

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

In the matter of an Appeal against an
order of the High Court under Section 331
of the Code of Criminal Procedure Act No
15 of 1979

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

COMPLAINANT

Court of Appeal CA Case No :
CA/HCC/0134/18

HC of Batticaloa Case No.
2929/2013

Krishnapillai Subramaniam alias Mani

ACCUSED

AND NOW BETWEEN

Krishnapillai Subramaniam alias Mani

ACCUSED-APPELLANT

Vs.

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

RESPONDANT.

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

Counsel : Nalin Ladduwahtty, PC with Kavithri Hirusha Ubeysekara for the
Accused-Appellant.

Nagaratnam Nishanth S.C. for the Respondent.

Written Submission: 18.05.2020 (by the Accused – Appellant)

On 12.06.2020 (by the Complainant - Respondent)

Argued On: 20.03.2026

Judgment On: 20.05.2026

JUDGEMENT

B. Sasi Mahendran, J.

The Accused- Appellant (hereinafter referred to as the Appellant) was indicted before the High Court of Batticaloa on the charge of committing the offence of murder of his wife, namely, Murugamoorthy Mahendra, on 20th September 2009, punishable under Section 296 read with Section 32 of the Penal Code.

At the conclusion of the trial, the Learned High Court Judge, by judgment dated 19.06.2018, found the Appellant guilty of murder and imposed the death sentence.

Being aggrieved by the said conviction and the sentences, Appellant sought to challenge the validity of his conviction on the following grounds,

1. Irregular compliance of Section 195(e)(e) of the CCPA relating to the jury option renders the proceedings illegal.
2. Items of circumstantial evidence are inadequate to draw a necessary, irresistible and inescapable inference of guilt of the appellant.
3. Trial court has failed to apply the principles governing the evaluation of c/e cases.
4. Trial court has drawn an adverse inference against the appellant relating to the recovery of the knife consequently causing serious prejudice to the appellant.

There are no eyewitnesses available against the Appellant to implicate the charge against him. I am mindful of the observation made in the following case with regard to the circumstantial evidence.

In the case of *State of U.P. vs Dr Ravindra Prakash Mittal* 1992 2 SCJ 549, it was held that the essential ingredients to prove guilt of an accused person by circumstantial evidence are:-

- “1) The circumstances from which the conclusion was drawn should be fully proved;*
- 2) The circumstances should be conclusive in nature;*
- 3) All the facts so established should be consistent with the hypothesis of guilt and inconsistent with innocence;*
- 4) The circumstance should; to a moral certainty, exclude the possibility of guilt of any person other than the accused.”*

The *Queen v. Sumanasena*, Basnayake, C.J. 66 NLR 350 :

“In our opinion the learned Judge's direction is wrong. Suspicious circumstances do not establish guilt. Nor does the proof of any number of suspicious circumstances relieve the prosecution of its burden of proving the

case against the accused beyond reasonable doubt and compel the accused to give or call evidence. We are unable to reconcile what the learned Judge said earlier in his summing-up with what he said in the passage to which exception is taken. The burden of establishing circumstances which not only establish the accused's guilt but are also inconsistent with his innocence remains on the prosecution throughout the trial and is the same in a case of circumstantial evidence as in a case of direct evidence.”

In the case of **Munn Rathne and V. the State** (2001) 2 SLR 382, Kulathilaka J held as follows,

“Suspicious circumstances do not establish guilt. Nor does the proof of any number of suspicious circumstances relieve the prosecution of its burden of proving the case against the accused beyond reasonable doubt...”

Karunaratne v. Attorney General, 2005 (2) SLR 233, Balapatabendi, J.

“The primary advantage of circumstantial evidence, is that the risk of perjury is minimized since it is unlike direct evidence, does not emanate from the testimony of a single witness. It is therefore more difficult to fabricate circumstantial evidence, than it is to resort to falsehood in the course of giving direct evidence.

Thus, there is no principle of the law of evidence which precludes a conviction in a criminal case based entirely on circumstantial evidence. There are no uniform rules for the purposes of determining the probative value of circumstantial evidence. This depends on the facts of each case.”

Guided by these judicial precedents, I now turn to assess the evidence presented before the learned Trial Judge by the prosecution.

The facts and circumstances of this case are as follows,

According to the testimony of PW 1, Ponnambalam Vanniyasingham, the brother-in-law of the deceased, the appellant was the deceased's husband. He stated that while he was at his mother's house, someone came and informed him of the

incident. Later, around midnight, his wife also conveyed the news to him over the phone. Upon visiting the deceased's residence, he found the body of his sister-in-law lying face down across the veranda, with blood spilt nearby. When he looked for the appellant, he learned that the latter had fled towards the tank, where local people apprehended and questioned him. Subsequently, the neighbours took the appellant to the hospital.

It should be noted that this evidence was not corroborated by any witness testimony.

PW-2, Ilayathamby Murugamoorthy, the father of the deceased, testified that the deceased and the appellant were frequently engaged in quarrels arising from the appellant's alleged affair with another woman. He further stated that on a previous occasion, when he visited the deceased's residence, he had witnessed the appellant and the deceased in the midst of a physical altercation.

According to PW-9, Kaurukulasingham Namasivayam, he escorted the appellant to the hospital, where the appellant was found to have sustained cut injuries at that time.

PW 11, JMO, Dr. M.M.A. Rahman, who conducted the autopsy, observed two external injuries and stated that the injuries were caused by a sharp weapon. It should be noted that the prosecution has failed to call the witness who had examined the Appellant.

According to PW-19, IP Karunathisse, the knife was recovered pursuant to the statement made by the appellant.

The only evidence against Appellant was the recovery of the knife, and he had been found with injuries.

Upon the conclusion of the prosecution's case, the appellant, in his dock statement, asserted that he had no involvement in the murder.

I am mindful that when the prosecution accuses a person and levels a criminal charge, in the instant case, murder, the prosecution has a duty to prove beyond reasonable doubt that the case for the prosecution has been proved beyond reasonable doubt. I am mindful of the following judgment.

Lord Denning J in the English Case of *Miller v Minister of Pensions (1947) 2 All ER 372* had expressed as follows,

“That degree is well settled it need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt doesn’t mean proof beyond a shadow of doubt. The law would fail to protect the community if it permitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favor which could be dismissed with a sentence “of course it is possible” the case is prove beyond reasonable doubt nothing short will suffice.

The above said judgment was followed by Her Lordship Menaka Wijesundara J, in the case of *Wedage Ranjani v Officer in Charge and another*, SC Appeal No. 13/2023, decided on 08.05.2026.

Upon perusal of the judgment delivered on 19.06.2018, I observed that the learned High Court Judge had concluded that the appellant was in the company of the deceased and that the injuries were inflicted by the appellant.

Page 389 of the brief,

“When it is observed, it is found that the accused, his deceased wife and the child had been in the house while the incident had taken place.

The fatal injuries had been caused while the deceased had been lying down. The knife used in causing the injuries had been kept hidden in the place of the incident.”

But there is no iota of evidence to establish that the Appellant was seen with the deceased at the time of the death. The learned High Court Judge has misdirected himself.

In the light of the foregoing, the conviction and the sentence imposed by the Learned High Court Judge are hereby set aside. The appellant is acquitted of the charge on which he was convicted.

Appeal Allowed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE.

JUDGE OF THE COURT OF APPEAL