knife was recovered under a mango tree in the land where the deceased's body was recovered. Inside the Appellant's house, two mobile phones were recovered inside a tool box. PW1 had identified one of the phones as belonging to the deceased. Inside his room, a shirt and a trouser were recovered by the police. On the following day, the Appellant was handed over to the officers attached to the Criminal Investigation Department along with the production recovered for further investigations.

IP/Jayasekera attached to the Homicide Division of the Criminal Investigation Department conducted further investigation after the inquiry was taken over by the CID. On 17.04.2014 a further statement was recorded from the Appellant. Upon his second statement a handbag was recovered from a toilet pit in the Appellant's house. The said hand bag was identified by PW1 and PW2 as belonging to the deceased. Several items were recovered inside the said hand bag including a wool band with a strand of hair which was sent for DNA analysis. Investigation further revealed that the deceased had last received a call from the Appellant.

PW19 Subramaniyam, a sanitary worker, had assisted to recover the hand bag from the toilet pit. He confirmed that the Appellant was brought to his house by the police and on his direction the hand bag was recovered.

PW23, Dr. Sivaroobaan, the JMO who held the post mortem observed 6 main injuries on the deceased's body. One stab injury was noted on the right side of the neck of the deceased and the other injuries noted are abrasions. The JMO had not noted any recent injuries in the genital area of the deceased. According to him the cause of death is drowning as the lungs of the deceased had been expanded.

Through Court, the strand of hair found in a wool band, the knife and the trouser of the Appellant's were sent for analysis. PW22, the deputy Government Analyst who gave evidence on the report submitted confirmed that the DNA profile of the items mentioned above matched with the DNA profile of the deceased.

The Appellant gave evidence from the witness box and admitted that he called the deceased on the day prior to the death of the deceased. He had taken up the position that the deceased had come to meet another person. Therefore, he denied the allegation. He admitted that his statement was recorded but denied any recovery upon his statement.

<u>The following appeal grounds were advanced by the Appellant.</u>

1. Inadmissible evidence led through PW27 and PW30.
2. The evidence led at the trial is infected with infirmities and therefore, not credible.
3. The items sent for DNA analysis were not recovered upon his statement.

According to PW1 and PW2 the deceased was having a long-term affair with the Appellant. Both PW1 and PW2 did not like it as the Appellant had no fixed job or income. The deceased went to Kilinochchi after receiving a call from the Appellant. She was asked to come secretly without informing any family member. But she had informed the same to her mother, PW2, before she had left for Kilinochchi. The Appellant had not denied calling the deceased. The deceased went missing after going to Kilinochchi. The sniffer dog, after smelling the blood on the shawl, directly went to the Civil Defence Force Unit and stopped near a room within the camp. PW13 confirmed that the Appellant was member of the CDS Karate team during the relevant time. No eye witnesses are available in this case. The case fully rests on circumstantial evidence adduced by the prosecution.

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 the case of **Kusumadasa v. State** [2011] 1 SLR 240 the court held that:

> *"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".*

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".*

In this case in order to find the Appellant guilty of the charge, all the circumstances must point at the Appellant, specifically, 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.

In this case, according to PW01 and PW2, the Appellant is the person who had an affair with the deceased. This was a long-term affair which was not liked by PW1 and PW2. On the day of the incident the deceased had told PW2 that she was going to meet the Appellant as per his request.

In the first ground of appeal, the Learned Counsel contended that the evidence led through PW27 and PW30 is inadmissible. He mainly argued that the recovery done under Section 27 recovery is false.

Section 27 of the Evidence Ordinance states that,

> "When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved."

In **Somaratne Rajapakse and Others v. Hon. Attorney General** (2010) 2 Sri L.R. 113 at 115 it is stated that:

> *"Vital limitation of the scope of sec. 27 Evidence Ordnance is that only the facts which are distinctly related to what has been discovered would be permitted in evidence. It is well settled law that there should be a clear nexus between the information given by the accused and the subsequent discovery of a relevant fact. A discovery, made in terms of the Sec. 27 of Evidence Ordinance discloses that the information given was true and that the accused had knowledge of the existence and the whereabouts of the actual discovery."*

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

> *"Section 27 is concerned with the proof of information whether it amounts to a confession or not, which leads to discovery of facts, and*

only that much of the information is admissible as distinctly relates to the fact discovered. Section 27 is based on the doctrine of confirmation by subsequent 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, the initial investigation was done by the Kilinochchi Police headed by PW27, who was the acting Officer-in-Charge at that time. After the apprehension of the Appellant, PW27 had recorded a short statement while in the police jeep. Upon that statement, a blood-stained knife was recovered under a tree which is 200 meters away from the well where the deceased's body was fished out. The deceased's clothes were also recovered at the scene of crime. The defence was not able to mark any contradiction or omissions in respect of this.

The second detection was done by the CID headed by PW30. After recording the second statement, a hand bag belonging to the deceased was recovered from a toilet pit in the Appellant's house. To recover the same, PW19 a sanitary worker had assisted and also given evidence. As correctly argued by the Learned State Counsel he is an independent witness. It is important to note that his evidence was not challenged by the defence.

As the prosecution had adduced strong recovery evidence, the contention raised by the learned Counsel is not strong enough to challenge Section 27(1) recovery evidence.

In the second ground of appeal, it was contended by the Learned Counsel that the evidence led at the trial is infected with infirmities, and would therefore not be credible. Such evidence with infirmities (such as major contradictions, inconsistencies or differences in timelines) being led would adversely affect the legal value of such evidence. Accordingly, such evidence would most likely be rejected by the judge or the jury, thus resulting in the acquittal of the accused due to reasonable doubt.

On the other hand, minor discrepancies in a witness's story would not destroy a case. The overall testimony will be assessed in order to assess whether the core story is in fact credible and truthful, by the Courts. If so, a conviction would be allowed.

In State of **Uttar Pradesh v. M. K. Anthony** [AIR 1985 SC 48] the court held that:

> *"While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief."*

In **Iswari Prasad v. Mohamed Isa** 1963 AIR (SC) 1728 at 1734 His Lordship held that;

> *"In considering the question as to whether evidence given by the witness should be accepted or not, the court has, no doubt, to examine whether the witness is an interested witness and to enquire whether the story deposed to by him is probable and whether it has been shaken in cross-examination. That is - whether there is a ring of truth surrounding his testimony."*

In the case of **Wickremasuriya v.Dedoleena and others** [1996] 2 SLR 95 Jayasuriya J held that;

> *"If the contradiction is not of that character the Court ought to accept the evidence of witnesses whose Evidence is otherwise cogent having regard to the Test of Probability and Improbability and having regard to his demeanour and deportment manifested by witnesses. Trivial contradictions which do not touch the core of a party's case should not be given much significance, especially when the probabilities factor echoes in favour of the version narrated by an applicant"*

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

> *"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."*

Although PW27 in his evidence said that the Appellant had confessed about the murder after he was arrested, no confessionary portion of evidence had gone into the proceedings. The recovery of vital productions which connect the Appellant directly to the crime was led under Section 27(1) of the Evidence Ordinance which is permissible under the law. It is important to note no contradictions or omissions were highlighted in this case.

The learned Counsel further contended that why the initial investigation conducted by the local police fail to detect the handbag of the deceased. Due to the serious nature of this crime, further investigation was entrusted with the Homicide Unit of the Criminal Investigation Department. The handbag was recovered separately by the CID upon further statement of the Appellant.

As correctly argued by the Learned State Counsel, there is nothing unusual or suspicious in the separate recoveries made pursuant to separate statements. As no infirmities have been noted in the evidence given by the prosecution witnesses, I conclude that the second ground raised by the Appellant has no merit.

In the third ground of appeal, the learned Counsel for the Appellant contended that the items sent for DNA analysis were not recovered upon his statement.

As stated earlier, there is no irregularity or ambiguity noted in the recovery evidence led by the prosecution. The use of DNA evidence in the criminal justice system has been regarded by scholars as "probably the greatest forensic advancement since the advent of fingerprinting".

In **The Attorney General v. M. N. Naufer alias Potta Naufer and Others** [2007] 2 SLR 144 the court held that:

> *"An individual's genetic constitution is unique in so much as there are no two individuals who have the same DNA. By analysing DNA of an individual, it is possible to say that the chances of finding another person with matching DNA is less than one in a trillion. This is analogous to hand finger printing techniques and that is why DNA finger printing has received the degree of acceptability which is similar to hand fingerprinting in courts the world over".*

DNA evidence has now been accepted by our courts as a science upon which expert evidence could be led in terms of Section 45 of the Evidence Ordinance.

<u>Section 45 of the Evidence Ordinance states:</u>

"When the Court has to form an opinion as to foreign law, or of science, or art, or as to identity or genuineness of handwriting or finger impressions, palm impressions or foot impressions, the opinions upon that point of persons especially skilled in such foreign law, science, or art, or in questions as to identity or genuineness of handwriting or finger impressions, palm impressions or foot impressions, are relevant."

The manner in which such expert evidence should be considered by a trial judge is discussed in several decided cases in our criminal justice system.

In **Mark Antony Fernando v. AG** CA/84/97 decided on 08/10/1998 the court held that:

> *"…the judge has to decide (…) whether there was a very great antecedent probability of the injury resulting in death as opposed to a mere likelihood. That function cannot be delegated to the expert. The judge is expected to decide this issue assisted by the evidence of the expert but independently of the opinion expressed by the expert."*

Dr. Ruwan J. Illeperuma, an expert in DNA Technology elaborates in his article titled "**DNA, THE BIOLOGICAL TOOL FOR CRIME INVESTIGATION IN SRI LANKA**" as follows:

> "Because each person's DNA is different from that of every other individual (except for identical twins) examining variations in genetic material among human individuals, by DNA technology is the most powerful method for accurate human identification. DNA can be isolated from a number of biological samples, such as hair, saliva, blood, bone, teeth etc. The technology currently being applied is so sensitive that even a miniscule amount of bodily fluid or tissue can yield accurate DNA information. Therefore, this technology has a wide application in identifying perpetrators of crime and in confirming familial relationships of humans. (…..). The level of accuracy achievable guarantees absolutely no risk of convicting the wrong person and thereby establishing the innocence of those wrongly convicted."

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.*

Therefore, an expert in DNA analysis plays a vital role in criminal cases. As in this case, their expert knowledge might help prosecuting authorities to identify the person against whom criminal charges should be filed. Their opinions are also very helpful to the court in properly adjudicating of the case.

The previous and subsequent conduct of the Appellant also gives rise to a reasonable suspicion about the Appellant. Now I shall consider whether the previous and subsequent conduct of the Appellant are relevant to this case.

Section 8(1) and 8(2) of Evidence Ordinance are read as follows:

> 8 (1) Any fact is relevant which shows or constitute a motive or preparation for any fact in issue or relevant fact.
>
> 8 (2) The conduct of any party, or of any agent to any party, to any suit or proceedings in reference to such suit or proceedings or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent therein.

According to PW2, the deceased had gone to Kilinochchi upon the request made by the Appellant over the phone. The Appellant had admitted calling the deceased. Further, the Appellant had given a missed call to PW1 on 13.04.2014 and pretended that he was an unknown person who had called PW1. The defence had not cross examined PW1 and PW2.

As discussed under the appeal grounds, 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 arrived at the conclusion that all the circumstances are consistent only with the hypothesis of the guilt of the Appellant and totally inconsistent with his innocence.
Therefore, I conclude that the prosecution had proven the case against the Appellant beyond reasonable doubt. Hence, I affirm the conviction and sentence imposed on him by the Learned High Court Judge of Kilinochchi.

Therefore, this Appeal is dismissed.

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree

JUDGE OF THE COURT OF APPEAL