IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an Appeal in terms of Section 331 (1) of the Code of Criminal Procedure Act No. 15 of 1979, read with Article 138 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The Democratic Socialist Republic of Sri Lanka

Complainant

Court of Appeal
No: HCC 0081-23

High Court of
Ampara Case No
HC: 2205/21

Vs

Samaran Kamkanamlage Wasantha Wijenayaka

Accused

AND NOW BETWEEN

Samaran Kamkanamlage Wasantha Wijenayaka

Accused – Appellant

Vs

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

Respondent

Before	:	**P. Kumararatnam, J.**
		Pradeep Hettiarachchi, J.
Counsel	:	Punarji Krunasekara for the Accused-Appellant.
		Azard Navavi ASG for the Respondent.
Argued on	:	26.01.2026
Decided on	:	31.03.2026

Pradeep Hettiarachchi, J

Judgment

1. The Accused-Appellant (hereinafter referred to as "the Appellant") has preferred the present appeal against the conviction and sentence dated 07.10.2022 of the Learned High Court Judge of Ampara. The Appellant was indicted for committing the murder of his wife named Madawattegedara Dinusha Malkanthi an offence punishable under Section 296 of the Penal Code.

2. When the charge was readout to the Appellant, he pleaded not guilty. The case was tried by the Judge of the High Court without a jury. The prosecution led 7 witnesses whereas the Appellant and three witnesses testified for the defense. At the conclusion of the trial, the Learned Trial Judge found the Appellant guilty of the charge and convicted him accordingly, and sentenced him to death.

3. In the appeal, only the Appellant has filed written submissions. As is evident from those submissions, the Appellant primarily contended that the Learned Trial Judge had erred in the analysis and evaluation of the evidence of the sole eyewitness,

namely PW1, particularly in light of the fact that PW1 had maintained two inconsistent versions regarding the alleged incident.

4. It was further contended that the Learned Trial Judge improperly disallowed the marking of several vital contradictions and omissions. It was also submitted that the Learned Trial Judge failed to observe that the evidence of PW1 was inconsistent with the findings of the Judicial Medical Officer.

5. Furthermore, it was argued that the Learned Trial Judge failed to consider that the Appellant and PW2 were not on good terms, thereby giving rise to the possibility that PW1 had been coached by PW2. It was also contended that the Learned Trial Judge failed to properly analyze the evidence of PW8 and to appreciate that the documents marked P1X, P1Y, and P1C had not been made voluntarily by PW1.

6. Finally, it was contended that the Learned Trial Judge failed to consider the evidence of the Appellant in its proper perspective.

7. In view of the submissions advanced by the Appellant, I shall first consider whether the testimony of PW1 is unworthy of credit and unreliable, thereby rendering the conviction untenable.

8. PW1, Senura Wijenayake, was the first witness to testify for the prosecution. The Appellant is the husband of the deceased. PW1 is their only child and the sole eyewitness to the incident.

9. According to the evidence of PW1, on the day of the incident, after finishing school, he went to the village fair with his mother, who is the deceased in this case. While they were at the fair, the Appellant also arrived there. The deceased and PW1 had some refreshments from a nearby tea kiosk, whereas the Appellant had consumed liquor with one of his friends named as ‘Janaka.’

10. When the deceased and PW1 set off for home, the Appellant followed them and, at one point, pulled the deceased by her hair. Thereafter, they went to a nearby house and requested some water to drink. After having water, they proceeded towards the tank, as the Appellant had insisted that the deceased get onto a canoe stationed at the bank of the tank. As the deceased was reluctant to get onto the canoe, the Appellant assaulted her, and ultimately, she got into the canoe. PW1 sat next to the deceased.

11. Thereafter, the Appellant commenced paddling the canoe, and when it reached the middle of the tank, he suddenly struck the deceased with the canoe paddle and pushed her into the water. While the canoe was in motion, the deceased somehow managed to resurface and cling to the canoe, whereupon she was again struck by the Appellant with the paddle and fell back into the water.

12. Thereafter, the Appellant paddled the canoe towards the bank. When PW1 began to cry, the Appellant also assaulted him and threw all the items they had purchased at the fair into the water.

13. After returning home, the Appellant warned PW1 not to disclose the incident to anyone and instructed him to state that the canoe had overturned in the middle of the tank. Subsequently, the Appellant threatened PW1 that he too would be killed and dumped in the tank if he revealed the incident to anyone. The Appellant also set fire to the canoe paddle.

14. PW1 further stated that, when a person named Asoka inquired about the deceased, he informed him that she had been killed by the Appellant in the tank and that he was waiting until she surfaced. Thereafter, the said Asoka informed the police, and investigations were commenced.

15. At the time he witnessed the incident, PW1 was a Grade 1 student. By the time he testified before the High Court, he was still only 13 years old. He admitted that he

had made more than one statement to the police. His evidence was that, as he had been threatened by the Appellant that he too would be killed, he made a false statement to the police in the first instance.

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උ: නාන්නා මාව බය කරාට පස්සේ නම් මම නාන්නා කියපු එක කිව්වා.

ප්‍ර: නාන්නා?

උ: මව මරනවා කීවාට පස්සේ නම් මම නාන්නා කියපු එක කිව්වා.

ප්‍ර: මොකක්ද නාන්නා කියන්න කිව්වේ?

උ: ඔරුව පෙරලුනා කියලා.

ප්‍ර: කාටද කිව්වේ?

උ: පොලිස් මාමලට." (vide page 95 of the Appeal Brief)

16. It is to be noted that, when the initial statement was recorded from PW1 at the bank of the tank, the Appellant was present with him. Thereafter, PW1 made four other additional statements to the Police in separate occasions, including 2nd statement on 11.09.2015, 3rd statement on 02.10.2015,4th statement on 05.09.2017, and 5th statement 03.12.2017.

17. During course of the trial, the Learned Counsel for the defence marked several contradictions in the evidence of PW1 by comparing his testimony with the statement he had previously given to the Police.

18. In his statement to the Iginiyagala Police dated 02.10.2015, PW1 had stated that the deceased initially fell onto the mud at the time when the Appellant struck the deceased with the canoe paddle and pushed her into the water. However, this account has been denied by PW1 at the trial. *(vide D3, marked in evidence at page 143 of the Appeal Brief)*

19. Furthermore, PW1 testified that after the Appellant paddled the canoe to the middle of the tank, he suddenly struck the deceased with the canoe paddle and pushed her into the water. However, the statement given to the Police, the said witness had stated that the Appellant pushed the deceased with the paddle and threw her into the deepest part of the tank. *(vide D4, marked in evidence at page 144 of the Appeal Brief)*

20. In his statement to the Police, PW1 stated that the Appellant pulled the deceased by her blouse and thereafter led the witness towards the canoe. In contrast, during his testimony the witness testified that the Appellant pulled the deceased by her hair and her hand and then proceed to take the deceased to the canoe. *(vide D5, marked in evidence at page 147 of the Appeal Brief)*

21. Although, the Learned Counsel for the defence has marked 12 contradictions, identified as D12 to D13, except D2, the Learned High Court Judge undertook a proper and careful evaluation of each contradiction, giving them due consideration in light of PW1 being a child witness. The Learned High Court Judge ultimately concluded that the said contradictions did not affect the core of the prosecution's case and that the defence had failed to establish a reasonable doubt in the prosecution's case.

22. In the light of the foregoing, I shall now proceed to the consider the degree of caution that a court is required to exercise when evaluating the testimony of a child witness.

23. **Sakar - Law of Evidence – 20th Edition – Volume 02 – page 2808,** where it has been said that "When a minor child witness is giving evidence… the court has to examine evidence of such child with utmost caution…. In the case of such evidence court has to search for reliable corroborative evidence either orally or documentary as a matter of prudence after being satisfied that evidence of such child witness is itself free from infirmity and is sterling sound, in rape cases it is

utmost necessary." ***Gujraasing vs. State of MP, 2001 (1) MP LJ 202 (MP)***In ***State of Gujarat vs. Bachmiya Musamiya, 1993 (3) Guj LR 2456 (Guj),*** observed:

"There is no rule of law that the uncorroborated testimony of a child witness and/ or a victim of sexual offence cannot be relied on without corroboration. It may be true that the evidence of a child of tender age may be examined, with more and extra-caution or full circumspection. If the evidence of the victim of the sexual offence who is of tender age, if found creditworthy and reliable, can be accepted without any corroboration… it is extremely difficult to formulate the kind of evidence which should or would be regarded as corroboration because its nature and extent may necessarily vary with the circumstances of the given case and also according to the particular circumstances of the culpability charged." (Principles stated)

24. The corroboration for the evidence of a child witness must come from an independent source and it may be direct or circumstantial [***Mobeni Mingim vs. Union Territory of Arunachal Pradesh, 1982 Cr LJ NOC 39 (Gau)].*** There is no bar accepting the uncorroborated testimony of a child witness, yet prudence requires that courts should not act on the uncorroborated testimony of a child witness ***[Munna v State, 1985 Cr LJ 1925, 1925: (1985) 2 Crimes 107 (All)***].

25. In ***R v Marquard, 1993 CanLII 37 (SCC), [1993] 4 SCR 223*** ascertaining the competency of a child witness was dealt with by the Supreme Court of Canada as follows:

"Testimonial competence is not presumed in the case of a child testifying under s. 16 of the Canada Evidence Act. The child is placed in the same position as an adult whose competence has been challenged. At common law, such a challenge required the judge to inquire into the competence of the witness to testify. Testimonial competence comprehends: (1) the capacity to observe (including interpretation); (2) the capacity to recollect; and (3) the capacity to communicate. The goal is not to ensure that the evidence is credible, but only

to assure that it meets the minimum threshold of being receivable. The enquiry is into capacity to perceive, recollect and communicate, not whether the witness actually perceived, recollects and can communicate about the events in question. The test is not based on presumptions of the incompetency of children to be witnesses and is not intended to make it difficult for children to testify. It merely outlines the basic abilities that individuals need to possess if they are to testify.

The phrase "communicate the evidence" indicates more than mere verbal ability. The reference to "the evidence" indicates the ability to testify about the matters before the court. It is necessary to explore in a general way whether the witness is capable of perceiving events, remembering events and communicating events to the court. If satisfied that this is the case, the judge may then receive the child's evidence under s. 16(3), after the child has promised to tell the truth. It is not necessary to determine in advance that the child perceived and recollects the very events at issue in the trial, as a condition of ruling that his or her evidence be received."

26. At this stage it is appropriate to refer to the Indian case of ***Bhoginbhai Hirjibhai vs. State of Gujarat (AIR 1983-SC 753 at pp 756-758)*** often cited in our Courts, where it was held:

"1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

2) Ordinarily, so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

3) The powers of observation differ from person to person. What one may notice, and the other may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part another.

4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purpose of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

5) In regard to exact time of an incident, or the time duration of an occurrence, usually people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates of such matters. Again, it depends on the time-sense of individuals which varies from person to person.

6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused or mixed up when interrogated later on."

27. It is noteworthy that, in the present case, the inconsistencies in the testimony of the child witness are understandable in the context in which they arose. The child witness had witnessed the brutal killing of his mother by his own father in the middle of the tank while they were on a canoe, and was subsequently threatened and assaulted by the Appellant to prevent him from disclosing the incident to anyone.

28. Therefore, the evidence of PW1 must be evaluated in that context, and he cannot be expected to recount each and every event leading to the killing of the deceased with mathematical precision. Accordingly, the presence of certain infirmities in PW1's evidence does not, by itself, erode his credibility. In the absence of any indication that PW1 had been coached to narrate events which he did not witness, there is no reason to disbelieve his evidence notwithstanding such infirmities.

29. Further, the Appellant contended that the Learned Trial Judge failed to observe that the evidence of PW1 was inconsistent with the findings of the Judicial Medical Officer.

30. The JMO (PW12), testified that three external injuries were observed on the body of the deceased, namely, one injury on the left hand, second injury on the left side of the back and the third injury on the left occipital region. Two of these injuries were identified as contusions caused by blunt force trauma and the JMO confirmed that they had been sustained prior to death. The JMO further opined that the said injuries could have caused either by an assault with a canoe paddle or as a result of the deceased resisting an assault.

31. Furthermore, the testimony of the JMO revealed that the cause of death of the deceased was drowning, which is corroborated with the testimony given by PW1 that the Appellant had assaulted the deceased with the canoe paddle and drowned her in the middle of the tank.

32. It is also significant to note that the JMO in his testimony has explained in detail the symptoms that can be observed in a post mortem examination of a body of asphyxia by drowning. Furthermore, he explained why he was unable to observe diatoms in the bone marrow of the deceased and opined that she may have fallen into the water in an unconscious state as a result of blunt force trauma to the head. This opinion of the Judicial Medical Officer corroborates the testimony of PW1, who stated that the Appellant struck the deceased with a canoe paddle.

33. Although the Judicial Medical Officer stated that he could not entirely rule out the possibility that the deceased may have lost consciousness as a result of a fall, when the medical evidence is considered together with the testimony of PW1, it can reasonably be inferred that the head injury was sustained due to an assault by the Appellant.

34. Accordingly, the medical evidence does not, in my view, contradict the testimony of PW1, as contended by the Appellant. Hence, it is evident that the Learned High Court Judge correctly evaluated the medical evidence of the Judicial Medical Officer, which materially corroborated the testimony of PW1.

35. It was further contended by the Appellant that the Learned Trial Judge failed to consider that the Appellant and PW2 were not on good terms, thereby giving rise to the possibility that PW1 had been coached by PW2.

36. It is noteworthy that, in addition to the testimony of PW2 testified that the Appellant and the deceased were not on good term, this account was further corroborated by the testimony given by an independent witness. In light of the testimony of PW6, who testified that the shortly before the Appellant, deceased, and their son left the house after drinking water, the Appellant verbally abused the deceased using obscene language.

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උ: කව්ද බැන්නේ?

ප්‍ර: වසන්න.

උ: කාටද බැන්නේ?

ප්‍ර: එයාගේ නෝනට." (vide page 237 of the Appeal Brief)

37. Furthermore, PW1 testified in several occasions that it was the Appellant who had coached him to give false account of the incident. This substantially undermine the Appellant's contention that PW2 had influenced or coached PW1 to give evidence against him, rendering that assertion highly questionable.

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උ: එහෙම ඉනින් කිව්වේ නාන්නා මට කියන්න කියපු නිසා." (vide page 192 of the Appeal Brief)

38. In advance, the Appellant contented that the Learned Trial Judge failed to properly analyze the evidence of PW8. It is noteworthy that PW8, retired Police Officer attached to the Iginiyagala Police station, testified that investigation did not reveal any evidence to suggest that the canoe had overturned and then the deceased had drowned as a result of such an occurrence. Therefore, it is evident that the Learned High Court Judge has properly analyzed the testimony of PW8.

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උ: නැත ස්වාමිනි.

ප්‍ර: අනාවරණය වුනේ?

උ: නැහැ ස්වාමිනි." (vide page 257 of the Appeal Brief)

39. The Appellant further contended that the Learned High Court Judge has failed to appreciate that the documents marked P1X, P1Y, and P1C had not been made voluntarily by PW1. However, evidence clearly establishes otherwise, as PW1 himself testified that it was he who made the arts marked as P1X, P1Y, and P1C without any influence from any person.

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උ: ඔව්.

ප්‍ර: දැන් මේ සෙනුර ඒ චිත්‍ර අදින්න කව්රුහරි කියල දුන්නද?

උ: නැහැ

ප්‍ර: කොහොමද ඒ චිත්‍ර සෙනුර ඇන්දේ?

උ: තනියෙන්." (vide page 189 of the Appeal Brief)

40. This position is further corroborated by the testimony of PW11, WPC Kanchana Wijesinghe, who confirmed that PW1 himself drew the said arts. Her testimony is as follows;

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උ: එහෙමයි.

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ප්‍ර: මේ දරුවා මොන විදියටද ඒ පින්තූර ඇන්දේ? කාගේ හරි මග පෙන්වීමක් තිබ්බද?

උ: එහෙම නැහැ ගරු උතුමාණනි. දරුවා විසින් තමයි ස්ටුල් එකක තියාගෙන හාෆ්ශිට් එක උපයෝගී කරගෙන දරුවා විසින් තමයි ඇන්දේ." *(vide page 289 of the Appeal Brief)*

41. I shall now consider the final ground of appeal advanced by the Appellant that the Learned High Court Judge failed to consider the evidence of the Appellant in its proper perspective.

42. According to the testimony of the Appellant, the deceased met with her death when the canoe allegedly overturned due to strong wind and waves while they were sailing in the said tank. Furthermore, the Appellant testified that he was in a state of shock following the incident and, as a result, had no recollection of his action thereafter.

43. However, it is noteworthy that, if the canoe had in fact overturned accidentally, as alleged by the Appellant, his subsequent conduct is wholly inconsistent with that of a reasonable and prudent person. Evidently, there were two or three houses situated in close proximity to the tank, and it would have been possible for the Appellant to raise alarm and seek assistance to rescue or search for the deceased. No evidence was adduced to show that the Appellant made any attempt to save the deceased. This renders the Appellant's subsequent conduct highly impalpable.

44. Furthermore, the Learned High Court Judge has paid adequate attention to the evidence of the Appellant and has evaluated it in its proper judicial perspective. More importantly, the conclusion reached by the Learned High Court Judge that the Appellant acted with the murderous intention to cause death of the deceased by striking his wife with the canoe paddle while in the said tank, after she fell into the tank, and by further pushing her down with the paddle as she clung to the canoe in an attempt to save her life. Therefore, I find no basis to disagree with the findings of the Learned Trial Judge. Accordingly, the conviction and sentence imposed on the Appellant by the Learned High Court Judge are hereby affirmed.

45. The appeal is accordingly dismissed.

Judge of the Court of Appeal

P. Kumararatnam, J
I agree,

Judge of the Court of Appeal