

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

In the matter of an appeal under and in terms of Section 331 of the Code of Criminal Procedure Act No.15 of 1979 of the Democratic Socialist Republic of Sri Lanka.

The Democratic Socialist Republic of Sri Lanka.

COMPLAINANT

**Court of Appeal
Case No.CA/HCC/0140/2025
High Court of Rathnapura
Case No. HCR/ 466 /2019**

Vs.

Mohammed Rahamathulla Mohammed
Farshad,
87/01,
Rilhena,
Pelmadulla.

ACCUSED

AND NOW BETWEEN

Mohammed Rahamathulla Mohammed
Farshad,
87/01
Rilhena,
Pelmadulla.

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT - RESPONDENT

Before: **Amal Ranaraja J.**

&

Dr. Sumudu Premachandra J.

Counsel: Anura Gunaratne instructed by Vindiya Ekanayaka for
the Accused-Appellant.

Akila Dalpatadu, SC for the State.

Accused-Appellant is produced via zoom platform by
the Prison Authorities.

Written Submissions: By the Accused-Appellant filed on 09/06/2026.

By the Complainant-Respondent filed on 07/07/2026.

Argument On : 14/09/2026.

Judgement On : 16/10/2026.

Dr. Sumudu Premachandra J.

1] The Accused is charged with the following single count of murder;

- **Count 01:-** On or about 05/06/2017, the Accused was indicted in the High Court of Rathnapura on a charge of committing the offence of murder of Don Nirosha Kumari, an offence punishable under Section 296 of the Penal Code.

2] After a lengthy trial, he was convicted and sentenced to death on 05/11/2024.

3] Being aggrieved; the Accused Appellant prefers this appeal on the following grounds (Vide: Paragraph (3) of the Petition of Appeal dated 05/11/2024);

1. The contradictions among the evidence presented by the Prosecution were not taken into consideration by the learned High Court.
2. The submission/alibi of the Defense was not taken into consideration by the Learned Court.
3. The weaknesses and unreliable nature of the Prosecution's evidence were not directed to the attention of the Learned Judge.
4. Delivering a judgement contrary to the evidence presented.

4] The Prosecution's principal evidence was the eyewitness testimony of PW 02, the deceased's aunt, who stated that she saw the Accused, the deceased's husband, repeatedly stabbing the Victim with a knife from approximately 20 feet away while she cried for help. The Victim subsequently succumbed to her injuries while being taken to hospital. The Accused was later arrested near the scene wearing a blood-stained shirt and with an injury to his hand. The Prosecution further relied on the evidence of the investigating officers, the recovery of the broken knife, blood-stained clothing and other exhibits, and the evidence of the JMO, PW 09.

5] The medical and forensic evidence substantially corroborated the eyewitness account. The JMO identified eight injuries, including several defensive wounds, with one wound being a deep V-shaped stab wound penetrating the chest, fracturing the sixth rib and damaging the pericardium, right ventricle of the heart, diaphragm and liver, resulting in massive internal bleeding and rapid death.

6] The cuts found on the Deceased's clothing were also consistent with the injuries. Forensic examination established that DNA/blood evidence connected the Deceased with the recovered knives, fingernail clippings and relevant clothing.

7] Although the Defence challenged discrepancies in descriptions of the clothing, and the failure of PW 02 to describe the knife in detail, the Court found these matters insufficient to undermine the Prosecution case. Applying Section 134 of the Evidence Ordinance and relying on **Sumanasena v Attorney-General** (1999) 3 Sri LR 137, the Court accepted PW 02's evidence as credible and found that the medical, forensic and circumstantial evidence materially corroborated her testimony.

8] The Trial Court also considered that the Accused, in his unsworn dock statement, denied the killing and claimed that he had confronted his wife over a suspected relationship with her uncle, after which an unknown person struck him unconscious and he later regained consciousness in police custody. The Court considered the evidentiary value of the dock statement with reference to **Ganganath v Attorney-General** [1995] 2 Sri LR 373, which recognizes its limited weight because it is not given under oath or subjected to cross-examination, while also considering **Angage Prela v OIC, Police Station, Kandy** [1998] 1 Sri LR 295, under which such a statement may nevertheless be acted upon if it creates reasonable doubt.

9] In determining whether the offence amounted to murder under Sections 293, 294 and 296 of the Penal Code, the Trial Court considered the nature, force and location of the injuries and the deliberate targeting of vital organs. thus, the learned High Court Judge convicted him for the charge of murder.

10] In the argument, the Learned Counsel for the Appellant contended that the lethal weapon was not shown to the eyewitness. He said under section 114 (f) *“that evidence which could be and is not produced would if produced, be unfavourable to the person who withholds it”* and the eyewitness was 25 feet away thus, if the knife was shown she could not have identified. Further he contended that the Witness said that the Deceased was in a pink color Punjabi kit, but only top part was shown, not the bottom part. He said at the Magisterial Inquiry, the Witness has said white skirt. Thus, according to this it is questionable whether the eyewitness-Anulawathi actually saw the incident.

11] I now consider the material part of the Witness. At the trial she asserted;

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- ප්‍ර: මහත්මිය එළියට ගිය අවස්ථාවේ මොකක්ද දුටුවේ?
- උ: මම එළියට පැත්ත එකපාරට කෑ ගහන ශබ්දය. එතකොට ගර්භාඩ් පිහියෙන් අනිනවා දැක්කා. ඇත්තහම වැටුණ. වැටුණට පස්සේ මේ පැත්තට හැරෙනකොට මේ පැත්තටත් ඇත්ත. මේ පැත්තට හැරෙනකොට මේ පැත්තටත් ඇත්ත.

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“අධිකරණයෙන්

- ප්‍ර: කොහොටද ඇත්තේ ඉස්සෙල්ලම ?
- උ: මම එළියට බිහිනාකට බඩට ඇතල ලේ වැක්කෙරෙනවා. මම බලාඉද්දීම තව දෙගමනක් ඇත්ත. එතකොටම මෙයා වැටුණ.
- ප්‍ර: ඒ කොහොටද ඇත්තේ අනෙක් දෙගමන?
- උ: බඩට. ඊට පස්සේ මෙයා වැටුණට පස්සේ මේ පැත්ත හැරෙනකොට මේ පැත්තට ඇත්ත. මේ පැත්තට හැරෙනකොට මේ පැත්තට ඇත්ත.
- ප්‍ර: ඒ කියන්නේ උරිස්ස පැත්තටද ඇත්තේ?
- උ: ඇල පැත්තට.
- ප්‍ර: දකුණු පැත්තටයි වම් පැත්තටයි ඇත්ත?
- උ: ඔව්.
- ප්‍ර: ඊට පස්සේ කෑ ගැහුවේ නැත්ද?

උ: එතන වැඩපලවල් තුනක් හතරක් තියෙනවා. ගැරේජ්. වාහන එහෙම හදන්න ආපු එක්කෙනෙක් ගිහිල්ල මෙයාට ගැහුව පයින්. පයින් ගැහුවහම පිහියයි මෙයයි විසිටුණා.

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ප්‍ර: මෙයාට කියල කිව්වෙ කාටද?

උ: උරුමාඩ්ට පයින් ගැහුව. ගහපු කෙනා මම අඳුරන්නෙ නැහැ. වාහනයක් හදන්න ආපු කෙනෙක්. එතකොට පිහියයි උරුමාඩ් විසිටුණා. විසිටුණාට පස්සෙ නිරෝෂ නැගිටල දිව්ව තේ කඩේ ගාවට. කඩේ ගාවට දිව්වට පස්සෙ කිව්ව මාව ඉස්පිරිකාලෙ එක්කන් යන්න එව්වයි කිව්වෙ.

ප්‍ර: මහත්මිය දකිනකොට මුලින්ම විත්තිකාරය නිරෝෂට පිහියෙන් අනින අවස්ථාවේ කොහේද ඒ ගොල්ලා හිටියේ?

උ: ඒ ගොල්ලන්ගේ ගේ දොරකඩ ආසන්නයේ.

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“උ: ඔව්.

ප්‍ර: ඒ කොහේදි ද ඇත්තේ?

උ: එතනමයි. ඇත්තට පස්සෙ එතනම වැටුණ. වැටුණට පස්සෙ මේ පැත්තට හැරෙනකොට මේ පැත්තට ඇත්ත. මේ පැත්තට හැරෙනකොට මේ පැත්තට ඇත්ත.

අධිකරණයෙන්

ප්‍ර: ඒ කියන්නෙ කිහිප සැරයක් ඇත්තද?

උ: සැහෙන පාරක් ඇත්ත හය සැරයක් විතර.” [Emphasis is added]

12] This is clear cut evidence that the Accused Appellant stabbed the Deceased several times. This evidence tallies with the medical evidence. Thus, not showing the knife and the bottom part or contradictions of the clothes are minor discrepancies in the proceedings, cannot create a reasonable suspicion. The pattern of the inflicted injuries clearly shows the murderous intention of the Accused.

13] The Prosecution's case relied primarily on the testimony of a single eyewitness, Anulawathie (the Victim's aunt), who stated that she saw the Accused stab the Victim from about 20 feet away. The Defence specifically

contended that the Prosecution failed to show the alleged murder weapon (P2) or crime scene photographs to the eyewitness, produced only the Victim's upper clothing, withheld a CD containing crime scene photographs from the indictment in violation of Section 162 of the Criminal Procedure Code, and failed to call the only other listed eyewitness to testify.

14] Section 162 of the Criminal Procedure, as amended enacts that every indictment for trial in the High Court must contain a list of Witnesses the Prosecution intends to call, alongside a list of documents. The Defence said that it breaches the fundamental rule of fair trial. It should be noted that the CD was not listed and the learned State Counsel replied since it (Photo CD) was not given to the Attorney General who drafts the indictment, it was not listed.

15] The Defence relied on **Wijepala v. The Attorney General** [221] 1 SLR 46, and contended that the Accused was denied a fair trial. This case established that the Prosecution's failure to disclose or produce the "first information" (such as a police statement made by a material Witness) impairs an Accused person's right to a fair trial under Article 13 (3) of the Constitution. It is to be noted that in the case of **Sudu Banda v. The Attorney General** [1998] 3 SLR 375, the Court of Appeal ruled that the non-production of a listed weapon (the physical production) at trial is not fatal to the Prosecution's case if there is reliable, sufficient oral testimony and circumstantial evidence to establish the crime. Thus, I am of the view that the productions not shown to the material Witness cannot be taken as a fatal failure since the eyewitness is cogent on the main facts.

16] The Defense challenges the credibility of the sole eyewitness, highlighting significant factual contradictions regarding the attire of both the Deceased and the Accused. While Anulawathie claimed the Victim was wearing pink shirt and pink trousers (pyjamas), Inspector Chintaka Mayadunne and the Magistrate's Inquest Report indicated she was dressed in a long sleeve blouse and a skirt. Furthermore, Anulawathie testified that the Accused was wearing a white shirt

and a sarong, whereas Chief Police Inspector Sugath Senawirathana, who arrested the Accused, recovered and marked the blue T-shirt and denim trousers as evidence (marked P4 and P5). The Defense argues these discrepancies create reasonable doubt as to whether Anulawathie actually witnessed the crime, making it unsafe to base a conviction on her testimony. Thus, the question was whether the eyewitness actually saw the incident?

17] It is to be noted that the part of the deceased clothes was shown to the eyewitness Anulawathi and she identified it. It was marked as P1. Proceedings shows;

“රජයේ අධිනීතිඥවරිය අධිකරණය අමතයි.

ගරු මැතිතුමණ සාක්ෂිකාරිය විසින් හඳුනාගන්නට යෙදුණු එම **පංජාබ් කීට් එක්ස්** උඩ කොටස පැ.1 ලෙස ලකුණු කිරීමට අවසර ඉල්ලා සිටිනවා.

අධිකරණයෙන්

අවසර දෙමි.”

18] Police Officer, also, in his evidence mentioned that the deceased had worn a pink colour jacket for the top part. He noted;

Pg:139 of the judges’ brief,

“ප්‍ර: ඔබ යම් නිරීක්ෂණ සටහනක් යොදා තිබෙනවාද මෘත ශරීරය සම්බන්ධයෙන් ඔබ කරන ලද නිරීක්ෂණ වලට අදාළව?

උ: එහෙමයි ස්වාමිනි. රෝහලේ ට්‍රොලියක් මත සුදු රෙද්දකින් වසා තිබූ අතර සුදු රෙදි ඉවත් කර පරීක්ෂා කලා. ඇස් දෙක ඇරි තිබුණා. මුඛය විවර වී දත් පෙනීමට තිබුණා. **උඩුකයට රෝස පාට අත්දිග හැට්ටයක් සහ යටි කයට සුදුපාට සායක් ඇඳ සිටියා.** යටිබඩ ප්‍රදේශයේ බඩවැල් එලියට පැමිණ තිබුණා. පෙකනියට ඉහලින් යටින් තුවාලයක් තිබුණා. පපුවේ වම් පසට වන්නට කුඩාකැපුම් තුවාලයක් සහ පැත්තකට වන්නට තවත් කැපුම් තුවාලයක් තිබුණා. රුධිරය ගලාගොස් ඇඳ සිටි ඇඳුම් තෙමී තිබුණ බවට දැක්කා.” [Emphasis is added]

19] There is no contradictions marked from the eyewitness. However, a single omission was marked. The eyewitness firmly confirmed that she saw the incident. She said;

“Pg: 65 of the judges’ brief:

ප්‍ර: එතකොට ඔය කියන විදිහට සාක්ෂිකාරිය, ඇත්තට පස්සේ වාහනයක් හඳුන්න ඇවිල්ල හිටිය කෙනෙක් ඇවිල්ල පයින් ගැහුව කිව්ව නේද දැන්?

උ: ඔව්.

Pg: 65 of the judges’ brief

උ: මම කිව්ව

(මැතිතුමණි එය උනතාවයක් වශයෙන් සඳහන් කර සිටිනවා)

Pg: 69 of the judges’ brief

ප්‍ර: ඒ වගේම මම සාක්ෂිකාරියට අවසාන යෝජනා කරනවා, සාක්ෂිකාරිය කිසිදු අවස්ථාවක ඔය වගේ පිහියක් දැක්කෙන් නැහැ, ඔය වගේ සිදුවීමක් සම්බන්ධයෙන්, ඔය පිහිය සම්බන්ධයෙන් කියන්න සාක්ෂිකාරියට කිසිදු අවබෝධයකුත් නෑ කියලා ?

උ: අවබෝධයක් තියෙනවා. අවබෝධයක් තියෙනවා කියන්නේ මම ඇහින් දැක්ක දේ.”

[Emphasis is added]

20] It should be noted that the State Counsel reserved the right to call the eyewitness to call again as below to identify the weapon.

රජයේ අධිනීතිඥ මහත්මිය කරුණු දක්වයි.

ගෞරවයෙන් මැතිතුමණි මෙම සාක්ෂිකාරිය තාවකාලිකව මුදා හරින මෙන් ඉල්ලා සිටිනවා. මෙම නඩුවේ නඩු භාණ්ඩ ලැබුණු පසු මෙම සාක්ෂිකාරිය නැවත කැඳවීමට බලාපොරොත්තු වෙනවා.

21] However, she (eyewitness) was not called, to identify the knife. I do not see any prejudiced caused to the Accused by not producing the weapon. However, the knife was shown to the JMO and he identified at the later stages of the trial. Thus, this cannot be a material discrepancy in the proceedings. It shows;

“Pg: 158 of the judges’ brief;

ප්‍ර: ඒ අනුව මෙම පැ.01 දරණ නඩු භාණ්ඩයේ වෛද්‍යවරයා විසින් ගරු අධිකරණය වෙත පෙනවා සිටි වම් පැත්තේ කැපුම් සලකුණු දෙක පැ.01 (a) සහ පැ.01 (b) වශයෙන් සලකුණු කිරීමට අවසර ඉල්ලා සිටිනවා.

අධිකරණයෙන්

අවසර දෙමි.”

22] I now consider the judgement of the learned High Court Judge. She has considered the factual evaluation and in drawing adverse conclusions from the Accused's post-incident behavior. She noted;

“Pg: 288 of the judges’ brief;

ඒ අනුව මරණකාරියට පිහි ඇනුම සිදු කර මරණකාරියව රෝහලට රැගෙන යන අවස්තාවේදීම අපරාධය සිදු කළා යැයි කියූ තැනැත්තා එම ස්ථානයේම රැඳී සිටීම තුලින් ඔහුට අපරාධය සිදු කිරීමට හැකි පසුබිමක් තිබී ඇති බව පෙනී යන්නේය. මා එයින් අදහස් කලේ අපරාධය සිදු වූ වහාම අපරාධකරු සිටියේ කිලෝමීටරයක් දෙකක් ඇතක ස්ථානයක නම් එවැන්නක් ප්‍රායෝගිකව විය නොහැකි වීමයි. නමුත් මෙහිදී අපරාධකරු අපරාධය සිදු වූ ස්ථානයේම සිටීම නිසා ප්‍රායෝගිකව අපරාධය ඔහුට කිරීමේ හැකියාවක් පැවති බව එයින් පෙනී යන්නේය. අනෙක් අතට මෙය වනාහි තමාගේම භාර්යාවට පිහි ඇනුම් තුවාල සිදු කළ අවස්ථාවක් වන්නේය.”

23] Thus, the Defence of alibi cannot be succeeded. This stance is proved by the dock statement of the Accused that he was in the crime scene soon after the incident and police arrested him. He said from the dock;

“Pg: 245 of the judge’s brief;

ගරු ස්වාමිනි, 2017.06.05 වැනිදා මගේ බිරිඳගේ ඝාතනයට පැල්මඩුල්ල පොලිසියෙන් සැක පිට මාව අත්අඩංගුවට ගත්තා. ඉන් අනතුරුව මාව බන්ධනාගාර ගත කලා. 2018.06.11 වැනිදා මම නැවතත් ඇප මත නිදහස් වුනා. ඒ සිද්ධිය වුනේ මගේ බිරිඳයි බිරිඳගේ ලොකු තාත්තයි අතර අනියම් සම්බන්ධයක් පැවතුනා. මම බිරිඳට දැඩි අවවාදයක් කලා ඕක

නවත්තන්. අපට දරු දෙදෙනෙක් ඉන්නවා. දුවයි පුතයි. දුවට අවුරුදු 13 යි පුතාට අවුරුදු 9 යි. මම බිරිඳට අවවාද කලා ඔක නවත්තන් කියලා. ඊටපස්සේ අවවාද නොතකා දිගින් දිගට සම්බන්ධය පවත්වාගෙන ගියා. ඉන් අනතුරුව අවසාන වශයෙන් දවසක් මට සැකයක් මතු වුනා. රාජකාරියට මම ගිහිල්ලා නැවතත් මම නිවසට පැමිණියා. ඉන් අනතුරුව මගේ බිරිඳයි බිරිඳගේ ලොකු තාත්තයි ඒ දෙන්නා එකට ඉන්න එක මම ඇස් දෙකෙන් දැක්කා. ඊටපස්සේ මගේ බිරිඳ මාව තල්ලු කරලා දිව්වා එලියට. ඊටපස්සේ මම පන්නාගෙන ගිහින් බිරිඳගේ මෙතැනින් ඇල්ලුවා. (විත්තිකරු ඔහුගේ ෂර්ට් එකේ කොලර් එකට මදක් පහලින් බොත්තම් දමා ඇති ස්ථානය අතින් තද කර ඇල්ලා පෙන්වයි.) ඉන් අනතුරුව ස්වාමීනී කවුරු හරි කෙනෙක් මට මේ පැත්තට පහරක් එල්ල කලා. (විත්තිකරු ඔහුගේ වම් අතින් දකුණු පැත්තේ බෙල්ලේ පිටුපසට අත තබා පෙන්වයි.) කවුරු හරි කෙනෙක් ඇවිල්ලා මට පහර දුන්නා. එතැනින් එහාට මොකද වුනේ කියලා මම දන්නේ නැ. මම බිරිඳගේ මෙතනින් ඇල්ලුවාට පස්සේ මට කවුරු හරි මේ හරියට පහර දුන්නා. (සාක්ෂිකරු නැවතත් ඔහුගේ දකුණු අතින් බෙල්ලේ පිටුපසට අත තබා පෙන්වයි.) කනයි බෙල්ලයි අතරට මට පහර දුන්නා. ඉන් පස්සේ වෙච්ච කිසිම දෙයක් මට මතක නැ. මට සිහිය කල්පනාව එනකොට දවල් 2ට විතර ඇති. මම කිසිම දෙයක් දන්නේ නැ.

Pg: 246 of the judge's brief;

ඒ කිසිවක් මම හිතා මතා කරපු දේවල් නෙවෙයි. නමුත් ස්වාමීනී මම තවම පසුතැවෙනවා මොකද වුනේ කියලා. කවුද මේක කරේ මොකද මේ වුනේ කියලා තවමත් මම පසුතැවෙනවා. ගෙවෙන තත්පරයක් තත්පරයක් ගානේ මම පසුතැවෙනවා.

Pg: 246 of the judge's brief;

හදිසියේ මේ නඩුවේ මට මෙකක් හරි ලොකු දඬුවමක් ලැබුනොත් දරු දෙදෙනා දැඩි අපහසුතාවයට පත් වෙනවා. රැකවරණයට කිසිම කෙනෙක් නැ. මගේ මවත් මේ ලෝකේ නැ. මගේ ඥාතීන් කිසිම කෙනෙක් නැ. මගේ දරුවන්ට කවුරුත් නැ. මගේ පවුලේ මම විතරයි ඉන්නේ ස්වාමීනී. මම ගරු අධිකරණයෙන් ඉල්ලන්නේ ස්වාමීනී මේ ගැන හැකි නම් පරීක්ෂණයක් පවත්වලා සාධාරණයක් ඉටු කරලා දෙන්න කියලා ඉල්ලා සිටිනවා. මේ මරණෙටයි මටයි කිසිම සම්බන්ධයක් නැ ස්වාමීනී.” [Emphasis is added]

24] In the dock statement he admitted that he chased the Deceased and held her by the shirt collar and one assaulted him. He said he cannot remember

thereafter. In the same dock statement, he has submitted the mitigation if he convicted that leniency be shown.

25] The contention of the Defence that the learned Trial Judge wrongly treated the Accused's failure to take the Deceased to the hospital and him remaining at the scene as circumstantial evidence of guilt. However, in totality of evidence that the subsequent conduct of the Accused can be a fact to consider the guilt. The Defense submits that remaining at the scene demonstrates a lack of flight, which is inconsistent with the guilty conduct, particularly given the Accused's statement that he was knocked unconscious by a blow to the neck. But one considers this dock statement against the eyewitness's testimony, it disproves that he was knocked by a hit and unconscious rather supports that the Accused was in the crime scene and cements that he stabbed the Deceased to death. The eye witness, Anulawatthi said after the stabbing, one kicked the accused, which he fell. (ආප්‍ර එක්කෙනෙක් ගිහිල්ල මෙයාට ගැහුව පයින්. පයින් ගැහුවහම පිහියයි මෙයයි විසිවුණා.) This version totally tallies with the dock statement as he was hit by someone.

26] The Learned Counsel contended that the investigation was mishandled by the police thus it is unsafe to convict the Accused on such evidence. He mentioned the O.J. Simpson murder case which destroyed the credibility of physical evidence and led to an acquittal. In that case, the famous phrase associated with O.J. Simpson's murder (**The People of the State of California v. Orenthal James Simpson**, Case No. BA097211 (Los Angeles County Superior Court) trial was that "*If it doesn't fit, you must acquit*". It was purely on circumstantial evidence. However, in this case purely on single eyewitness. The facts of that case totally misfits to this case.

27] This case is solely based on a single solitary Witness, that is Anulawathi. As noted above, she has clearly seen the stabbing by the Accused. Not only that, the Deceased has pleaded Anulawathi that she be admitted to a hospital soon. (මාව ඉස්පිරිතාලෙ එක්කන් යන්න එව්වරයි කීව්වෙ.)

)

28] In the case of **Wijepala V. Attorney General** [2001] 1 S.L.R. page 46, at page 57, Court observed;

"Senaratne who was the sole eye witness has thus been cross-examined on vital aspects relating to the incident and doubts have been raised in regard to his presence at the scene. Section 134 of the Evidence Ordinance lays down a specific rule that no particular number of witnesses shall in any case be required for the proof of any fact, thus attaching more importance to the quality of evidence rather than the quantity. The evidence of a single witness, if cogent and impressive, can be acted upon by a Court, but, whenever there are circumstances of suspicion in the testimony of such a witness or is challenged by cross-examination or otherwise, then corroboration may be necessary"

29] In the case of **Sumanasena V. Attorney General** [1999] 3 SLR 137, it was held that evidence must not be counted but weighed and the evidence of a single Witness if cogent and impressive could be acted upon by a court of law.

30] When I go through the judgement, the learned Trial Judge has analysed the evidence as a whole and made the conclusion. I cannot see any error in that. In the case of **Fradd V. Brown & Company Ltd.** 20 N.L.R. Page 282, the Privy Council held;

"It is rare that a decision of a judge so express, so explicit, upon a point of fact purely, is over-ruled by a Court of Appeal, because Courts of Appeal recognize the priceless advantage which a judge of first instance has in matters of that kind, as contrasted with any Judge of a Court of Appeal, who can only learn from paper or from narrative of those who were present. It is very rare that, in question of veracity, so direct and so specific as these, a Court of Appeal will over-rule a Judge of first instance"

31] Further in **Dharmasiri vs. Republic of Sri Lanka** [2010] 2 SLR 241, it was held;

"Credibility of a witness is mainly a matter for the trial Judge. *Court of appeal will not lightly disturb the findings of trial Judge with regard to the credibility of a witness unless such findings are manifestly wrong. This is because the trial Judge has the advantage of seeing the demeanour and deportment of the witness...*" [Emphasis is added]

32] In the case of **Mahathun and Others vs. The Attorney General** [2015] 1 SLR 74, the court held with regard to the credibility of the Witness as;

"(1)...

(2)...

(3)...

(4) ***Where evidence is generally reliable, much importance should not be attached to the minor discrepancies and technical errors.***

(5) *The Court of Appeal will not lightly disturb the findings of a trial judge with regard to the acceptance or rejection of the testimony of a witness unless it is manifestly wrong.*" [Emphasis is added]

33] Thus, it is a matter for the Trial Judge to consider the credibility. The learned Trial Judge has accepted the evidence of the eyewitness Anulawathi. Her evidence is supported by the police evidence and the medical evidence and findings. The alleged inconsistencies regarding the clothing worn by the Victim and the Accused are not vitiating the credibility of the Witness. When the stabbing happened in front of her, can a Witness remember the clothes of the Deceased and the Accused. I hold that these discrepancies are minor and natural given the trauma of the event. Anulawathie consistently identified the pink top worn by the Victim which matched the Judicial Medical Officer's (JMO) physical examination and correctly identified the Accused as the assailant who

leaped from a window and stabbed the Victim multiple times. Her testimony is directly corroborated by forensic evidence showing the Victim's blood on the knife blade and the JMO's medical findings regarding the nature of the stab wounds.

34] It is true that there is a non-compliance with Section 162 of the Criminal Procedure Code requirements, that a CD containing 105 crime scene photographs was not formally produced during trial. However, the Respondent affirms that copies were provided to the Defense during initial proceedings and that the Prosecution simply chose to rely on the direct, physical findings of the JMO and eyewitness testimony instead. Since the Defense never made an application to have the photographs produced in court, and because direct physical examination by medical experts carries greater evidentiary weight than photographs, the Respondent submits that no prejudice was caused to the Accused and his right to a fair trial remained intact. I do admit when direct, physical findings are available, the Prosecution has the prosecutorial discretion to choose to what evidence to be produced and what production to be produced and what evidence to be relied upon. Thus, I hold there is no miscarriage of justice nor fair trial had been denied to the Accused.

35] I hold that the minor discrepancies (such as distance measurements) do not diminish the eyewitness's account of the marital disputes and the stabbing, which was further confirmed by injuries to the Accused's left palm consistent with a slipping knife. On the other hand, the Accused Appellant's defense of total denial where he admitted to an altercation (someone knocked him at the crime scene, then why was he knocked down) and previously his suspicions of the illicit affair with the uncle and the Deceased, proves the Prosecution version and his uncorroborated dock statement failed to create reasonable doubt.

36] For the aforesaid reasons, I hold there are no substances in this appeal.

Appeal is dismissed. Sentence is affirmed.

JUDGE OF THE COURT OF APPEAL

AMAL RANARAJA J.

I agree

JUDGE OF THE COURT OF APPEAL