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

In the matter of an Application for Appeal under and in terms of S.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/0200-203/25

HC Case No. HCB/3242/2018

01. Vadivel Thirudchelvan alias Kali
02. Kulanthaivel Baskaran
03. Thaillainaygam Krishanaroopan
04. Karunakaran Mahenthiran alias Illankeethan

ACCUSED

AND NOW BETWEEN

01. Vadivel Thirudchelvan alias Kali
02. Kulanthaivel Baskaran
03. Thaillainaygam Krishanaroopan

04. Karunakaran Mahenthiran alias
Illankeethan

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 Amal Ranaraja

Counsel : Darshana Kuruppu with Tharushi Gamage, Anjana Adhikaramge and Rajitha Kulathunga for the Accused-Appellant.
Nishantha Nagaratnam, S.C. for the Respondent.

Written Submission: 11.12.2025 (by the Accused – Appellant)
On 27.02.2026 (by the Complainant - Respondent)

Argued On: 10.03.2026

Judgment On: 19.05.2026

JUDGMENT

B. Sasi Mahendran, J.

The Accused Appellants (herein after referred to as Appellants) were indicted before the High Court of Batticaloa on or about 8th February 2007, for committing the murder of one Mayilvaganam Raveendran, punishable under Section 296 read with Section 32 of the Penal Code.

Upon conclusion of the trial, the Learned High Court Judge, by judgment dated 21.03.2025, found all the Appellants guilty of murder and imposed the death sentence.

Being dissatisfied with both the conviction and the sentence imposed by the Learned High Court Judge, the Appellants preferred an appeal before this Court, articulating the following grounds in support of their challenge.

I. The learned Trial Judge erred in failing to appreciate that the testimony of the prosecution witnesses, especially PW-01 and PW-03, is unreliable and does not inspire the degree of confidence required to convict the Accused-Appellants.

II. The learned Trial Judge failed to give due consideration to the material contradictions between PW-01, PW 02 and PW-03, which go to the very root of the prosecution case and necessarily create reasonable doubt in favour of the Accused-Appellants.

III. The learned Trial Judge erred in failing to appreciate that the Accused-Appellants were arrested only after an inordinate and wholly unexplained delay, which fatally undermines the fairness of the proceedings and amounts to a denial of their right to a fair trial.

IV. The learned Trial Judge erred in law by shifting the burden onto the Accused-Appellants to explain why they allegedly took the deceased, despite the fact that the Accused-Appellants had completely denied the incident

V. The learned Trial Judge has erred in law by perusing and relying upon police investigation reports in the course of writing the judgment, even though those reports were never produced or proved at trial.

VI. The learned High Court Judge erred in failing to appreciate that the circumstantial evidence adduced by the prosecution is entirely inadequate to establish the guilt of the Accused-Appellants for the offence of murder.

VII. The learned High Court Judge erred in failing to appreciate that the prosecution has wholly failed to exclude the reasonable possibility that a third party may have committed the offence.

VIII. The Accused-Appellants were denied their right to a fair trial by not being afforded an opportunity to sum up their case at the conclusion of the proceedings.

IX. The learned High Court Judge erred in law by convicting the Accused-Appellants on the basis of a supposed common intention, when there is no evidence whatsoever to show that the Accused-Appellants shared a common intention to commit the alleged offence. The prosecution has failed to establish that the Accused-Appellants acted in concert or pursuant to any pre-arranged plan, and in the absence of such evidence, the conviction on the basis of common intention is legally unsustainable.

X. The learned Trial Judge erred in law by allowing the prosecution to lead evidence of alleged bad character against the Accused-Appellants. Such evidence was highly prejudicial, irrelevant to the charge, and improperly influenced the trial, thereby violating the Accused-Appellants' right to a fair trial.

The facts and circumstances of this case are as follows,

PW1, Sathasivam Ariyananthini, the wife of the deceased, testified that on 08.02.2007 at about 10:00 a.m., while she and her husband were at home, Ilangeethan (4th Appellant), Ruban (3rd Appellant), Kali (1st Appellant), and Bhaskaran (2nd Appellant) came and took the deceased away. Later that day, at around 12:00 noon, she went to Karuna's office in Morakottanchenai to inquire about her husband and the appellants. She was asked to return at 4:00 p.m. When she went back in the evening, she was informed that her husband had been sent to Velikanda and was advised to go there the following day to look for him.

On 09.02.2007, after being informed by someone that a body had been found nearby, she went to the location, which was about six houses away from her own house, and saw her deceased body there. She stated that she did not ask where her deceased was being taken, though she saw them escorting him away. On the same day, she had made a complaint to the police in this regard.

During cross-examination, PW1 reaffirmed that all four appellants had taken the deceased from his home, and that the body of the deceased was discovered the following morning. Her testimony remained consistent throughout, maintaining that the deceased was escorted away by all four appellants.

PW3, Muththaiya Sivalingam, the sister-in-law of the deceased, testified that on the day in question, while he was at home with the deceased, all four appellants arrived and took the deceased away, stating that they were taking him to Karuna's office. On the following day, the deceased was found, and PW3 lodged a complaint with the police regarding the abduction.

PW 4, JMO, who conducted the autopsy, stated that the death was due to the gunshot injuries and observed injuries found on the body of the deceased indicate that the deceased had been subjected to torture.

I note that there are no contradictions or omissions brought to the attention of the court in the evidence of the witnesses. Both pieces of evidence from witnesses corroborate each other with the identification of the Appellants.

At the close of the prosecution's case, all four appellants gave statements from the dock. The 1st Appellant asserted that he had been abroad in January 2007 and was unaware of the matter in question. The 2nd Appellant stated that he had no knowledge of the issue. The 3rd Appellant explained that he had returned from abroad to Batticaloa, after which he was arrested. The 4th Appellant testified that he was in Chenkalady at the relevant time and had no involvement in the matter. He added that certain individuals, who were angry with him, may have falsely claimed responsibility and implicated him, but he maintained that he had no connection to the issue. All four Appellants took the plea of *alibi*.

The prosecution sought to establish its case through circumstantial evidence, relying on the fact that the deceased was last seen in the company of the appellants. In such circumstances, it becomes necessary to examine the principles governing cases founded upon circumstantial evidence.

In ***King v. Abeywickrama***, 44 NLR 254, Soertsz J remarked thus:

> *"In order to base a conviction on circumstantial evidence the Jury must be satisfied that the evidence was consistent with the guilt of the accused and inconsistent with any reasonable hypothesis of this innocence."*

In ***King v. Appuhamy***, 46 NLR 128, Kueneman J held thus:

> *"in order to justify the inference of guilt from purely circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable-hypothesis the that of his guilt."*

In ***Podisingho v. King*** 53 NLR 49, Dias J remarked thus:

> *"That in a case of circumstantial evidence it is the duty of the trial Judge to tell the Jury that such evidence must be totally inconsistent with the innocence of the accused and must only be consistent with his guilt."*

Sudu Hakuruge Jamis and One other v. The Attorney General, CA 204/2010 Decided on 13.11.2013, Sisira De Abrew, J held;

> *"Applying the principles laid down in the above judicial decisions, I hold that in a case of circumstantial evidence if the Court is going to arrive at a conclusion that the accused is guilty of the offence, such an inference must be the one and only irresistible and inescapable conclusion that the accused himself committed the crime. Further I hold that if the proved facts are not consistent with the guilt of the accused, he must be acquitted"*

Having regard to the principles laid down in the above judicial decisions, I hold that in a case of circumstantial evidence, if an inference of guilt is to be drawn, such an inference must be the one and only irresistible and inescapable conclusion that the accused committed the offence. When the evidence adduced at the trial is considered, the one and only irresistible and inescapable conclusion that can be arrived at is that the Appellants committed the murder of Mayilvaganam Raveendran.

It is established that the deceased was in the company of all Appellants shortly before his death. At this stage, it is appropriate to refer to judicial precedents that have examined and applied the *'last seen theory'*.

In the case of ***State of Uttar Pradesh v Satish*** [AIR 2005 SC 1000] by Ajith Pasayat J,

> *"The last seen theory comes into play where the time gap between the point of time when the Accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the Accused being the author of the crime becomes impossible."*

It was followed by Justice S.B Sinha, J *in* ***Remreddy Rajeshkhanna Reddy v State of Andhra Pradesh,*** AIR 2006 SC (2) 1656, held that;

> *"The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case Courts should look for some corroboration."*

This fact was not contradicted by all four Appellants. It is well settled that where the evidence of a witness on a material point is not challenged in cross-examination, it should be taken that such evidence is not disputed and is accepted, subject to the witness being otherwise reliable. I am mindful of the following judgments.

In ***Edrick de Silva v. Chandradasa de Silva***, 70 NLR page 169 at 170, Justice H.N.G. Fernando held that,

> *"Where there is ample opportunity to contradict the evidence of a witness but is not impugned or assailed in Cross-examination that is a special fact and feature in the case. It is a matter falling within the definition of the word "Prove" in section 3 of the evidence Ordinance, and a trial Judge or court must necessarily take that fact into consideration in adjudicating the issue before it."*

In the case of ***Dedimuni Wimalasena and Dedimuni Indrasena Vs AG*** CA No. 135/2003, decided on 10.06.2008, Sisira de Abrew J. held that

> *"Whenever the evidence given by a witness on a material point is not challenged in cross examination it has to be concluded that such evidence is not disputed and is accepted by the opponent subject of course to the qualification that witness is a reliable witness"*

It is pertinent to refer to the following Indian Judgments.

In the case of State of ***Himachal Pradesh vs. Thakur Dass*** (1983) 2 Criminal Law Journal 1694 at 1701, V D Visva C.J held:

> *"Whenever a statement of fact made by a witness is not challenged in cross examination it must be concluded that the fact in question is not disputed"*

In the case of ***Sarwansingh Vs. State of Punjab*** (2002) AIR Supreme Court (iii) 3652 at 3655 the Indian Supreme Court held thus:

> *"It is a rule of essential justice whenever the opponent has declined to avail himself of the opportunity to put his case in cross examination it must follow that the evidence tendered on this issue ought to be accepted"*

On reviewing the evidence of PW1 and PW3, it is clear that the appellants did not dispute the fact that they had taken the deceased from his residence. It is relevant to refer to the following judgment.

In the case of ***Battugedara Arachchige Jagath Nanda Kumara vs A.G.***C.A. No. 178/2017 by Davika Abeyratne. J.

> *"However, as stated above, the Prosecution witnesses have testified that it was the appellant who was last seen walking away with the deceased before his body was discovered after a few minutes. Since it appears that the knowledge of the said circumstance was exclusively within the appellant, it should have been explained by him. But the accused has not offered any explanation."*

On the other hand, although the appellants sought to rely on a plea of *alibi* in their defence, they did not suggest to the prosecution witnesses that they were absent at the material time. The plea of *alibi* was raised for the first time only in their dock statements.

It has taken place during their dock statements. It is pertinent to refer to the following judgment.

In the case of ***Rathnayake v. the Democratic Socialist Republic of Sri Lanka,*** 2020 (1) SLR at 328 page 335, Wickremasinghe J held that,

> *"Further the learned Counsel for the Appellant has drawn the attention of court to the defence of alibi taken up by the Accused-Appellant in his dock statement. He has not taken up this position at the non-summary stage other than in the dock statement.*
>
> *In the case of Jayatissa v. Hon. Attorney General,*
>
> > *When alibi is set up as a defence, there are certain fundamentals to be observed:-*
> >
> > *a) If an alibi is established by unsuspected testimony, that will be satisfactory and conclusive.*
> >
> > *b) An alibi should cover the time of the alleged offence so as to exclude the Accused's presence at the crime scene at the relevant time.*
> >
> > *c) The credibility of an alibi is greatly enhanced, if it was set up at the time the accusation was first made and was constantly maintained. If it is taken up belatedly-the effect of the alibi will be less.*
> >
> > *d) An alibi can be falsified by mistaken identity and the difference of time in the clocks. A few minutes will make all the difference.*
> >
> > *A false alibi will weaken the defence case and strengthen the prosecution case."*

The learned High Court Judge rightly rejected this defence, as the plea of *alibi* did not create sufficient doubt in his mind regarding the presence of the appellants at the scene.

In my view, the defence of *alibi* was neither credible nor capable of displacing the prosecution's case.

Upon perusal of the learned High Court Judge's judgment and the evidence placed before the High Court, it is evident that the prosecution has proved its case beyond reasonable doubt. All the appellants were found to have caused the death of the deceased, and the Learned High Court Judge correctly evaluated the evidence in reaching that conclusion.

For the above-mentioned reasons, I am disinclined to interfere with the judgment delivered by the Learned High Court Judge together with the sentencing order and dismiss the appeal.

The Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.
I AGREE.

JUDGE OF THE COURT OF APPEAL