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

In the matter of an appeal made 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.

Court of Appeal Case No:
CA/HCC/0091/2023

High Court of Rathnapura Case No: **31/2016**

Angodage Janaka Sarath Kumara
1st Accused – Appellant

Vs

Hon. Attorney General
Respondent

Before	:	**P. Kumararatnam, J.**
		Pradeep Hettiarachchi, J.
Counsel	:	Ershan Ariaratnam for the Accused – Appellant.
		Hiranjan Peiris, ASG for the Respondent.
Argued on	:	26.08.2025
Decided on	:	07.11.2025

Pradeep Hettiarachchi, J

Judgment

1. The Accused–Appellant (hereinafter referred to as the Appellant) was indicted before the High Court of Ratnapura along with one Hathwelthotage Randika (the 2nd Accused) under Sections 102 and 113B read with Section 296 of the Penal Code, for abetting and conspiring to commit the murder of Rajapakshalage Gamini Rajapakshalage alias Shantha, and for committing the murder of the said Gamini Rajapaksha, an offence punishable under Section 296 of the Penal Code.

2. The 2nd Accused was also indicted for aiding and abetting the Appellant in committing the murder of Gamini Rajapaksha.

3. The learned High Court Judge acquitted the 2nd Accused of all charges. The Appellant, however, was convicted on the second count and sentenced to death. This appeal has been preferred against the said conviction and sentence. The prosecution case rested solely on circumstantial evidence.

4. On behalf of the prosecution, nine witnesses, namely PW1, PW2, PW3, PW4, PW8, PW9, PW12, PW13, and PW16, testified at the trial. The Appellant and the 2nd Accused opted to make dock statements.

5. In the appeal, the following grounds were urged by the Appellant in impugning the judgment of the learned High Court Judge.
    a. The circumstantial evidence led at the trial was insufficient to sustain a conviction.
    b. There was no proper identification of the Appellant.
    c. The learned High Court Judge had erroneously placed an unwarranted burden on the Appellant.
    d. The recovery made under Section 27 of the Evidence Ordinance was not evaluated in its proper perspective.

6. The deceased and the 2nd Accused were husband and wife. The Appellant had an illicit affair with the 2nd Accused. About a month prior to the alleged murder, the 2nd Accused had eloped with the Appellant.

7. It is noteworthy that none of the witnesses who testified on behalf of the prosecution had witnessed the commission of the alleged murder. Hence, the

prosecution relied entirely on circumstantial evidence to establish the charges against the appellant.

8. The prosecution case rests entirely on circumstantial evidence, as there was no eyewitness who saw the appellant shooting the deceased. The paramount question, therefore, is whether the circumstantial evidence adduced by the prosecution is sufficient to establish the guilt of the appellant beyond reasonable doubt.

9. It is a well-settled principle that a conviction may lawfully be founded on circumstantial evidence, provided that the circumstances relied upon are cogently and firmly established, are consistent only with the hypothesis of the accused's guilt, and exclude every reasonable hypothesis of innocence.

10. In other words, the circumstances from which the conclusion of guilt is to be drawn must, in the first instance, be fully and conclusively established. Furthermore, all such established facts must be consistent only with the hypothesis of the accused's guilt and must exclude every reasonable hypothesis of innocence.

11. To elaborate further, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. It is therefore appropriate, at the outset, to consider the principles of law governing circumstantial evidence.

12. It is well settled that when a conviction is based solely on circumstantial evidence, such evidence must satisfy certain essential tests before it can be relied upon. The circumstances, when taken together, must form a complete and unbroken chain pointing unequivocally to the guilt of the accused and must be inconsistent with any reasonable hypothesis of innocence. In other words, the proved circumstances should be of a conclusive nature and tendency, excluding every possible inference except that of the accused's guilt. This principle has been affirmed in several landmark cases.

13. In ***King v. Appuhamy*** **(46 NLR 128),** the court held that

    i. *"In order to justify the inference of guilt from purely circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt."*

14. Similarly, in ***Podisingho v. King*** **(53 NLR 49),** it was emphasized that

    "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."

    These decisions underscore the necessity for circumstantial evidence to exclude every reasonable hypothesis except that of the accused's guilt.

15. Furthermore, in ***Nandasena v. The Republic of Sri Lanka*** **(1994) 3 SLR 175,** the court reiterated that

    "In a case which turns on circumstantial evidence it is essential that the trial judge should explain clearly to the jury that circumstantial evidence, if it is to support a conviction, must be altogether inconsistent with the accused's innocence and explicable solely on the hypothesis of his guilt"

16. In ***Don Sunny Vs Attorney General [1998] (2) Sri.L.R. 1*** it was held that:

    When a charge is sought to be proved by circumstantial evidence the proved items of circumstantial evidence when taken together must irresistibly point towards the only inference that the accused committed the offence.

    On a consideration of all the evidence the only inference that can be arrived at should be consistent with the guilt of the accused only.

    2. *If on a consideration of the items of circumstantial evidence if an inference can be drawn which is consistent with the innocence of the accused, then one cannot say that the charges have been proved beyond reasonable doubt.*

3. *If upon a consideration of the proved items of circumstantial evidence if the only inference that can be drawn is that the accused committed the offence then they can be found guilty.*

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

17. In ***Krishantha De Silva vs The Attorney General [2003] (1) Sri.L.R, 162*** it was held inter alia that:

    Circumstantial evidence can be acted upon only if from the circumstances relied upon the only reasonable inference to draw is the inference of guilt. If the circumstances are consistent both with guilt and with innocence then the case is not proved on circumstantial evidence.

    Per Edirisuriya, J.

    The hypothesis of innocence must be excluded by the circumstance relied upon and the circumstances must point to one conclusion alone, i.e. the guilt of the accused"

18. **Sir Alfred Wills** in his book `*Wills' Circumstantial Evidence' (Chapter VI)* lays down the following rules specially to be observed in the case of circumstantial evidence:

    (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum;

    (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability;

    (3) in all cases, whether of direct of circumstantial evidence the best evidence must be adduced which the nature of the case admits;

    (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of

explanation, upon any other reasonable hypothesis than that of his guilt; and

(5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

19. This reinforces the standard that circumstantial evidence must lead to an inescapable conclusion of guilt. Therefore, in evaluating the sufficiency of circumstantial evidence in the present case, this Court must ensure that the circumstances adduced are consistent with the guilt of the Appellant and exclude any reasonable hypothesis of innocence.

20. It is with these legal principles in mind that I proceed to consider the present appeal. The first ground of appeal is that the circumstantial evidence adduced at the trial does not warrant a conviction. As emphasized in the aforementioned authorities, where a conviction is sought to be founded solely on circumstantial evidence, the only reasonable inference that must be drawn from such evidence is the guilt of the accused, and all other possible inferences must be inconsistent with his innocence.

21. The first witness called by the prosecution was Palihawadana Arachchilage Piyasena (PW2). On the day of the incident, he saw the deceased lying in the compound of his house. Other than seeing the body of the deceased in the compound, this witness had not observed anything of material relevance to this case.

22. The next witness who testified on behalf of the prosecution was Rankiri Pathirannehalage Pathirana (PW1). The deceased was the son of his mother's younger sister. On the date of the incident, PW1 was loading logs into a lorry that was parked about 150 meters away from the deceased's house. Thereafter, he had a bath and was on his way home, passing by the deceased's house. Upon reaching home, his son ran towards him and shouted, "තාත්තේ, බාප්පා වැටිලා ඉන්නවා. ළඟට යන්න බෑ. මොකක්දෝ සැර ගඳක් එනවා. තාත්තා ඉක්මණට ගිහින් බාප්පාව රෝහලට ගෙනියන්න."

23. Thereafter, he rushed to the scene with one of his workers and saw PW2 near the body of the deceased. By using PW2's torch, the witness identified the deceased. According to his evidence, the body was lying on the by-road close to the deceased's house. However, this witness did not make any attempt to examine the injuries on the deceased but immediately proceeded to the Kalawana Police Station to make a complaint. The witness further stated that about four days prior to the incident, the deceased had informed him that he had filed a divorce action, as his wife, who is the 2nd Accused in this case, was having an illicit affair with the Appellant. He further stated that during that period, the deceased was living alone at his residence. When the witness returned from the Police Station, the body had already been taken to the Kalawana Hospital.

24. The 2nd Accused is the daughter of PW1's wife from her first marriage. According to the evidence of PW1, the 2nd Accused had been separated from the deceased during the relevant period. He further stated that on the date of the incident, the Appellant, the 2nd Accused, and the child of the 2nd Accused visited his house and left around 5.15 p.m. According to his evidence, the deceased and the 2nd Accused were having matrimonial disputes, and on one occasion, the 2nd Accused came to his house and stated that she would throw acid on the deceased and thereafter commit suicide by consuming poison. About ten days after that incident, the 2nd Accused had made a complaint to the Police and subsequently came to this witness's house, where she stayed with the Appellant.

25. PW 3, Upul Pushpa Kumara, is the son of PW 1, Karunarathna. On the date of the incident, he was at a friend's house, located about 250 meters from the deceased's residence, playing carrom around 7.45 p.m. Suddenly, he heard someone shouting from the direction of the deceased's house and believed it to be the deceased. He immediately ran towards that direction carrying a torch. While running towards the deceased's house, he observed the Appellant and another person running away from that direction. Although the second individual could not be identified, the witness categorically identified the Appellant. He further stated that at that time, the Appellant was wearing a black T-shirt and a black trouser.

26. When he reached the deceased's house, he saw the deceased lying on the floor and noticed a strong smell resembling acid. Some of his friends also arrived at the

scene shortly thereafter. According to the witness, the deceased was screaming in pain, but when he called out to him, the deceased was unable to respond. The witness then ran back to his residence and informed his father of the incident. Two days later, he made a statement to the Kalawana Police.

27. However, the witness admitted that he did not disclose all that he had seen to his father, but only mentioned that the deceased was lying on the floor and that there was a smell similar to acid. When questioned as to why he did not inform his father that he had seen the Appellant at the scene, the witness explained that he was frightened at that time. It also transpired that the witness was approximately 16 years of age at the time of the incident.

28. In her judgment, the learned High Court Judge placed considerable reliance on the knife recovered under Section 27 of the Evidence Ordinance and drew an adverse inference against the appellant based on that recovery.

29. However, there is no conclusive proof that the knife marked as P12, recovered under Section 27 of the Evidence Ordinance, was in fact the weapon used to stab the deceased. Therefore, even in the absence of an explanation from the Appellant as to how he became aware of the location where the knife was concealed, no adverse inference can be drawn against him. The evidence of the Judicial Medical Officer has not conclusively established that the injuries found on the body of the deceased were caused by the knife marked as P12. He merely stated that the injuries observed on the deceased could have been inflicted by a sharp-cutting weapon similar in nature to the weapon marked as P12. However, no significant marks or imprints consistent with the knife were observed on the injuries of the deceased. More importantly, no bloodstains or any other material linking the knife to the murder were found on it.

30. Nevertheless, in his judgment, the learned High Court Judge concluded that there was a high probability that the knife marked as P12 was used to commit the murder and that, in the absence of any explanation by the appellant, the recovery made under Section 27 of the Evidence Ordinance constituted strong circumstantial evidence against him. In my view, this conclusion runs contrary to the well-established legal principles governing circumstantial evidence.

31. In the present case, only PW3, Upul Pushpakumara, stated in his evidence that he saw the appellant running from the direction of the deceased's residence. However, that evidence is also not free from infirmities. Firstly, the issue of identification remains in dispute. According to PW3, he observed the appellant from a distance of about 15 meters at approximately 7.30 p.m. Therefore, the pertinent question arises as to whether there was sufficient light in the area at that time to enable PW3 to clearly and reliably identify the appellant.

32. Furthermore, according to the evidence of PW3, he saw the appellant from behind, and that too at night, when there was no light in the vicinity except for the torch he was carrying. There is no evidence to suggest that PW3 directed the torchlight towards the appellant while he was running. What is more probable is that he directed the torchlight towards his own path as he ran towards the deceased's house.

33. In the case of *S v Mthethwa* **1972 (3) SA 766** *(A) at 768A-C*, Holmes JA held as follows:

"Because of the fallibility of human observation, the Courts approach to evidence of identification with some caution. It is not enough for the identifying witness to be honest; the reliability of his observation must also be tested. This depends on various factors, such as lighting, visibility, and eyesight; the proximity of the witness; his opportunity for observation, both as to time and situation; the extent of his prior knowledge of the accused; the mobility of the scene; corroboration; suggestibility; the accused's face, voice, build, gait, and dress; the result of identification parades, if any; and, of course, the evidence by or on behalf of the accused. The list is not exhaustive; these factors or such of them are applicable in a particular case, are not individually decisive but must be weighed one against the other in the light of the totality of the evidence and the probabilities

34. In ***Rex vs Turnbull (1977) QB 224,*** court established key principles and safeguards to minimize the risk of wrongful convictions based on mistaken identification. The central thrust of the case is based on the court's acknowledgement of the real risk of miscarriages of justice in visual identification

cases and can be distilled from the following passages in the judgment of Lord Widgery CJ:

How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as for example, by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance?

35. In the present case, PW3's evidence was that he identified the appellant from behind, solely with the aid of his torchlight. This was at a time when the appellant was running with another person who was not identified by the witness. According to PW3, the area was in complete darkness except for the light from his torch, as the incident occurred around 8.00 p.m. The duration of the witness's observation would have been very brief, as the identification was made while both parties were in motion. The distance from which PW3 made this observation was approximately 50 feet. The witness clearly stated that he directed the torchlight and identified the appellant. He testified as follows:

ප්‍ර : කොහොමද තමා අඳුනගත්තේ කුමාර කියන එක්කෙනා කියලා ?

උ : ටෝච් එලියෙන් දැක්කා මීටර් 15 ක් පමණ දුරින්.

ප්‍ර : තමා දුවන් යනකොට තමා කිව්වා දෙන්නෙක් දුවන් යනවා කුමාර කියන එක්කෙනා තමා දැක්කා කියලා ?

උ : ඔව්.

ප්‍ර : ඒ කුමාර කියන එක්කෙනාව තමා දකින කොට තමා හිටපු තැන ඉඳන් පෙන්වන්න කුමාර කියන එක්කෙනා කොච්චර දුරකින්ද දැක්කේ කියලා මේ උසාවියේ තැනක් පෙන්වලා ?

උ : මෙතන ඉඳන් උතුමාණනි අර දැන්වීම් පුවරුව තියෙන්නේ.

(සාක්ෂිකරු සාක්ෂිකූඩුවේ සිට විවෘත අධිකරණයේ සිර මැදිරිය තිබෙන ස්ථානයේ ඇති දැන්වීම් පුවරුව තිබෙන ස්ථානයට දුර පෙන්වා සිටී. (එය අඩි 15 ක් පමණ දුරකි.)

ප : ඒ වෙලාවේ කොහොමද තමා කුමාර කියලා අඳුනගත්තේ ?

උ : මගේ අතේ තිබුන විදුලි පන්දම දල්වමින් අඳුනගත්තා.

ප : ඒ වෙලාවේ මොනවද ඇඳන් හිටියේ කුමාර ?

උ : කුමාර කලුපාට ටීෂර්ට් එකක් ඇදගෙන හිටියා. තව කලු කලිසමක් ඇඳන් හිටියා.

ප : කුමාර අතේ මොනවාහරි තිබුනා තමා දැක්කද ?

උ : එහෙම දැක්කේ නැහැ.

ප : දැන් තමා කිව්වා කුමාර කලු කලිසමකුයි, කලුපාට ටීෂර්ට් එකකුයි ඇඳන් හිටියා කියලා ?

උ : ඔව්.

ප : ඔය කලු කලිසම ආයෙත් දැක්කොත් අඳුරගන්න පුලුවන්ද ?

උ : පුලුවන් කලු කලිසම ඒකමද කියන්න අමාරුයි කලු කලිසමක් රාත්‍රී කාලයේ දැක්කේ. කලු කලිසමක් කියලා මං හොඳටම දැක්කා.

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36. What is discernible from the above evidence is that PW3 had only a few seconds to identify the appellant with the aid of his torchlight, while both were in motion. The identification was made from behind, further diminishing its reliability. It is also in evidence that some of PW3's friends were following him when he was running towards the direction of the deceased's house. However, none of them had seen the appellant, nor did PW3 inform any of them at that time that he had identified the appellant.

37. Hence, the possibility of a mistaken identity cannot be entirely ruled out. Moreover, the witness admitted that he did not immediately disclose to his father or to the police that he had seen the appellant running from the scene, which further weakens the reliability of his testimony. His explanation that he was frightened at the time, though plausible, does not satisfactorily account for the delay in making such a crucial disclosure.

38. It is also pertinent to note that when PW3 was shown a trouser and a T-shirt said to have been recovered pursuant to the appellant's statement, the witness was unable to identify them with certainty. He merely stated that they could be the same clothes but that he was not sure. He testified as follows:

ප්‍ර : බලන්න සාක්ෂිකරු තමා කිව්වා දිග කලු කලිසමක් ඇඳගෙන හිටියා කියලා කුමාර කියන අය බලන්න මේ කලිසම අඳුනගන්න පුලුවන්ද කියලා තමන්ට ?

උ : මේක වෙන්න ඇති කියලා හිතෙනවා උතුමාණනි.

ප්‍ර : තමා කිව්වා ඔහු කලු ටීෂර්ට් එකක් ඇඳන් හිටියා කියලා?

උ : ඔව්.

ප්‍ර : ඒ අත් කොතෙන්ට විතර තියෙන ටීෂර්ට් එකක්ද ?

උ : මේ හරියට විතර වගේ (සාක්ෂිකරු තමාගේ අතේ වැලමිටෙන් ඉහල ප්‍රදේශය පෙන්වා සිටී)

ප්‍ර : කර කොහොමද තිබුනේ ?

උ : එහෙම නම් මතක නැහැ උතුමාණනි මට.

(මේ අවස්ථාවේදී පැ.3 වශයෙන් ලකුණු කර තිබෙන ටීෂර්ට් එක සාක්ෂකරුට පෙන්වා සිටී)

ප්‍ර : සාක්ෂිකරු බලන්න මේ ටීෂර්ට් එක අඳුනගන්න හැකියාවක් තියෙනවාද ?

උ : මේ වගේ ටීෂර්ට් එකක් තමයි උතුමාණනි.

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39. Therefore, when the circumstances under which PW3 identified the appellant are considered alongside his delay in disclosing the appellant's identity, his evidence becomes unsafe and unreliable. When, in the opinion of the trial Judge, the quality of identification evidence is poor, as for example when it depends solely on a fleeting glance, it is unsafe to allow a conviction to stand without any independent corroborative evidence.

40. This entire case revolves around the issue of identification and the inherent risks of error, contamination, and mistaken recollection. PW3's failure to disclose the identity of the appellant to his father at the very first instance, and his subsequent disclosure only two days later, when considered together, inevitably creates serious doubt as to the reliability of PW3's evidence regarding the identification of the appellant.

41. In ***Hanumant Govind Nargundkar v. State of M.P., AIR (1952) SC 343,*** it was observed thus;

> *"It is well to remember that in case where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."*

42. In ***State of U.P. v. Ashok Kumar Srivastava, (1992) Crl LJ 1104*** it was pointed out that great care must be taken in evaluating **circumstanti**al **evidence** and if the **evidence** relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative

effect of all the facts so established must be consistent only with the hypothesis of guilt.

43. In ***C. Chenga Reddy v. State of A.P.*****, *[1996] 10 SCC 193,*** wherein it has been observed thus:

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

44. In ***Padala Veera Reddy v. State of A.P., AIR (1990) SC 79*** it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

45. In the present case, the evidence relating to the identification of the appellant is unreliable due to several infirmities discussed in this judgment. Therefore, it would be unsafe to allow the conviction to stand solely on the evidence of PW3. Moreover, when the identification itself is unreliable, the most vital link in the chain of circumstantial evidence inevitably fails. Hence, in accordance with the established legal principles, it is impossible to conclude that the guilt of the appellant has been proved beyond reasonable doubt based solely on the circumstantial evidence adduced.

46. Regrettably, the learned High Court Judge has failed to properly assess the above infirmities which tainted the prosecution evidence, rendering it unreliable and unsafe to base a conviction upon. A meticulous evaluation of the evidence should have revealed that the inconsistencies and weaknesses in the identification testimony were fatal to the prosecution case.

47. In view of the foregoing analysis, it is evident that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. The circumstantial evidence led at the trial does not form a complete and unbroken chain pointing only to the guilt of the appellant and excluding every reasonable hypothesis of innocence. The evidence relating to identification being unreliable and the recovery made under section 27 of the Evidence Ordinance being inconclusive, the conviction of the appellant cannot be sustained. Accordingly, I set aside the conviction and sentence imposed by the learned High Court Judge and acquit the appellant from the charge.

Judge of the Court of Appeal

P. Kumararatnam, J

I agree,

Judge of the Court of Appeal