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, 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 :
HCC/204/2025

HC of Badulla
Case No. HC/123/2018

Vs.

01. Aththanayaka Mudiyanselage Ajith Bandara.
02. Rathnayaka Mudiyanselage Heenbanda

ACCUSED

AND NOW BETWEEN

Rathnayaka Mudiyanselage Heenbanda

ACCUSED-APPELLANT

Vs.

The Hon. Attorney General

COMPLAINANT-RESPONDANT

Before: **Hon Justice B. SasiMahendran, J.**
Hon Justice Amal Ranaraja, J

Counsel : Amila Palliyage, Sandeepani Wijesooriya, Savani Udugampola, Lakitha Wakishtaarachchi, Subaj de Silva, Gayathrika de Silva for the Accused-Appellant
Anupa de Silva, ASG for the State

Written Submissions: 02.12.2025(by the Accused-Appellant)
06.01.2026(by the Respondent)
On

Argued On: 13.02.2026

Judgment On: 06.05.2026

JUDGEMENT

B. Sasi Mahendran, J.

The Accused-Appellant (hereinafter referred to as the Appellant), along with the 1st Accused, Aththanayaka Mudiyanselaage Ajith Bandara, were indicted before the High Court of Badulla on the charge of committing the offence of murder of one Fransis Sudarshana on 09.04.2014, punishable under Section 296 read with Section 32 of the Penal Code.

At the trial, the prosecution presented evidence through 6 witnesses and thereafter closed its case. The Appellant, in his defence, gave evidence in the witness box.

Upon conclusion of the trial, the Learned High Court Judge, by judgment dated 28.05.2025, found Appellant guilty of murder and imposed the death sentence and acquitted the 1st Accused.

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

1. The Learned Trial Judge has gravely erred in law in convicting the Accused Appellant on evidence that is internally inconsistent, contradictory and inherently unreliable.
2. The judge failed to consider the legal impact of admitted falsehood of the sole eye witnesses of the incident.
3. The Learned Trial Judge came to a finding upon the absence of independent corroboration of the alleged act of pushing.
4. The Learned Trial Judge has erred in law by failing to properly appreciate that the sole eye witnesses were employees of the 1s Accused and were closely connected to the deceased, thereby rendering them interested and interested witnesses whose evidence required strict judicial scrutiny before being relied upon for a conviction.
5. The Learned Trial Judge has failed to appreciate that the 2 sole eye witness's evidence fails the test of Probability.
6. The prosecution failed to prove its case beyond reasonable doubt against the Appellant.
7. The Learned Trial Judge has erred in law by failing to evaluate the evidence favourable to the Appellant with the same degree of care, objectivity, and judicial scrutiny as was applied to the evidence led by the Prosecution, thereby occasioning a miscarriage of justice.

The facts and circumstances of this case are as follows,

PW2, Ramar Selwendran, testified that he provided two statements to the police regarding the incident, one on 10 April 2014, the day of the occurrence, and another on 11 April 2014, following the death of the deceased. He stated that on the day in question, he accompanied the first accused, the deceased, and PW3 to a funeral in Badulla, travelling in a three-wheeler owned and driven by the first accused. During the journey, they stopped near a bar in Deke Knawa where the deceased and the appellant consumed liquor, while others did not. Later, at Passara, they stopped, and 1st Accused purchased another bottle of liquor before proceeding to the funeral. According to the witness, the liquor was consumed near the funeral premises by 1st accused, the appellant, and the deceased.

The witness stated that after attending the funeral for several hours, they began the return journey with the first accused driving. The witness sat near the mudguard, while the appellant, the deceased, and PW3 were seated together at the rear accordingly. He testified that since leaving Passara, minor verbal disputes had arisen between the appellant and the deceased. While passing through Thune Kanuwa, the appellant, seated at one corner, allegedly pushed the deceased, who was seated at the opposite corner without a mudguard, out of the moving vehicle. The witness shouted, prompting the first accused to stop. After a brief argument lasting about ten minutes, the journey resumed, with the appellant seated in the middle of the rear section and the deceased positioned near the side with the first accused.

According to the witness, the deceased complained of discomfort while seated at the front and attempted to move to the back of the moving vehicle. At that point, the appellant allegedly grabbed him by the neck and waist and pushed him out of the vehicle. The deceased fell to the ground, and as the vehicle turned at a junction, it ran over his body. The witness testified that he shouted, causing the vehicle to stop a short distance away. The deceased was then taken to Badulla Hospital. PW2 further explained that they later went to the police and, following instructions from the first accused, initially gave a false account stating the deceased had fallen

asleep and accidentally fallen. However, after learning of the deceased's death, he provided a second statement to the police, disclosing the true sequence of events.

During cross-examination, PW2 firmly maintained that the appellant pushed the deceased when he attempted to move toward the back of the vehicle. The defence highlighted an omission in PW2's second statement to the police, noting that he had not mentioned the vehicle stopping a short distance away when the deceased fell off. The defence further suggested that the deceased, while moving in the vehicle, tried to come back and accidentally fell, without being pushed by the appellant. PW2 categorically denied this suggestion.

PW3, Arumugam Raguwaran, corroborating evidence of PW1, confirming that he attended the funeral and, on the return journey, was seated on the right side of the three-wheeler, with the deceased on the left and the appellant beside him. He stated that at Thune Kanuwa, the appellant and the deceased quarrelled both on the way to the funeral and again on their return, during which the deceased struck the appellant's ear. The vehicle was then stopped, and the first accused moved the deceased to the front seat. Later, fearing police attention, the first accused instructed the deceased to return to the back. As the deceased attempted to move, the appellant allegedly struck him on the head with a wheel brush, causing him to fall to the ground, whereupon the vehicle ran over his body. The witness shouted for the vehicle to stop and noticed that the appellant was no longer present. The deceased was then taken to Badulla Hospital.

PW3 admitted that he initially gave a false statement to the police, claiming the deceased had fallen asleep and accidentally fallen while moving to the back seat, as directed by the first accused, who assured them the deceased would recover. After the deceased's death, PW3 retracted his earlier version and provided a second statement, disclosing the true events.

During cross-examination, the witness categorically stated that when the deceased tried to return from the front seat to the back, the appellant grabbed him by the neck and pushed him out of the three-wheeler. The defence pointed out omissions in the witness's police statements, such as not mentioning that the

appellant was absent when the deceased was taken to hospital and not stating that the deceased hit his head on the floor. The defence further suggested that the deceased fell due to his own carelessness while drunk, but the witness firmly denied this.

PW 7, Dr Kithsiri Wijewira, JMO, testified that he conducted the post-mortem examination of the deceased on 12 April 2014 at Badulla General Hospital. He identified nine external injuries, including Injury No. 01, a contusion at the rear of the skull, its corresponding internal injury, Injury No. 2, and Injury No. 03, a contre coup injury to the frontal aspect of the brain. The JMO explained that these injuries resulted from the rapid spinning of the head followed by impact against a hard surface. Injuries 1–3 were classified as necessarily fatal, compound injuries. He emphasized that injury 1 was fatal due to excessive force penetrating through the scalp into the head, indicating that the deceased's head struck a solid, stationary surface at high speed while the body was in motion. The JMO concluded that the pattern and nature of these injuries were entirely consistent with the account that the deceased had been pushed.

Upon conclusion of the prosecution's evidence, the Appellant, while testifying in the witness box, stated that he was seated on the right side of the vehicle, with the deceased on the left. He explained that as the deceased attempted to move toward the back, he accidentally fell from the vehicle. The Appellant emphasized that he had no intention of pushing the deceased. During cross-examination, the Appellant denied having pushed the deceased or having engaged in any physical altercation with him while on their way home.

The question before us is whether to believe the version of PW 2 and PW 3. The inconsistencies in the statements of PW2 and PW3 were explained by the witnesses themselves. Both admitted that their initial accounts to the police were false, given under the instruction of the first accused, who assured them that the deceased would recover. Out of fear and influence, they concealed the true events at first. However, after learning of the deceased's death, each provided a second

statement, retracting the earlier version and disclosing what had actually occurred. This inconsistency was accepted by the learned High Court Judge.

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> "ඔවුන්ගේ මෙම පැහැදිලි කිරීම පිළිගත හැකි පැහැදිලි කිරීමක් වන්නේද යන්න පිළිබඳව සලකා බැලීමේදී ඔවුන් දෙදෙනා මෙම 02 වන චූදිත සමඟ කිසිදු අමනාපයක් ඇති තැනැත්තන් නොවේ. සිද්ධිය සිදුවූ අවස්ථාවේදී හෝ එයට පසුව හෝ 02 වන චූදිත සමඟ කිසිදු දබරයක් හෝ ඔවුන් සමඟ කිසිදු අමනාපයක්ද තිබී නොමැත. ඒ අනුව ඔවුන් දෙදෙනා 02 වන චූදිත නිරපරාදේ පැටලවීම සඳහා අවශ්‍ය වන කිසිදු හේතුවක් මෙම සාක්ෂි මඟින් අනාවරණය වීමක්ද සිදු වී නොමැත. ඔවින් දෙදෙනා අධිකරණයේදී කිසිදු සත්‍ය වසන් කිරීමකින් තොරව සිදුවූ සිද්ධිය නිසි පරිදි අනාවරණය කරමින් සිදුවූ සිද්ධිය පිළිබඳව සත්‍ය හෙලිදරව් කරන සාක්ෂිකරුවන් දෙදෙනෙකු වන බව පෙනී යයි."

It is true that both witnesses initially presented two different versions of events. However, they provided explanations for these discrepancies, and the appellant did not dispute this fact nor raise any questions on the matter during cross-examination. Both witnesses stated that they were influenced by the first accused and, as a result, gave false statements to the police at the outset. Importantly, there is no evidence to suggest that either witness was biased against the appellant. Upon careful analysis, the testimonies of both witnesses corroborate each other, and the defence has failed to establish any reasonable doubt in the prosecution's case. While it is true that the witnesses gave differing accounts earlier, they later clarified their reasons in subsequent statements to the police.

The function of an appellate court in dealing with a judgment mainly on the facts from the court, which saw and heard witnesses, has been specified as follows by Macdonnel CJ in the ***King v. Gunaratne and Another,*** CLR V.14 page 144, Macdonnel CJ:

> *"This is an appeal mainly on facts from a Court which saw and heard the witnesses to a Court which has not seen or heard them, and in dealing with this judgment I have to apply the three tests, as they seem to be, which a Court of Appeal must apply to an appeal coming to it on questions of fact. Can we say that the verdict of the learned District Judge, namely, that these*

people are guilty, was unreasonably. against the, weight of the evidence adduced on both sides? Clearly it is not possible to say that. Can we say that there has been any misdirection either on the *law or on the evidence? Again, I do not think it would be possible to say so. There was a point of law argued here that accused had no intention to cause loss in the end. I have dealt with that, and properly understood, I do not think it is a misdirection in law at all. I do not remember any other point that was seriously raised to this Court as a misdirection, Them there is the third ground of interference, that the Court of trial has drawn the wrong inferences from matter in evidence which is as much before this Court as. it. was before the Court of trial, for instance, documents. Again, I do not think it can be said that there has been any wrong inferences drawn by the Court of trial. On the contrary, the documents put in seem, rightly apprehended, to support the findings of fact arrived at by the learned District Judge."*

He held further:

"The principles laid down by the authorities, referred to above, make it clear: that, although the findings of a Magistrate on questions of fact are entitled to great weight, yet, it is the duty of the Appellate Court to test, both intrinsically and extrinsically the evidence led at the trial: that, if after a close and careful examination of such evidence, the Appellate Court entertains a strong doubt as to the guilt of the accused, the Appellate Court must give the accused the benefit of such doubt."

Applying the above legal principle, and having already analyzed the testimonies of PW 2 and PW3, I am satisfied that the Learned High Judge has correctly evaluated the evidence of both witnesses and reached a justifiable conclusion that their evidence is truthful and consistent. There is no basis to disregard or disbelieve this finding. Furthermore, it is evident that Counsel for the Appellant was unable to demonstrate any contradictions or inconsistencies in the testimonies of the two witnesses. Consequently, the defence failed to cast any doubt upon the prosecution's case.

In those circumstances, I am not inclined 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