

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

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

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

**COMPLAINANT**

**Court of Appeal CA Case No :**  
**HCC/200-201/2016**

HC of Chilaw Case No.  
HC/09/2016

**Vs.**

01. Callistus Miranda
02. Anthony Sunil Miranda
03. Janaka Edward Croos
04. Sinhamaha Mudiyanseilage Austin
05. Anton Newton Marcus Perera
06. Manuel Nixon George Miral alias  
Nevil Seeniya
07. Anthoni Georege Miranda

08. Peduru Apoolunius Miranda alias  
Nevil
09. Anthoni Camillus Miranda
10. Claude Ranjan Miral alias Rasappa
11. Fransis Noel Jayarani Miranda
12. Adwin Georege Miranda alias Sinna.
13. Maria Juwana Miranda
14. W. Joseph Wellington

**ACCUSED**

**AND NOW BETWEEN**

W. Joseph Wellington

**ACCUSED-APPELLANT**

**Vs.**

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

**COMPLAINANT-RESPONDANT**

**Before:** Hon Justice B. Sasi Mahendran, J.  
Hon Justice R.P. Hettiarachchi

**Counsel :** Shavinda Fernando, PC with Puchindra Fernando for the Accused-  
Appellants.  
Sudarshana de Silva, ASG for the Respondent.

**Written:** 19.02.2025 and 31.03.2026 (by the Accused – Appellant)

**Submission**

**On**

**Argued On:** 26.02.2026

**Judgment On:** 13.05.2026

## **JUDGEMENT**

**B. Sasi Mahendran, J.**

The 14<sup>th</sup> Accused- Appellant (hereinafter referred to as the Appellant), along with 13 Accused, were indicted before the High Court of Chillaw for having committed the offences of unlawful assembly, the murder of Neville Nuton Miral and Kaspus Francis Miral and mischief of the property of Neville Nuton Miral. The first five charges were levelled against the 2nd, 3rd, 5th, 7th, 9th, 10th, 12th, 13th, and 14th accused, under sections 140, 146/296, 32/296 of the Penal Code.

Upon conclusion of the trial, the Learned High Court Judge, by judgment dated 10 October 2016, acquitted the 5th, 12th, and 13th accused. The appellant and the 3rd accused were convicted and found guilty on Counts 1, 2, and 3. Subsequently, they were sentenced to six months' imprisonment on the first count and to the death penalty on the second and third counts.

Being aggrieved by the aforementioned judgment of the Learned High Court Judge, the Appellant and the 3<sup>rd</sup> Accused filed a separate appeal dated 10 October 2016 in Case No. HCC 200-201-16, before this court seeking to set aside the judgment where on 8 June 2022, the Court of Appeal Judge affirmed the Learned High Court Judge's judgment and dismissed the appeal.

Subsequently, being aggrieved by the aforementioned decision, the Appellant and the 3<sup>rd</sup> Accused preferred a special leave-to-appeal application before the Supreme Court on 19 July 2022 in Case No. SPL/LA 198/2022, praying that special leave be granted. The Supreme Court thereafter granted special leave to appeal and directed this Court to rehear the appeal of the Appellant based on the petition filed in the Court of Appeal. It should be noted that the other appeal filed by the 3<sup>rd</sup> accused was dismissed

When the matter was argued before us, the principal ground urged by learned counsel for the Appellant was that the High Court Judge had failed to consider the plea of *alibi*. The issue before this Court is whether the prosecution has established the presence of the Appellant at the relevant time. The plea of *alibi*, however, can be rebutted by the prosecution by proving the Appellant's presence at the scene. In short, this Court must consider whether competent evidence exists to negate the plea of *alibi*. It is well-settled in our jurisprudence that when an accused raises an *alibi*, the prosecution bears the burden of producing compelling evidence that excludes the possibility that the accused was elsewhere.

**The facts and circumstances of this case are as follows,**

PW1, Doreen Manjula Miranda, the wife of the 1st deceased and daughter-in-law of the 2nd deceased, testified that she and the 1st deceased operated a small boutique in the front portion of their residence, while the 2nd deceased resided a short distance away. On 31 January 1993, at about 2.30 p.m., a police vehicle from Chilaw Police Station arrived at their residence, and four to five police officers alighted, seeking to speak with her husband, the 1st deceased. PW1 informed the 1st deceased, who then came out and spoke with the officers. Thereafter, the police proceeded towards the lagoon in search of illicit liquor. According to the witness, the police vehicle stopped near the boutique, and the three suspects inside were taken to the police station by the officers.

After the police had departed, approximately 10 to 15 people arrived at the boutique in search of the deceased. According to the witness, the 2nd, 3rd, 5th,

7th, 9th, 10th, 12th, 13th accused, and the appellant were among those present. They allegedly attacked the deceased on the basis that he had provided information to the police, which resulted in the seizure of their illicit arrack. The witness further stated that the 10th accused was armed with knives, while the others carried clubs. According to the witness, the 7th accused declared that he would kill the deceased. Thereafter, the group broke the fence in front of the boutique, pelted stones at it, and assaulted the deceased with bricks. Subsequently, the witness grabbed the 1st deceased and ran to his brother's house situated nearby. The witness then informed the 2nd deceased to bring a vehicle in order to proceed to the police station.

In response, the 2nd deceased arrived in a van to accompany them to the Chilaw Police Station. The two deceased persons, together with PW1, got into the van, which was driven by PW3. According to the witness, they were unable to proceed more than approximately 150 feet and reached a T-junction, where the 3rd accused (whose appeal was dismissed) and the appellant, Joseph Wellington, allegedly obstructed the road by placing their bicycles across it, forcing the vehicle to stop.

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ප්‍ර : අඩි 176ක් විතර ගමන් කරමින් ඉන්නකොට මොකද වුනේ?

උ : ජානකයි, වෙලින්ටනුයි ඇවිල්ලා වාහනය හරස් කලා.

ප්‍ර : කොයි පැත්තෙන්ද ආවේ වාහනය හරස් කරන්න.

උ : ඉදිරියෙන් නෙවේ හරහින් ඇවිල්ලා

ප්‍ර : ඊට පස්සෙ වැන් රථය මොකද කලේ.

උ : නතර කලා

ප්‍ර : වැන් රථය නතර කරලා මොනවද කිව්වේ?

උ : තර්ජනය කලා

ප්‍ර : ඒ අවස්ථාවේදී වෙලින්ග්ටනුයි ජානකයි අතේ මොනවද තිබුණේ?

උ : බයිසිකල් පෙරලනවා තමයි දක්කේ.

According to the witness, the 9th and 10th accused stabbed the 2nd deceased, and after dragging him out of the van, the 7th accused, together with the 3rd accused, assaulted his head with a club. The witness then managed to escape from the van and proceeded to the police station. She further stated that, at the time of her escape, the 1st deceased remained inside the van. Thereafter, she lodged a complaint at the police station and was informed that two people had already succumbed to their injuries.

During cross-examination, the defence suggested that the appellant and the 3rd accused had stopped the van in order to prevent it from proceeding to the Police.

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ප්‍ර : මේ ජානක, 14 වන විත්තකරු වෙලින්ටන්ව පොලිසියට ගෙන ගියොත් කරදරයක් වෙයි කියලා බියට නේද ?

උ : නැහැ.

ප්‍ර : වැන් එක පොලිසියට යයි කියලා භයෙන් තමයි වැනි එක නැවැත්තුවේ කියලා විත්තියෙන් කියනවා

උ : නැහැ

Further, she affirmed that she stated the same thing in the Magistrate Court.

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ප්‍ර : තමා මෙහෙම කියලා තනවා නම් පිලිගන්න ඕනෑ නේද? තමාගෙන් පහල උසාවියේ මෙහෙම ප්‍රශ්නයක් අහලා තිනවා.

ප්‍ර : වැන් එක පොලිසියට එයි කියලා භයට ඒ අය වැන් එක නැවැත්තුවා.

උ: ඔව්.

ප්‍ර : එතකොට තමා පිලි ගන්නවා පහල උසාවියේ දිවුරලා එහෙම කිව්වා කියලා

උ : ඔව්. මතකයි.

ප්‍ර : ඒන නඩු පොතේ තියෙන බව පිලි ගන්නවාද?

උ : සමහර වේලාවට මගෙන් කියවෙන්න ඇති.

Further defense suggested that this has happened in front of the boutique

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ප්‍ර : සිද්ධිය වුනේ වැන එක නවත්තපු තැනයි.

උ : කඩය ඉස්සරහයි.

PW4, Mariya Kalauilda Kroos, the wife of the 2nd deceased, testified that on 31 January 1993 at about 3.00 p.m., she attended a funeral located approximately 200–300 meters away. Upon returning towards the boutique of the 1st deceased, she heard the sound of stones being thrown and proceeded to the boutique. She stated that she recognised five individuals among those throwing stones: the 2nd, 3rd, 6th, 10th, and 9th accused. According to her testimony, these persons pelted stones into the boutique and assaulted the 1st deceased with bricks.

Thereafter, both deceased persons and PW1 entered a van. PW4 stated that they were unable to proceed more than approximately 200 feet, as the 7th accused, the 10th accused, and the appellant blocked the road with bicycles, forcing the van to stop.

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ප්‍ර : කවුද වෑන් එක ඉස්සරහට බයිසිකල් තුන දැමීමේ.

උ : ජෝර්ජ් මීරන්ඩා, වෙලින්ටන්, රාසප්පා දැමීමේ.

ප්‍ර : මේ බයිසිකල් තුන වෑන් එක ඉස්සරහට දානවා තමා දැක්කාද?

උ : ඔව්.

The 9th accused then dragged the 2nd deceased and PW1 out of the van, and the 2nd, 7th, 5th, and 10th accused allegedly killed the 2nd deceased on the spot using knives and clubs. PW4 further stated that she did not witness the killing of her son, as she fainted from shock. She added that she observed the incident from near the boutique but was too afraid to intervene.

During cross-examination, the witness testified that she returned home after attending the funeral of the uncle of the Appellant, and at that time, the Appellant was present at the funeral.

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ප්‍ර : ඒ මළ ගෙදර ගිය වෙලාවේ වෙලින්ටන් මරණ කටයුතු වලට සහාගී වෙමින් ඉන්නවා දැක්කා ?

උ : ඔව්.

But the defence didn't suggest the appellant was not at that time.

It should be noted that the appellant was seen by both witnesses, namely PW 1 and PW 4, obstructing the van together with the 3rd accused.

At the end of the trial, Appellant also gave evidence, stating that on the day in question, he had been at the funeral of his *bappa* from about 8.30 a.m. and later

went to the Kottapitiya Roman Catholic Cemetery at around 4.30 p.m. He denied blocking the van carrying the two deceased persons and further denied any involvement in distilling illicit liquor. He further stated that three months and ten days after the incident, he received an order from the Chilaw Police Station to surrender before the Magistrate's Court of Chilaw, where he was subsequently arrested.

It should be noted that he did not present to either witness that he was elsewhere at the time of the incident. I am mindful of the written submission dated 31.03.2025 by the appellant,

*“b. Other than PW1 it was clear in evidence that none of the other witnesses who claimed to be eye witnesses ever saw the incident. (PW4, PW2, PW6)”*

Appellant raised a defence that the witnesses could not have seen the incident, as the attack occurred not in front of the boutiques but a few yards away at the junction near the statue of Madhu Mary. Nevertheless, when cross-examined, the defence admitted that they had carried out the attack in order to prevent the van from proceeding to the police station.

In the instant case, the prosecution's evidence primarily rests on the testimony of PW1 and PW4, who were both eyewitnesses to the incident. Their versions are consistent on the material facts, particularly regarding the presence and participation of the appellant in obstructing the van in which the deceaseds were travelling. PW1 clearly stated that the appellant, along with several others, blocked the van using bicycles. PW4 independently corroborated this version by also stating that she saw the appellant obstructing the van and being present during the attack. The convergence of their testimonies on this crucial aspect lends strong probative value to the prosecution case.

The defence plea of alibi raised by the appellant is not supported by credible or independent evidence sufficient to displace the strong ocular testimony of PW1 and PW4. It must be emphasized that the burden remains on the prosecution

throughout to prove the guilt of the accused beyond reasonable doubt, and, in the present case, the prosecution has discharged that burden through consistent eyewitness evidence, whereas the alleged *alibi* is not supported by reliable material.

The evidence also establishes a clear sequence of events showing that the appellant was not a passive bystander but an active participant in the commission of the offence. There is no material contradiction or procedural irregularity in the prosecution of evidence that creates a reasonable doubt in favour of the appellant.

Upon careful evaluation of the evidence, the prosecution has established beyond reasonable doubt that the appellants were present at the scene and actively participated in obstructing the van and facilitating the attack on the deceased.

For the above-mentioned reasons, I am disinclined to interfere with the judgment of the learned High Court Judge.

The appeal is therefore dismissed, and the conviction and sentences imposed on the appellant are affirmed.

Appeal dismissed.

**JUDGE OF THE COURT OF APPEAL**

**R.P. Hettiarachchi, J.**

**I AGREE.**

**JUDGE OF THE COURT OF APPEAL**