IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

An Appeal filed in terms of Section 331 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.

Court of Appeal Case No: **CA/HCC/145-146/2023**

High Court of Kandy Case No: **HC/82/2007**

Democratic Socialist Republic of Sri Lanka

Complainant

Vs

1. Hapugoda Deshapriya
2. Hapugoda Podimahattaya
3. Pallegedara Shantha
4. Pallegedara Wimalawathi

Accused

AND NOW BETWEEN

1. Hapugoda Deshapriya
2. Hapugoda Podimahattaya

Accused – Appellants

Vs

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

Complainant - Respondent

Before	:	**P. Kumararatnam, J.**
		Pradeep Hettiarachchi, J.
Counsel	:	Punarji D. Karunasekara for the Accused – Appellants.
	:	Hiranjan Peris A.S.G for the Respondent.
Argued on	:	30.03.2026
Decided on	:	21.05.2026

Pradeep Hettiarachchi, J

Judgment

1. The 1st and 2nd Accused-Appellants (hereinafter referred to as "the 1st and 2nd Appellants") were indicted before the High Court of Kandy along with two other Accused on 3 counts, namely:

    a. For committing the murder of Dissanayake Mudiyanselage Seelawathie, an offence punishable under Section 296 of the Penal Code;

    b. For causing grievous hurt to Pallegedara Heen Menika, an offence punishable under Section 317 of the Penal Code; and,

    c. For causing grievous hurt to Devate Gedara Gunarathne, an offence punishable under Section 317 of the Penal Code.

2. The trial was heard by the High Court Judge of Kandy without a jury. At the conclusion of the trial, the Learned Trial Judge found the 1st and 2nd Appellants guilty of all counts. And convicted them accordingly.

3. In respect of the first count, the Appellants were sentenced to death. In respect of the 2nd and 3rd counts, each Appellant was sentenced to 10 years' rigorous imprisonment. They were also ordered to pay a fine of Rs. 10,000.00 each on the 2nd and 3rd counts, with a default sentence of six months' imprisonment.

4. Further, the 1st and 2nd Appellants were directed to pay Rs. 300,000.00 each as compensation to PW2 and PW3, with a default sentence of one year's rigorous imprisonment. In addition, the Appellants were ordered to deposit Rs. 2,000.00 each under the Protection of Victims of Crime and Witnesses Act, with a default sentence of one month's imprisonment. The Learned Trial Judge acquitted the 4th Accused on all counts, while the 3rd Accused died pending trial.

5. The grounds of appeal advanced by the Appellants are as follows:

    i. With the unavailability of the medical report of PW3, it is not clear how the Learned Trial Judge ascertained PW3 sustained grievous hurt as per section 317 of the Penal Code.

    ii. Has the Learned Trial Judge failed to correctly analyze PW3's omission when he was making the first complaint to the police station.

    iii. Has the Learned Trial judge failed to analyze the vital inter se contradictions of PW1 and PW3 as to the place where PW3 sustained injuries.

    iv. Has the Learned Trial Judge failed to correctly analyze the 1D1 contradiction as to who had attacked PW3 according to PW1's observation.

    v. Has the Learned Trial Judge failed to correctly analyze that PW1 was fabricating evidence regarding the front door and rear doors of the house to establish that both doors are visible from the place where he was observing the incident.

vi. Has the Learned Trial Judge failed to correctly analyze the defence evidence, and has the Trial Judge placed an additional burden on the 2nd Appellant to prove the facts which he has comprehensively placed before the police to be investigated.

vii. Has the Learned Trial judge failed to analyze whether PW3 does not have knowledge of the identity of the culprits who were involved in the attack.

viii. Has the clear picture of the identity of the culprits faded away from the judicial mind because of the crucial witnesses never being led before the trial court, which definitely amounts to showing that PW1, PW2, and PW3 were never under the knowledge that from whom they had been attacked by.

ix. Has the Learned Trial Judge failed to analyze the probable facts/improbable facts which show/infer that the particular attack could have been done by some other people in the light of the suggestions which were put to the prosecution witnesses other than the Appellants.

6. Since grounds (ii), (iii), (iv), (v), and (ix) are interrelated and challenged the manner in which the Learned Trial Judge analyzed and evaluated the inconsistencies and contradictions in the testimonies of the witnesses, I propose to consider them together. Similarly, grounds (vii) and (viii) relate to the issue of the identity of the Appellants, while ground (vi) concerns the evaluation of the defence evidence.

7. I shall first consider grounds (ii), (iii), (iv), (v), and (ix) of the appeal, as they primarily focus on the inconsistencies and contradictions discernible in the testimony of the prosecution witnesses.

8. In assessing the nature and significance of contradictions and omissions, the following authorities provide valuable guidance.

9. In ***The Attorney General vs. Sandanam Pitchai Mary Theresa*** **[2011] 2 SLR 292,** the court held that*:*

> *"Whilst internal contradictions or discrepancies would ordinarily affect the trustworthiness of the witness statement, it is well established that the Court must exercise its judgment on the nature of the inconsistency or contradiction and whether they are true material to the facts in issue."*

10. In the case of ***Mohamed Niyas Naufer and others vs. Attorney General*** **(SC. 01/2006 decided on 08/12/2006),** the Court observed that;

> *"When faced with contradictions in a witness's testimonial, the Court must bear in mind the nature and significance of the contradictions, viewed in light of the whole of the evidence given by the witness."*

11. In ***State of Rajasthan vs. Smt. Kalki & Anr.,*** **AIR 1981 SC 1390,** while dealing with this issue, the Supreme Court observed as under:

> *"In the depositions of witnesses, there are always normal discrepancies, however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person."*

12. *"It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, may not prompt the Court to reject the evidence in its entirety. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions."* As held by the Supreme Court of India in ***Bhajan Singh @ Harbhajan Singh & Ors. v. State of Haryana,*** **2011 (7) SCC 421.**

13. It is with these legal principles in mind that I shall consider the present appeal.

14. According to the testimony of PW1, on the day of the incident, he was at home with his wife, his son Gunarathne Banda, and Seelawathi, the wife of Gunarathne Banda. His brother's house was also located in close proximity.

15. The incident is said to have occurred at around 7.30 p.m., when PW1 was in the toilet. He suddenly heard a noise and, upon looking out, observed the 2nd and 3rd Accused standing armed with swords. As PW1 had a fractured leg, he did not raise any alarm for fear of being attacked himself. However, he heard shouting from within the house.

16. PW1 further stated that, when his son Gunarathne Banda ran out of the house, he saw the 1st Appellant attacking him with a sword. In cross-examination, it was suggested to PW1 that he could not see anything that occurred near the front door; however, he denied this. He firmly stated that his son was attacked by the 1st Appellant while attempting to escape through the rear door of the house.

17. The defence contended that PW1 could not properly identify the Appellants as the incident occurred at night. However, the Appellants were known persons residing in the vicinity and were not strangers. Therefore, it can be safely inferred that PW1 had no difficulty identifying the Appellants even from a distance at night.

18. It is to be noted that the alleged incident occurred in 1999, whereas the trial commenced in November 2010, i.e., 11 years after the incident. Therefore, certain inconsistencies in the testimonies of witnesses from both the prosecution and the defence are to be expected, and the court must evaluate them in the proper perspective.

19. The defence marked two alleged contradictions during the cross-examination of PW1. The first contradiction (1D1) related to the naming of the 2nd Appellant in the police statement. However, it is to be noted that the defence failed to prove any such contradiction in PW1's statement to the police.

20. The second contradiction (1D2) concerned whether PW1 had seen his wife lying on the verandah of the house, whereas at trial, PW1 maintained that he did not know what had happened to his wife. In my view, this inconsistency does not go to the root of the case, as it pertains to a matter observed after the commission of the offence.

21. The next witness to testify for the prosecution was PW2, Palle Gedara Heen Menika, who was one of the injured persons. According to her evidence, the 1st Appellant attacked her, following which she escaped from the kitchen, ran over an embankment, and raised cries for help. She further stated that the 1st Appellant was wearing a green-colored striped T-shirt resembling an army uniform at the time of the incident.

22. The defence highlighted a discrepancy regarding the nature of the weapon described by the witness, as she stated in her statement to the police that she was attacked with something similar to a sword, whereas in her testimony before the Court, she stated that the 1st Appellant attacked her with a sword. In my view, this discrepancy does not go to the root of the matter, as it relates merely to the description of the weapon rather than the identity of the assailant.

23. Whether the weapon was a sword or an instrument resembling a sword does not, in my opinion, constitute a material contradiction capable of undermining the credibility of PW2. This position is further supported by the medical evidence, which confirms that PW2's injuries were caused by a sharp, heavy cutting weapon.

24. The defence further contended that PW2, in her statement to the police, had not stated that her hand was hanging after receiving the blow and that this amounted to an omission on her part. However, I am not inclined to treat the said omission as a material one, particularly in view of the strength of the medical evidence adduced in the case.

25. In assessing the evidentiary value of omissions in a witness statement, it is necessary to distinguish between material omissions and those that are merely peripheral or

trivial in nature. Only omissions that go to the root of the prosecution's case or materially affect the core version of events can be regarded as affecting credibility. Minor omissions, particularly those relating to details of injury or peripheral descriptions, do not, by themselves, render the testimony unreliable.

26. In the present case, the omission relied upon by the defence, that PW2 did not state in her police statement that her hand was hanging after receiving the blow, does not relate to the identity of the assailant, the occurrence of the attack, or the essential narrative of the incident. Rather, it pertains to a consequential physical manifestation of the injury, which is more appropriately corroborated by medical evidence.

27. Where, as in this case, the medical evidence independently confirms the nature and severity of the injuries sustained, such omission cannot be elevated to a material contradiction so as to undermine the credibility of the witness. Accordingly, I am of the view that the said omission does not affect the probative value of PW2’s testimony.

28. As stated earlier, it cannot reasonably be expected that a witness will narrate an incident with mathematical precision ten years after its occurrence. It is a matter of common experience that human memory tends to fade with the passage of time, particularly where the incident in question is of a distressing or traumatic nature.

29. Accordingly, the mere presence of minor discrepancies in testimony cannot, by itself, render the evidence unreliable. Such discrepancies assume significance only where they amount to material inconsistencies going to the root of the prosecution's case and thereby undermine the credibility of the witness to such an extent that it becomes unsafe to rely upon the evidence.

30. PW3, Devate Gedara Gunarathne, was also a victim of the attack. According to his evidence, he was having dinner at the time the incident occurred. Upon hearing a noise when the deceased proceeded towards the front room, he moved forward to ascertain what had happened, whereupon he was attacked by the 1st Appellant. He

then made his escape through the kitchen door. PW3 further stated that it was the Appellant who attacked the deceased with a sword. He claimed to have witnessed the incident from the compound before fleeing to his uncle's house.

31. It is to be noted that the defence marked two contradictions, namely 2D2 and 2D3, during the cross-examination of PW3. The contradiction marked as 2D2 does not directly relate to the incident, as it concerns whether the deceased had brought money on that day with the intention of purchasing land. Accordingly, in my view, 2D2 does not go to the root of the case.

32. The contradiction marked as 2D3 relates to the omission in the witness's earlier statement, where he had not stated that he saw the deceased being attacked. It is, however, pertinent to note that PW3 had given two statements to the police, the first on 28.11.1999 while he was receiving treatment for the injuries he had sustained, and the second on 01.12.1999 at the Police Station. In his second statement, PW3 stated that he had witnessed the deceased being attacked by the 2nd Appellant.

33. In evaluating the contradiction marked as 2D3, it is necessary to consider the context in which the initial statement of PW3 was recorded. The first statement, dated 28.11.1999, was made while PW3 was undergoing treatment for injuries sustained during the incident. In such circumstances, it is neither unusual nor unreasonable that the statement may not have contained a complete or detailed account of all aspects of the incident.

34. The subsequent statement dated 01.12.1999, recorded at the Police Station, contains a more detailed narration, including the assertion that PW3 witnessed the deceased being attacked by the 2nd Appellant. The omission in the earlier statement, therefore, must be viewed in light of the physical and mental condition of the witness at the time it was made.

35. In ***Sumanasena v. Attorney-General*** **[1999] 3 Sri. L.R 137 at 140**; held as follows;

> *"Just because the witness is a belated witness the Court ought not to reject his testimony on that score alone and that a court must inquire into the reason for the delay and if the reason for the delay is plausible and justifiable the Court could act on the evidence of a belated witness."*

36. It is well established that omissions in an earlier statement do not necessarily amount to contradictions unless they are of such a nature as to materially affect the core of the prosecution's case. In the present instance, the omission in the first statement does not, in my view, rise to the level of a material contradiction, particularly when a more comprehensive account was subsequently provided.

37. Accordingly, when the evidence of PW3 is considered in its entirety, the contradiction marked as 2D3 does not undermine the credibility of the witness nor does it detract from the probative value of his testimony.

38. In this matter, the testimony of Dr. Upendra Sirisena, who conducted the post-mortem examination of the deceased Seelawathi, is of considerable importance. According to Dr. Sirisena, undigested food was found in the stomach of the deceased, and in his opinion, she had consumed her last meal approximately 10 to 15 minutes prior to her death.

39. This medical evidence lends support to the testimonies of PW1 and PW3 with regard to the timing of the incident, as both witnesses stated that the incident occurred while they were having dinner and shortly after the deceased had finished her meal.

40. In the judgment, the Learned Trial Judge has adequately analyzed and evaluated the prosecution evidence and, in particular, has comprehensively considered the contradictions and omissions highlighted by the defence in their proper judicial perspective. The Learned Judge has also provided cogent reasons as to why those contradictions and omissions do not constitute material inconsistencies affecting the merits of the case.

41. It is also desirable to emphasize that the evidence relating to the observations made by the Police Officers at the scene of the crime provides a clear indication of the surrounding circumstances, including the possibility of PW1 seeing the entrance to the house from the toilet, as well as the location of the doors and the lighting conditions prevailing at night. This evidence was neither challenged nor disputed during the testimony of the investigating officers.

42. ASP Amarasingha (PW7), in his testimony, stated that there was no barrier between the toilet and the house, and that the toilet was clearly visible from the house. More importantly, he testified that a person coming from the toilet could clearly see inside the house. He further stated that there was a rear door to the house, from which the toilet was clearly visible. Accordingly, PW1's evidence that he observed two of the Appellants armed with swords from the toilet can be acted upon, particularly in light of the observations made by the Police.

43. The grounds of appeal Nos. (vii) and (viii) relate to the identification of the Appellants by the prosecution witnesses. It was submitted on behalf of the Appellant that the evidence of PW1, PW2, and PW3 does not convincingly establish that they were able to identify the assailants.

44. However, it is to be noted that the Appellants were residents of the same village and were known to the witnesses from a young age. This is therefore not a case of identification of strangers. Moreover, the evidence establishes that the house in which the incident occurred was supplied with electricity, and this fact was also confirmed by the police officers who visited the scene. The testimony of the witnesses indicates that there was sufficient lighting at the time of the incident to enable proper identification.

45. In these circumstances, I find that the identification of the Appellants by the prosecution witnesses is both reliable and credible. Accordingly, I see no merit in the grounds of appeal Nos. (vii) and (viii). In this regard, the following authorities provide useful guidance on the principles applicable to the identification of known persons:

46. In ***Pruthiviraj Jayantibhai Vanol vs. Dinesh Dayabhai Vala*** **Criminal Appeal No. 177 OF 2014**, it was held:

> *"There is evidence about the availability of light near the place of occurrence. Even otherwise, that there may not have been any source of light is hardly considered relevant in view of the fact that the parties were known to each other from earlier.*
> *The criminal jurisprudence developed in this country recognizes that the eye sight capacity of those who live in rural areas is far better than compared to the town folks. Identification at night between known persons is acknowledged to be possible by voice, silhouette, shadow and gait also. Therefore, we do not find much substance in the submission of the respondents that identification was not possible in the night to give them the benefit of the doubt."*

47. In ***M. G. Eshwarappa vs. State of Karnataka,*** **AIR 2017 Supreme Court 1197,** held that,

> *"As to the source of light it is argued that it is not clear as to how PW-1 Rajeshwari recognized the accused. Had the accused been unknown persons, we would have accepted this argument. But the accused were close relatives living in the house of the witness, as such, it cannot be said that it was difficult at all for her to recognize them when they assaulted her brother at 7.30 p.m. on the way back from Honnali to Marigondanahalli."*

48. In light of the foregoing authorities, I find that the identification of the Appellants by the witnesses was properly made, and that there is no uncertainty in that regard.

49. Ground (ix) of the appeal advanced by the Appellant is that the Learned Trial Judge failed to consider, in light of the suggestions put to the prosecution witnesses, the possibility of the involvement of a third party in the commission of the offence. In this regard, it must be emphasized that a mere suggestion, in the absence of any supporting evidence, cannot be treated as substantive material warranting judicial analysis. Accordingly, this ground of appeal is devoid of merit and does not require further consideration.

50. The Appellant further contended that, in the absence of a Medico-Legal report in respect of PW3, the Appellants ought not to have been found guilty of Count No. 3, namely causing grievous hurt by dangerous weapons to Devate Gedara Gunarathne (PW3), an offence punishable under Section 317 of the Penal Code. It is Section 311 that defines grievous hurt. Section 311 reads:

The following kinds of hurt are only designated as 'grievous'; -

(a) emasculation;

(b) permanent privation or impairment of the sight of either eye;

(c) permanent privation or impairment of the hearing of either ear;

(d) privation of any member or joint;

(e) destruction or permanent impairment of the powers of any member or joint;

(f) permanent disfiguration of the head or face;

(g) cut or fracture, of bone, cartilage or moth or dislocation or sublimation, of bone, joint or tooth;

(h) any injury which endangers life or if consequence of which an operation involving the opening of the thoracic, abdominal or cranial cavities is performed;

(i) any injury which causes the sufferer to be in severe bodily pain or unable to follow his ordinary pursuits, for a period of twenty days either because of the injury or any operation necessitated by the injury.

51. Thus, in order to convict a person under Section 317, there must be evidence establishing that the injured party sustained injuries falling within the categories enumerated in Section 311, and that such injuries were caused by means or in the manner contemplated in Section 317. In the present case, there is evidence that PW3

sustained injuries and was admitted to the hospital. However, no evidence has been adduced to describe the nature of those injuries, in particular, whether any of them fall within the scope of Section 311. Therefore, it is my view that the conviction of the Appellants on this count is not sustainable.

52. Accordingly, I acquit the Appellants of Count 3 and set aside the conviction, together with the fine and sentence imposed in respect of that count.

53. Appeal Ground (vi) advanced by the Appellant is that the Learned Trial Judge failed to analyze and evaluate the defence evidence in the proper perspective, and thereby imposed an additional burden on the Appellants to prove facts which he had placed before the police for investigation.

54. It can be observed from the judgment that the Learned Trial Judge has carefully analyzed and evaluated the defence evidence and has provided cogent reasons for rejecting it. More importantly, the Learned Trial Judge has undertaken a comprehensive analysis of the evidence of the 2nd Appellant and correctly concluded that, on the day of the incident, the 2nd Appellant was at home. The prosecution's evidence further established that the Appellants were residing in close proximity to the house where PW1, PW2, and PW3 lived with the deceased.

55. In these circumstances, I find no misdirection on the part of the Learned Trial Judge in evaluating the defence evidence. Accordingly, ground (vi) advanced by the Appellant is devoid of merit and must fail.

56. Upon consideration of the foregoing factual and legal context, I find no reason to depart from the findings of the Learned Trial Judge. In the circumstances, the conviction of the Appellant on Counts 1 and 2 is affirmed.

57. Accordingly, the appeal is dismissed.

Judge of the Court of Appeal

P. Kumararatnam, J

I agree,

Judge of the Court of Appeal