

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

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

Democratic Socialist Republic of Sri Lanka.

COMPLAINANT

Court of Appeal

CA Case No: CA/HCC/0102-0112/25

HC of Badulla

Case No. BADU/HC/202/2025

Vs.

01. Karunaratne Ganithayalage Senaka
Ranjith Premaratne
02. Samarasinghe Arachchige Rohana
Jagath
03. Itihamyge Gayan Chaminda
04. Pallewela Arachchige Nanda Kumara
05. Lekhamlage Asanka Seneviratne
(Lekhamlage Asoka Seneviratne)
06. Wahalamuni Arachchilage Suneth
Sanjeewa Ranasinghe

07. Rasika Priyantha Kumara Pathirana
(Dead)
08. Wickramasinghalage Samantha
09. Wickrama Gunarathne Pinidiya
Bandara
10. Porambage Hemantha Kamalasiri
11. Kapurukotuwage Dinesh Manjula
Jayawardane
12. Rajapaksha Mudiyansele Rukman
Indika
13. Rathnayaka Mudiyansele Manjula
Rathnayake

ACCUSED

AND NOW BETWEEN

02. Samarasinghe Arachchige Rohana
Jagath
03. Itihamige Gayan Chaminda
04. Pallewela Arachchige Nanda Kumara
05. Lekhamlage Asanka Seneviratne
(Lekhamlage Asoka Seneviratne)
06. Wahalamuni Arachchilage Suneth
Sanjeewa Ranasinghe
08. Wickramasinghalage Samantha
09. Wickrama Gunarathne Pinidiya
Bandara
10. Porambage Hemantha Kamalasiri
11. Kapurukotuwage Dinesh Manjula
Jayawardane

12. Rajapaksha Mudiyansele Rukman
Indika

13. Rathnayaka Mudiyansele Manjula
Rathnayake
(Now in Prison)

ACCUSED-APPELLANTS

Vs.

Democratic Socialist Republic of Sri
Lanka.

Before: Hon Justice B. Sasi Mahendran, J.
Hon Justice Amal Ranaraja, J

Counsel : Saliya Peiris, P.C. with Sarinda Jayawardena and Hiruni
Chandrasekara for the 2nd and the 12th Accused-Appellants.
Neranjana Jayasinghe with Randunu Heellage and Pravindika
Kularathne for the 3rd, 8th, and 13th Accused- Appellants
Anil Silva, P.C. with Isuru Jayawardena for the 4th, 10th and 11th
Appellants
Amila Palliyage with Sandeepani Wijesooriya, Suwani Udugampola,
Lakitha Wakishta Arachchi and Subash De Silva for the 5th and 6th
Appellants
U.R. de Silva, PC with Pradeep Kaluarachchi, Thilini Atapattu,
Chathura Weeramantry, Sanuri Dissanayake and Hansani Pathirana,
for the 9th Accused – Appellant
Anoop de Siva, DSG for the state

Written 19.11.2025 (by the 1st and 2nd Accused-Appellants)
Submissions: 04.08.2025 (by the 3rd, 8th and 13th Appellants)
On 19.08.2025 (by the 4th, 10th and 11th Appellants)
07.10.2025 (by the 5th and 6th Appellants)
23.07.2025 (by the 9th Appellant)
18.09.2025 (by the 11th Appellant)
20.11.2025 (by the Respondent)

Argued On: 14.05.2026

Judgment On: 12.06.2026

JUDGEMENT

B. Sasi Mahendran, J.

The 11 Accused-Appellants, along with the 1st and the 7th Accused, who were dead, were indicted before the High Court of Badulla under Section 140, the murder of Wadduwa Ponsuge Bandula Jayawardena Thissera, and voluntarily causing hurt to Wadduwa Ponsuge Jayawardena Thissera and Wadduwa Ponsuge Madhuwanthi Thissera, offences punishable under Sections 435, 410, 296 and 314 read with Section 146 of the Penal Code.

Upon conclusion of the trial, the Learned High Court Judge, by judgment dated 29.01.2025, acquitted the 1st Accused of all charges, while sentencing the remaining Appellants to the death sentence for the 4th charge of committing the murder of Wadduwa Ponsuge Bandula Jayawardena Thissera.

The grounds of appeal raised by the 1st Accused-Appellant are as follows:

- A. Whether the Learned High Court Judge could rely upon the evidence given by the eyewitnesses regarding identification
- B. Whether the Circumstantial Evidence against the Accused Appellant was properly evaluated

C. Whether the Learned High Court Judge has failed to consider the ingredients of the unlawful assembly when convicting the Accused

D. Whether the Learned High Court Judge considered the contradictions in the evidence of the Prosecution Witnesses both Inter se and per se

The grounds of appeal raised by the 5th and 6th Accused-Appellants are as follows:

a) The Learned Trial Judge erred in law by failing to consider that the 5th and the 6th Accused Appellants were not identified at the IDP by Prosecution Witnesses.

b) The Learned Trial Judge wrongfully concluded and determined an unlawful assembly and common object

c) The Prosecution has failed to prove the charges against the 5th and the 6th Accused Appellants beyond reasonable Doubt

d) The Learned Trial Judge has arrived at his judgement without properly considering the dock statements of the 5th and the 6th Accused Appellants

The grounds of appeal raised by the 12th Accused Appellant are as follows,

A. Due to his failure to evaluate the credibility of the Prosecution Witnesses using the accepted tests of Consistency, Probability and Spontaneity, the Learned Trial Judge has failed to conclude that the Case of the Prosecution had failed.

B. The Learned Trial Judge has failed to evaluate the role that the eye witness PW3's testimony would have played had he been called as a Witness, and has failed to draw an adverse inference against the Prosecution for their failure to call PW3.

C. The Learned Trial Judge has failed to identify that a fair investigation had not been conducted, as the statements of the witnesses at the scene have not been recorded.

D. The Learned Trial Judge has failed to analyze the Defence Case in a lawful manner and has failed to reject the evidence of the Defence Witness.

E. The Learned Trial Judge has erroneously arrived at the finding that the case is proved beyond reasonable doubt

During the argument stage, learned Counsel for the Appellants contended that the prosecution witnesses had failed to identify the Appellants at the identification parade properly and had identified them for the first time during the trial. The learned Deputy Solicitor General substantially conceded this position during the course of arguments.

The prosecution case which gave rise to the conviction is as follows,

PW5, Maduwanthi Thisera, the sister of the deceased, testified that on 29.05.2004 she was at home together with her parents, her sister's family, and the deceased. At about 8.30 p.m., they heard someone at the front door calling out the deceased by the name "Bandara." As the voice was unfamiliar, the deceased opened the back door and proceeded outside through it. As he was leaving, they heard him scream. Upon hearing the scream, the witness immediately went outside and observed a group of persons taking hold of the deceased. The witness stated that though she doesn't know them by name, she identified them.

They further witnessed the group assaulting the deceased by striking him on the head and stomach. Thereafter, the deceased lost consciousness and collapsed. Subsequently, PW 4 and PW 1 arrived at the scene, and the group assaulted her father by striking him on the head with a hoe. The witness further stated that she thereafter lost consciousness and, upon regaining consciousness, found herself admitted to the hospital. Then she gave a statement to the police. She testified that she was able to identify the 4th (3rd Appellant), 7th Accused, and 10th accused (8th Appellant). According to her, the 10th accused (8th Appellant) struck the deceased on the head with a pole. Although other accused were present at the scene, she was unable to state what acts they had committed. The witness further stated that she could not remember who assaulted her father, but maintained that there was sufficient light at the scene.

The witness further stated that she was acquainted with the 1st accused, as she had previously maintained a relationship with him. She further testified that, approximately one month prior to the incident, a dispute had arisen between the deceased and the 1st accused. However, according to the witness, the 1st accused was not present at the scene on the day of the alleged incident.

During cross-examination the witness categorically stated that he identified three accused persons at the identification parade. He specifically identified the 10th Accused as one of the individuals who assaulted the deceased with a pole and further testified that she too was struck by the same blow. The defence further suggested that the witness had identified the person who was placed in the 15th position at the identification parade, who was an outsider. The defence suggested that although the witness had identified the 3rd Accused (2nd Appellant) at the identification parade, she failed to identify him during the trial. It was suggested by the defence that the witness had identified certain persons who were outsiders to the area merely on suspicion. The witness agreed with that suggestion.

Upon an analysis of the evidence of PW5, it is apparent that she was able to identify the 10th Accused and gave evidence regarding the manner in which he participated in the attack. However, although it was suggested that she had identified the 3rd Accused at the identification parade, she failed to identify him during the trial.

PW4, Jayawardena Thisera, the father of the deceased, testified that at about 8.00 p.m. on the day of the incident, a group of persons arrived at their residence. Although he did not see the deceased at that moment, he stated that he witnessed the 7th Accused assaulting him with a hoe. As a result of the injuries sustained, he was admitted to hospital, where he subsequently gave a statement to the police. The witness further stated that he was unable to identify any suspect at the identification parade. However, in his testimony before Court, he identified the 7th accused.

During cross-examination, the witness reiterated that he had been unable to identify any person at the identification parade. Nevertheless, he maintained that

the 2nd (1st Appellant) and 7th accused were among the persons who had assaulted him.

PW1, Sumanaweera Bandara, the brother-in-law of the deceased, corroborating the evidence of PW4 and PW5, testified that a group of persons came to the house and called out the deceased by name. When he came out through the back door, three persons stood in front of him while two others looked at him through the gap between his shop and house. According to the witness, one of the persons standing between the two walls stated that he was the correct person and immediately struck him on the ear with a plank. Thereafter, at the request of one of the assailants, another person grabbed him by his T-shirt and dragged him towards the side of the road. At that time, the witness observed 4-5 persons entering through the gate.

He was then dragged away by the assailants, assaulted with sticks on his legs, back, and hands, and restrained by several persons. The witness further stated that, as the assailants left the scene, they damaged the van belonging to the deceased. The witness further testified that he was taken towards a nearby tea estate, where he managed to hide. He stated that the 5th (4th Appellant) and 12th accused (11th Appellant) were among the persons who dragged him to the front of the house. According to the witness, the 5th, 7th, and 12th accused thereafter proceeded towards the deceased. The witness further stated that he was able to identify the 10th and 13th accused among the assailants. However, he acknowledged that at the identification parade he was only able to identify the 7th accused.

PW26, the JMO, Dr Samantha Wijeratne, testified that he conducted the autopsy examination on 31.05.2004 and observed a total of 12 injuries on the body of the deceased. He further stated that Injury No. 1, which was to the left side of the head, was fatal and was sufficient in the ordinary course of nature to cause death.

Upon the conclusion of the prosecution case, the Appellants stated that they had been on a trip to Nuwara Eliya and that, on their return journey, they were arrested by the police.

Accordingly, the principal issue for determination is whether the prosecution witnesses have properly and reliably identified the accused persons as participants in the alleged incident. This incident happened at night and according to the witnesses, they had not seen these accused persons earlier.

Our courts have consistently held that the identity of an accused in a criminal case is of fundamental importance, and any doubt surrounding such identification is capable of undermining the credibility of the witness and creating a reasonable doubt as to the involvement of the accused in the commission of the offence. It has further been emphasised that courts are generally reluctant to place reliance on dock identification unless it is corroborated by other independent and cogent evidence. Therefore, where the identification of evidence is weak, inconsistent, or not supported by prior identification at an identification parade or other material evidence, such evidence must be treated with considerable caution.

There are three eyewitnesses who purported to identify the accused persons. Upon examining the evidence of PW5, it appears that she identified the 4th, 7th (who died during the trial) and 10th Accused during the trial. However, she gave specific evidence only regarding the participation of the 10th Accused, stating that he struck the deceased on the head with a pole. Although she had identified the 3rd Accused at the identification parade, she failed to identify him during the trial. Further, PW4 stated that he was unable to identify any accused at the identification parade. However, in his testimony before Court, he identified the 7th Accused. PW1 testified that the 5th, 7th, and 12th Accused, along with the 10th and 13th Accused, were among the assailants. However, he acknowledged that at the identification parade he had only identified the 7th Accused.

The question that arises is whether identification made for the first time at trial is sufficient, in the absence of consistent prior identification, to establish the identity of the accused beyond reasonable doubt. I am mindful of the dictum in *Regina v. Turnbull*, which sets out the principles governing visual identification in criminal cases.

“Secondly, the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. 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 trams 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?”

Further held that,

“All these matters go to the quality of the identification evidence. If the quality is good and remains good at the close of the accused's case, the danger of a mistaken identification is lessened; but the poorer the quality, the greater the danger. In our judgment, when the quality is good, as for example when the identification is made after a long period of observation, or in satisfactory conditions by a relative, a neighbour, a close friend, a workmate and the like, the jury can safely be left to assess the value of the identifying evidence even though there is no other evidence to support it; provided always, however, that an adequate warning has been given about the special need for caution.”

Vijith K. Malalgoda PC considered this dictum. J in the case of **Pallawa Lekamlage Gayan Sanjirwa alias Asanka Wewellawela and 2 others v Attorney General**, CA 246/2009, decided on 01.09.2015.

“In the present case, according to the prosecutrix the three accused were known to her previously but the same principles discussed in the Turnbull case will apply to her identification as well, except for having an identification parade.”

Opatha Widanapathiranege Wasantha and 3 Others v. Attorney General (2010. V. II Unreported), CA 179/2006, Decided on 29.04.2010, W.L. Ranjith Silva, J

“The Learned Trial Judge ought to have followed the standard guidelines with regard to his directions to the jury. On the issue of identification evidence, the judges must give accurate directions regarding the identification evidence and direct the jury that they must be satisfied beyond a reasonable doubt that the accused was correctly identified and give the benefit of any doubt to the accused. The Jury must be directed as to the possibility of a mistaken identify even by honest witnesses and if they cannot make up their minds as to whether the witnesses were lying or mistaken the accused must be given the benefit of the doubt and should be acquitted. The trial judge must direct the jury to examine closely the circumstances under which the identification came to be made and the means of identification. The trial judge should direct the jury on the rules laid down in Rex v. Turnbull.”

In *Munirathne and Others vs. The State*, [2001] 2 SLR 382, Kulathilake, J, has held,

“Jurists on evidence have expressed the view that it is undesirable and unsafe for the Court to rely upon the identification of an accused in Court for the first time or dock identification. The reason being that a witness may well think to himself that the police must have got hold of the right person and it is, so easy for a witness to point to the accused in the dock.”

Applying the above principle, I hold that the Learned High Court Judge has wrongly formed an opinion with regard to the dock identification. For the aforesaid reasons, I conclude that apart from the 10th Accused and the 7th Accused (who died during the trial), there is no proper identification in respect of the 2nd, 3rd, 4th, 5th, 6th, 8th, 9th, 11th, 12th, and 13th Accused. Therefore, they must be acquitted of all charges framed against them.

According to PW5, she identified the 10th Accused as the person who struck the deceased on the head with a pole. This witness consistently identified this person,

and her evidence against the 10th Accused remained unshaken during cross-examination. I am of the view that her evidence is sufficient to establish the identity of the 10th accused to the required standard that is beyond reasonable doubt.

The Judicial Medical Officer (PW26) also found a head injury consistent with the cause of death of the deceased. According to the witness, the skull was extensively fractured and had shattered into several pieces, with fragments of bone driven into the brain.

According to the testimony of PW 5, together with the 10th accused, the other accused also attacked the deceased. However, she was unable to specify the individual acts of those assailants. PW 1, on the other hand, stated that he had seen unknown persons attacking the deceased. This creates a doubt as to whether it was the 10th accused who inflicted the fatal injury that caused the death. Nevertheless, the fact remains that PW 5 did witness the 10th accused striking the deceased with a club. Yet, the prosecution has failed to establish that the head injury, which ultimately caused the death of the deceased, was in fact inflicted by the 10th accused. Therefore, he has to be acquitted from the 4th count, committing the murder of one Wadduwa Ponsuge Bandula Jayawardena Thissera.

For the aforesaid reasons, I hold that the Court is entitled to conclude that the 10th Accused caused grievous hurt to Wadduwa Ponsuge Bandula Jayawardena Thissera.

Accordingly, under Article 139(1) of the Constitution, I convict the 10th Accused (8th Appellant) under Section 316 read with Section 32 of the Penal Code. In doing so, I also take into account the participation of the 7th Accused (now deceased) in the attack on the deceased.

I acquit the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, and 11th Appellants from all the charges preferred against them.

For the reasons set out above, I hereby impose a sentence of five (05) years' rigorous imprisonment on the 10th Accused, Porambage Hemantha Kamalasinghe (8th Appellant), together with a fine of Rs. 10,000/= in default 6 months' simple

imprisonment. The sentence shall be backdated to commence from the date of conviction, namely 29.01.2025.

Appeal partly allowed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE.

JUDGE OF THE COURT OF APPEAL