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

In the matter of an appeal in terms of section 331 (3) of the Code of Criminal Procedure Act.15 of 1979 read with Article 139 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Democratic Socialist Republic of Sri Lanka.

Complainant

Vs

1. Liyanaarachchige Don Premaratna *alias* Ranja *alias* Ranji
2. Gamage Sunil Shantha alia Sarath
3. Meegaha Kankanamge Danuka Rathnasiri

Accused

AND NOW BETWEEN

Meegaha Kankanamge Danuka Rathnasiri

Accused-Appellant

Vs

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

Complainant - Respondent

Court of Appeal Case No:
CA/HCC/0205/2024

High Court of Kaluthara Case No:
HCC- 834/2007

Before : **P. Kumararatnam, J.**
Pradeep Hettiarachchi, J.

Counsel : Darshana Kuruppu with Tharushi Gamage and Rajitha Kulatunga for the Accused - Appellant.
Disna Warnakula DSG for the Respondents.

Argued on : 26.09.2025

Decided on : 12.12.2025

Pradeep Hettiarachchi, J

Judgment

1. The accused-appellant has preferred this appeal against the judgment and sentence dated 02.05.2024 of the learned High Court Judge of Kalutara. The appellant was indicted, along with two other accused, for the murder of Meegaha Kankanamge Dhanuka Rathnasiri, an offence punishable under section 296 read with section 32 of the Penal Code. The trial was conducted before the High Court Judge without a jury. During the pendency of the trial, the 1st and 2nd accused passed away.

2. At the conclusion of the trial, the learned High Court Judge found the appellant guilty of the charge, convicted him, and imposed the death sentence. Being aggrieved by the said conviction and sentence, the appellant (3rd accused in the High Court Case) has preferred this appeal.

3. According to PW1's evidence, she is a cousin of the deceased. She resided with the deceased and his wife, as she was employed in a garment factory. On the day of the incident, while returning from work around 6:30–7:00 p.m., PW1 heard the distressing voice of the deceased. As she moved in that direction, she saw the

deceased lying on the ground, with two persons near him, one holding the deceased's legs and the other kneeling beside him.

4. PW2 identified the assailants and immediately returned home to inform PW1 of the incident. Upon receiving this information, PW1 rushed to the scene and found the deceased lying on the ground with injuries. The deceased was subsequently taken to the hospital.

5. There are ten grounds of appeal. The first ground of appeal raises several issues, primarily challenging the manner in which the learned Trial Judge analyzed and evaluated the evidence of PW2, who was the sole eyewitness to the incident. Grounds 1(a) to 1(f) concern the conclusions reached by the learned High Court Judge based on the evidence of PW1 and PW2. Accordingly, grounds 1(a) to 1(f) shall be considered together.

6. PW2 was the sole eyewitness to the incident. According to her testimony, when she went in the direction from which she heard the distressed voice of the deceased, she saw the deceased lying on the ground with two individuals near him. One was mounted on the deceased's legs, while the other was kneeling beside him. During cross-examination, PW2 admitted that, out of the two individuals present, she was able to identify only one.

7. In his judgment, the learned trial Judge erroneously found that PW2 had seen three persons attacking the deceased. These findings are contrary to PW2's testimony. PW2 unequivocally stated that she saw only two persons and did not testify that they were attacking the deceased; rather, she said that neither the 2nd accused nor the appellant did anything beyond holding the deceased. Moreover, the trial Judge's conclusion that the deceased died as a result of an assault by the 1st to 3rd accused is not supported by the evidence. The sole eyewitness, PW2, never stated that she observed the 1st to 3rd accused attacking the deceased. Such findings, which are inconsistent with the record, constitute material misdirection.

8. What is discernible from the judgment is that several conclusions reached by the learned trial Judge are wholly inconsistent with, or contrary to, the evidence led at the trial. At pages 5 and 6 of the judgment, the learned Judge concludes that PW2

witnessed the 1st, 2nd and 3rd accused assaulting the deceased, an assertion never made by PW2 in her testimony.

9. Furthermore, at page 6, of the judgment it is stated that PW2 heard the deceased screaming and pleading not to be assaulted, although no such evidence was ever given by PW2. These findings, being unsupported by the evidence, amount to clear misdirection.

10. More importantly, at page 8 of the judgment, the learned Trial Judge stated that he would analyze the testimony of PW2 on the premise that she had stated that she saw the deceased being attacked by the 3rd accused (the appellant). It is significant to note that PW2, in her evidence, never stated that she saw the appellant attacking the deceased.

11. It is further evident that the learned Trial Judge proceeded on the premise that PW2 had witnessed the deceased being attacked with sharp cutting weapons by the 1st to 3rd accused, despite PW2 never having stated any such fact in her testimony. She categorically stated that she saw only two individuals at the scene, one holding the deceased's legs and the other kneeling beside him. Outside this, no evidence was elicited from PW2 to suggest that she saw the deceased being attacked by any of the accused.

12. Regrettably, the learned Trial Judge appears to have paid little or no attention to the evidence adduced at the trial, as he has made several glaring errors in the judgment. His lack of care is clearly demonstrated by the erroneous statement that the 1st and 2nd accused had testified at the trial, whereas the 1st accused had died even before the commencement of the proceedings. Such mistakes, evident on the face of the judgment, reflect a negligent approach to the evaluation of evidence and raise serious concerns regarding the accuracy of the factual findings recorded by the learned Trial Judge.

13. Another misdirection committed by the learned trial Judge relates to the alibi taken up by the appellant. In the judgment, the learned Judge summarily rejected the appellant's alibi on the basis that it had not been disclosed by counsel prior to the commencement of the trial.

14. As the law stands today, notice of alibi must be given to the prosecution prior to the commencement of the trial. The purpose of such notice is to afford the prosecution a fair opportunity to investigate the alibi and, if necessary, to lead rebuttal evidence. However, where no notice of alibi has been given and the prosecution nevertheless raises no objection at the point when the defence advances the alibi, it may properly be presumed that the position relied upon forms part of the accused's police statement.

15. It is well settled that an alibi once raised, the Court is under a duty to consider it in light of the totality of the evidence. The mere absence of formal notice does not, by itself, justify the rejection of an alibi, particularly when the prosecution has not been taken by surprise or prejudiced in any manner. The jurisprudence consistently recognizes that an alibi must be evaluated alongside all other evidence, and if it raises a reasonable doubt as to the presence of the accused at the scene, the benefit of that doubt must be afforded to the accused.

16. In these circumstances, the learned Trial Judge's refusal to consider the alibi solely on the basis of an alleged procedural default constitutes a misdirection in law. Such an approach undermines the accused's right to a fair trial and fails to appreciate the proper legal principles governing the assessment of alibi evidence.

17. It is also notable that the learned Judge, without any evidential foundation, proceeded to attribute blame to the defence counsel by suggesting that the alibi may have been a creation or fabrication on the part of counsel. In my view, this was an entirely unwarranted and inappropriate remark which ought not to have been made. Such comments reflect adversely on the Judge's attitude towards defence counsel and raise serious concerns regarding the fairness and impartiality of the trial process.

18. It may also be observed that the learned trial Judge drew an adverse inference against the appellant on the basis that he had been evading arrest for six months. Although the appellant surrendered to court six months after the incident, there was no evidence whatsoever to establish that he had been evading arrest during that period. Not even the police officer who testified stated that the appellant was absconding or attempting to evade arrest.

19. Moreover, the learned Trial Judge, on the same premise, namely, the alleged evasion of arrest by the appellant, went on to observe that the police had failed to recover any

weapon used to attack the deceased. This observation is purely speculative and is unsupported by any evidence on record. Such an inference, made in the absence of evidentiary basis, undoubtedly amounts to a serious misdirection of fact.

20. Another glaring error evident in the judgment is the observation by the Trial Judge that PW2 had seen the deceased being killed and that the appellant was attacking the deceased while kneeling beside him. This alleged fact was never borne out by the evidence. Accordingly, this finding amounts to yet another conjecture on the part of the Trial Judge, reached without any evidentiary basis.

21. In ***Wimalarathne Silva & Another vs A.G. [2008] 1 Sri.L.R. 119***, *it was held:*

> *It is the paramount duty of courts to act well within the bounds of admissible evidence and not to act on mere conjecture and surmise. Where the prosecution has failed to establish the charge beyond reasonable doubt, the benefit of the doubt should always be given to the accused*.

22. The Supreme Court of India in the case of ***Sujit Biswas vs. State of Assam*** ***Criminal Appeal NO. 1323 of 2011*** decided on 28th May, 2013 held:

> *Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that `may be' proved, and something that `will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between `may be' and `must be' is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof."*

23. In the present case, there has been a complete failure on the part of the Trial Judge to properly scrutinize and evaluate the evidence. Many of the conclusions reached by the learned Trial Judge are based on speculation rather than on any supporting evidence. The contradiction marked as 3D1 reveals that the sole eyewitness, PW2, was unable to identify the person who was kneeling beside the deceased when she first saw him. She further stated that the individual who was mounted on the deceased's legs was not present in court. If that is so, the presence of the appellant at the scene has not been

established beyond reasonable doubt through the testimony of PW2, who was the sole eyewitness to the incident.

24. This evidence strikes at the very core of the prosecution's case. PW2's inability to identify either of the two individuals allegedly involved in the assault creates a fundamental evidentiary vacuum. In a case resting entirely on a single eyewitness, the prosecution bears the burden of establishing the identity of the assailant beyond reasonable doubt. The failure to do so is fatal to the prosecution's case.

25. The Trial Judge's disregard of these critical inconsistencies, and the reliance instead on conjecture, has resulted in a serious misdirection of law and fact. Such misappreciation undermines the integrity of the conviction and renders it unsafe. In the absence of clear, cogent, and credible evidence establishing the appellant's presence and participation in the alleged act, the conviction cannot stand.

26. For the reasons stated above, I do not consider it necessary to proceed further to examine the other grounds advanced by the appellant, as the observations already made are sufficient to set aside the conviction and sentence imposed by the learned High Court Judge. Accordingly, the appeal is allowed, and the appellant is acquitted of the charge.

Judge of the Court of Appeal

P. Kumararatnam,J

I agree,

Judge of the Court of Appeal