

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

In the matter of an Appeal in terms of section 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.

The Democratic Socialist Republic of Sri Lanka.

COMPLAINANT

CA Appeal No.CA HCC-202-203-2024

High Court of Kalutara Case No.

HC 817/2007

Vs.

- 1)Alagiya Hewage Gamini
- 2) Abdul Cadar Hasan Mohomad
- 3) Wickrama Arachchige Don Rohitha

ACCUSED

AND NOW BETWEEN

- 1) Alagiya Hewage Gamini
- 2) Abdul Cadar Hasan Mohomad

ACCUSED-APPELLANTS

Vs.

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

COMPLAINANT RESPONDENT

Before: **Amal Ranaraja J.**

&

Dr. Sumudu Premachandra J.

Counsel: Sandeepani Wijesooriya for the Appellants.

Disna Warnakula, D.S.G. for the State.

Accused-Appellant is produced via zoom platform by the Prison Authorities.

Written Submissions: By the 1st and 2nd Accused-Appellants filed on 27/03/2024.

By the Respondent filed on 15/06/2026.

Argument On : 12/06/2026.

Judgement On : 31/07/2026.

Dr. Sumudu Premachandra J.

1] Three Accused were indicted at the High Court of Kalutara on the following charge that;

On or about 23/05/2001, in Meegahathanna the Accused caused the murder of Lihiniya Kumarage Ranjith, under Section 32 of the Penal Code to be read with Section 296 of the Penal Code.

2] At the trial, all three Accused pleaded not guilty to the charges and selected a non-jury trial. After a contested trial, on 10/05/2024, the learned trial judge

convicted the 1st and 2nd Accused of murder and 3rd Accused was acquitted and discharged.

3] The incident involves robbery and fatal stabbing. P.W. 01 (the wife of the deceased) testified that around midnight on the night of the incident, the Accused forcibly broke into their home, threatened the family with knives, robbed her of jewelry, and that the 1st and 2nd Accused directly stabbed her husband. Supporting her, P.W. 02 (a relative) and P.W. 04 (the deceased's brother) testified to hearing screams around 12:00 am and spotting suspects fleeing the scene, with P.W. 02 and local villagers subsequently capturing and handing over the bleeding 1st Accused to the police.

4] Judicial Medical Officer Dr. Kiribaddalage Sunil Kumara (P.W. 07) conducted the post-mortem, revealing five total injuries including two stab wounds and confirmed that the primary stab injury was sufficient in the ordinary course of nature to cause immediate death. Medical evidence presented by the Judicial Medical Officer (JMO) confirmed that the cause of death was fatal stab injuries to the chest, flank, and ribs inflicted by a sharp, cutting, pointed weapon, leading to cardiac damage, severe internal hemorrhage, and shock. Furthermore, investigating officer SIP Priyadarshana (P.W. 15) and P.W. 16 testified that information disclosures made under Section 27 of the Evidence Ordinance led directly to the recovery of productions, including the murder knives, a torch, and a plastic gun used during the commission of the offense.

5] The evidence of the Prosecution reveals that the perpetrators gained entry into the Victim's home by removing roof tiles above the dining area and deliberately cutting off the main power supply. The primary direct evidence was provided by the deceased's wife, who testified that using the beam from an electric torch held by the 2nd Accused, she clearly observed and identified both the 1st and 2nd Accused stabbing her husband.

6] The 1st Accused was apprehended at 4:30 AM on the morning of the crime, hiding under a bed in a nearby house in Meegahathanna with blood-stained clothing and physical injuries. Following his disclosure statement (marked as P 03), police recovered a blood-stained knife (marked as P 01) under the bed. Similarly, the 2nd Accused was detained at 4:00 AM by suspicious bus passengers while attempting to board a Colombo-bound bus in Meegahathanna, wearing muddy, torn, and crumpled clothes. Both Accused were permanent residents of Piliyandala (located over 50 km away) and failed to offer any credible explanation for their presence at the crime scene in the early morning hours.

7] Against the above evidence of the Prosecution, all three Accused made dock statements denying the incident and the charge. Based on the above evidence, the learned trial judge convicted the 1st and 2nd and acquitted the 3rd Accused.

8] Now, 1st and 2nd Accused filed separate Appeals for their convictions on the following grounds;

- The learned high court judge erred in law by misdirecting himself as to the burden of proof applicable in a criminal trial and by placing an obligation on the defence to challenge the Prosecution evidence, instead of recognizing that the burden of proving the guilt of the Accused beyond a reasonable doubt rests solely on the Prosecution.
- The learned high court judge erred in law by convicting the Accused of the offence of murder where the evidence led by the Prosecution itself gave rise to a reasonable doubt rendering the conviction unsafe.
- The learned high court judge has failed to analyse and/or evaluate that the Prosecution failed to prove the identity of the Accused beyond a reasonable doubt.
- The learned high court judge has failed to analyse and/or evaluate the Common Murderous Intention.

9] I now consider the merits of this Appeal. The impugned judgement unfolds from page 353 to page 378 of the brief. From page 353 to page 365, the learned trial judge narrates the evidence of the Prosecution. It should be noted that the learned trial judge started assessing the evidence from the dock statements. The learned trial judge has questioned himself "**01 වන වූදින මරණකරු මියගිය දිනයේ ඔහුගේ නිවසට ආසන්න නිවසක ඇදක් යට ලේ තැවරුණු පිහියක් සමග සැඟව සිටියේ මන්දැයි පැහැදිලි කිරීමට අපොහසත් වී ඇත.**" Thus, it is clearly seen that the learned trial judge has put unnecessary burden to the Accused without considering the credibility of the Prosecution witnesses.

10] Further, the learned trial judge had considered the question of identity as "**01 වන වූදිනව හඳුනාගැනීමේ පෙරටුවුවේදී මරණකරුගේ බිරිඳවූ ශ්‍රීමති විසින් නිශ්චිතව හඳුනාගෙන තිබීමද**". It is seen that the learned trial judge had failed to apply **R v Turnbull** [1977] QB 224, in relation to identifying the Accused. In our courts the following factors on visual identification has been consistently considered. Those are;

- Amount of time the suspect was under observation.
- Distance between the Witness and the Accused.
- Visibility and lighting conditions.
- Obstructions or interference during the sighting.
- Known or previously seen by the Witness.
- Any special reason to remember the person.
- Time lapse between the original event and the police statement.
- Error or material discrepancy between the first description and actual appearance.

11] Thus, there is grave non direction on the trial judge's part on the identity of the Accused. It should be remembered that the identity of the Accused should be proved beyond reasonable doubt and trial judge must satisfy himself by applying the above factors. In **Gamini Sugathasena and Another vs. The**

State [1988] 1 SLR 405, His Lordship Justice Asoka de Zoysa Gunawardana ruled that the identity of an Accused person must be proven strictly beyond a reasonable doubt, noting that weak or shifting witness testimony fails to establish reliable identification, doubt must be given to the Accused. In this matter, the Witness identified the Accused in the identification parade. Under section 157 of the Evidence Ordinance, it would corroborate the testimony of the Witness, however, this aspect had not been considered at the judgement, which is grave non direction.

12] Learned D.S.G. keeping the highest tradition of the profession, conceded that the learned trial judge lacked in proper evaluation of the evidence. However, she said that there are enough materials against all three Accused for safe conviction. It should be stressed that under the provision to Article 138(1) ¹of the Constitution, sections 334(1)², 436 ³ and 456A ⁴of the Criminal Procedure Code No. 15 of 1979 that a trial judge's analytical defects do not vitiate a conviction if the overarching evidence proves guilt beyond reasonable doubt.

13] On perusal of the evidence and the analysis of the impugned judgement, I am of the view that the conviction is bad in law because the learned trial judge

¹ "Provided that no judgement, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice."

² "The Court of Appeal on any appeal against conviction on a verdict of a jury shall allow the appeal if it thinks that such verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of any law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Provided that the court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred".

³ "Subject to the provisions hereinbefore contained any judgment passed by a court of competent jurisdiction shall not be reversed or altered on appeal or revision on account -

(a) of any error, omission, or irregularity in the complaint, summons, warrant, charge, judgment, summing up, or other proceedings before or during trial or in any inquiry or other proceedings under this Code; or

(b) of the want of any sanction required by section 135, unless such error, omission, irregularity, or want has occasioned a failure of justice."

⁴ "The failure to comply with any provision of this Code shall not affect or be deemed to have affected the validity of any complaint, committal or indictment or the admissibility of any evidence unless such failure has occasioned a substantial miscarriage of justice."

impermissibly shifted the burden of proof onto the defence and relied on perceived weaknesses in the defence case to bolster the Prosecution. This is not permissible. I am of the view that the Prosecution can stand alone with available evidence if the trial judge evaluated the evidence as required by law. In other words, there is enough evidence adduced by the Prosecution for a safe conviction; however, the trial judge took a short cut on analysing defence weakness. Thus, I am of the view that this is a fit and proper case for the act under the section 334(2) of the proviso⁵.

14] In view of the above, the impugned judgement, conviction and the sentence are quashed. There will be a de novo trial against all three Accused before a different High Court Judge. The trial Court is directed to conclude the trial within six months from the date of the receipt of this judgement. The Registrar of this Court is directed to dispatch this direction to the High Court of Kalutara forthwith.

The Appeal is allowed; Re-trial is ordered.

JUDGE OF THE COURT OF APPEAL

AMAL RANARAJA J.

I agree

JUDGE OF THE COURT OF APPEAL

⁵ "Provided that the Court of Appeal **may order a new trial** if it is of opinion that there was evidence before the jury upon which the accused might reasonably have been convicted but for the irregularity upon which the appeal was allowed".