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 S.331 of the Code of Criminal Procedure Act No 15 of 1979

Democratic Social Republic of Sri Lanka.

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COMPLAINANT

Court of Appeal CA Case No :
CA/HCC/243-244/2018

HC of Trincomalee Case No.
HCT 669/2016

Vs.

01. Balasingham Naguleswarn
02. Vijayakumar Chandrapalan
03. Krishnabalan Rajeevkanthan
04. Sivakumar Sivaruban

ACCUSED

AND NOW BETWEEN

01. Balasingham Naguleswarn
02. Vijayakumar Chandrapalan

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 : Tenny Fernando for the 1st Accused-Appellant.
Indika Mallawaratchy for the 2nd Accused-Appellant.
Azard Navavi, PC, ASG, for the Respondent.

Written Submission: 04.10.2021 (by the 2nd Accused – Appellant)
On 17.08.2021(by the Complainant - Respondent)

Argued On: 26.02.2026

Judgment On: 14.05.2026

JUDGEMENT

B. Sasi Mahendran, J.

The Accused- Appellants (hereinafter referred to as the 1st and the 2nd Appellant), along with the 3rd Accused and the 4th Accused, were indicted before the High Court of Trincomalee on the charge of committing the offence of murder of one Kuruwesingham Srivanthani on 24th November 2011, punishable under Section 296 read with Section 32 of the Penal Code.

At the conclusion of the trial, the Learned High Court Judge, by judgment dated 07.08.2018, found both Appellants guilty of murder and imposed the death sentence and acquitted both 3rd and 4th Accused.

Being aggrieved by the said conviction and the sentences, Appellants sought to challenge their validity on the following grounds,

1. Items of circumstantial evidence are wholly inadequate to support the conviction.
2. Application of the Ellenborough principle is wholly inadequate to support the conviction.

It should be noted that there were no eyewitnesses to the incident, and the prosecution case was based entirely on circumstantial evidence. Accordingly, it is necessary to consider the established principles governing the evaluation of cases found on 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."

In ***Krishantha De Silva vs The Attorney General*** [2003] (1) SLR, 162, it was held inter alia that:

> *"Circumstantial evidence can be acted upon only if from the circumstances relied upon the only reasonable inference to draw is the inference of guilt. If the circumstances are consistent both with guilt and with innocence then the case is not proved on circumstantial evidence.*

Recently, Aluwihare, PC, J, in ***Junaiden Mohamed Haaris v. Attorney General***, SC Appeal 118/17, Decided on 09.11.2018, held that:

> *"Before I consider the facts of the case and the legal issues raised in this appeal, it should be borne in mind that the prosecution relied entirely on circumstantial evidence to establish the charges, for the reason that there were no eyewitnesses to substantiate any of the charges against the Accused-Appellant. Thus, it was incumbent on the prosecution to establish that the 'circumstances' the prosecution relied on, are consistent only with the guilt of the accused- Appellant and not with any other hypothesis.*
>
> *Regard should be had to a set of principles and rules of prudence, developed in a series of English decisions, which are now regarded as settled law by our courts.*
>
> *The two basic principles are-*
>
> *i. The inference sought to be drawn must be consistent with all the proved facts, if it is not, then the inference cannot be drawn.*
> *ii. The proved facts should be such that they exclude every reasonable inference from them, save the one to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct (per Waterm eyer J. in R vs. Blom 1939 A.D. 188)"*

Bearing these legal principles in mind, it becomes incumbent upon this Court to undertake a careful and dispassionate evaluation of the facts and circumstances attendant to the present case.

According to the testimony of PW1, Kanagaraja Kalaichelvan, on 24.11.2011, he was on his way to attend a meeting at the Zonal Education Office in Muthur. On his way, he met a farmer at Santhosapuram who stopped him and informed him that a female had fallen among the shrubs. Thereafter, he had reported the incident to the police, and only then he had got to know that the deceased was a teacher at his school. He also stated that he gave a statement to the Police on the same day.

PW06, Saravanamuthu Saravanapavan, testified that on 24.11.2011, he left his home at about 7.20 a.m. on his motorcycle to travel to work. While passing a culvert on the way, he was required to slow down and place their feet on the ground, and he observed a person from a neighbouring village sharpening a small object, though he could not identify whether it was a knife or an axe. The witness had identified the person at the culvert as the 1st Appellant. He further stated that another individual was also present at the location, and he didn't see his face.

PW 16, Kanapathypillai Navaratnarasa, a villager, testified that while returning from selling vegetables, he saw the 1st Appellant at a culvert sharpening an axe. When he questioned the Appellant, he was told that they were going to cut firewood, and the witness identified that person as the 1st Appellant. The witness stated that he saw the 1st Appellant at about 7.30 a.m. and observed that the axe had a handle approximately three feet in length. He identified a production marked “P1” as an axe similar to the one he had seen.

PW04, Kurukulasingham Srimathi, the mother of the deceased, testified that her daughter, who was a teacher, died on 24.11.2011. She stated that her daughter regularly wore jewellery, including a chain with a pendant, bangles, and rings, when going to work from her elder brother’s residence. Upon receiving news of her daughter’s death, she went to the scene where the Police showed her the jewellery recovered in connection with the incident. She identified the said jewellery as

belonging to her daughter and, during her evidence before the Court, marked them "P-1a" to "P-7".

PW 12, Maheswaran Santhi, testified that she had come to testify in relation to a heart-shaped ring which was identified as P6. She stated that the said ring was given to her by the 1st Appellant, who requested Rs. 2,000/-, stating that his children were hungry. She stated that she obtained Rs. 2,000/- from her mother and handed it over. Thereafter, she gave the ring to her mother. She further stated that the Police later came, took her to Sampur Police Station, and, upon request, the ring was handed over to them. She also stated that the incident took place on 24.11.2011 and that she gave a statement to the Police in this connection.

It should be noted that according to the witness, the 1st appellant gave the ring to her on 24.11.2011 at 3.30 p.m.

PW 14, Gunabalaratna Nisiyananthan, stated that the chain was given to him near the Bank by his elder cousin brother, 1st Appellant, requesting him to pawn it on his behalf. He stated that, then he took the chain from the Appellant. The witness further stated that when the chain was handed over to him, he questioned why the Appellant did not pawn it himself, to which he replied that he did not have his identity card and that his child was suffering from fever, and requested him to pawn it on his behalf. He stated that he thereafter pawned the chain and handed over the cash obtained to the Appellant.

It should be noted that evidence of PW12 and PW14 established that the 1st Appellant handed over the jewellery to them. The said jewellery was identified by the mother of the deceased, PW 04, as belonging to the deceased when she left the house. Significantly, this aspect of the evidence was not challenged during cross-examination. The evidence relating to the identity of jewellery remains unshaken. Through these witnesses, the prosecution has established that the 1st Appellant gave jewellery to them. It was given to them within a short period of time on the same day. This fact was not contradicted by the 1st Appellant.

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"*

It should be noted that jewellery was recovered based on the 1st Appellant's statements, and our courts have examined the impact of Section 27 in relation to this recovery.

Ariyasinghe and Others V Attorney General, 2004 (2) SLR 357, Gamini Amaratunga, J. Held That;

> *"The facts discovered by the portions of statements of the accused persons and their acts of pointing out the places where G/66 notes were found were that the accused had knowledge that G/66 notes were in the places described and pointed out by them. How did they know that G/66 notes were in those places? In order to find out the answer to this question the learned trial Judge has considered the ways in which the accused could have gained such Knowledge. According to the analysis, there were three ways in which the accused persons could have acquired their knowledge about the places where G/66 notes were found. The following are the three ways.*
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> *I. The accused himself concealed those G/66 notes found in the place where they were found.*
> *II. The accused saw another person concealing the notes in that place.*
> *III. A person who had seen another person concealing those notes in that place has told the accused about it."*

Applying the aforesaid dictum to the present case, this Court is satisfied that the Appellant was aware that the jewellery in question belonged to the deceased. But he has not denied that he made a statement to the effect.

When the prosecution has led incriminating circumstantial evidence, the question necessarily arises whether the Appellant has offered any explanation capable of establishing his innocence.

This dictum was considered in the following Indian judgment.

In the case of ***State of Tamil Nadu vs. Rajendran*** 1999 Cri L.J. 4552, the Indian Supreme Court observed thus:

> *"In a case of circumstantial evidence when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete."*

This judgement was referred by His Lordship Pradeep Hettiarachchi J, in the case of ***Wedakkara Nekethige Premarathne alias Korale Raja v Attorney General***, CA/HCC/0119/2019, decided on 30.01.2026.

In the dock statement, the 1st Appellant contended that he was in Awissawella at the relevant time. This assertion, however, stands contradicted by the testimony of PW16 and PW6, both of whom categorically stated that they had seen the Applicant on the day in question. It is further significant to note that the defence did not put to these witnesses any suggestion that the 1st Appellant was elsewhere at the material time.

In the circumstances, I am compelled to hold that the plea of alibi advanced by the defence is an afterthought, devoid of credibility and unsupported by the evidence on record. The dock statement of the 1st Appellant has not succeeded in creating any reasonable doubt over the prosecution case. I further hold that, in the face of strong incriminating evidence led by the prosecution, the 1st Appellant was required to furnish a plausible explanation. The failure to do so leads to the inference that no such explanation was available to him.

I am mindful of the judgment of the Indian case of ***Saundraraj v. The State of Madya Pradesh*** (1954) 55 Cr. L.J.257, it has been held that in cases where murder and robbery were shown to be part of the same transaction, recent and unexplained possession of stolen articles, in the absence of circumstances tending to show that the accused was only a receiver, would not only be presumptive evidence on the charge of robbery but also on the charge of murder.

The above said case was referred by His Lordship Sampath B. Abayakoon, J. in HCC/262/16 ***Kumarasinghe Arachchilage Samantha v. Attorney General***.

With the above incriminating evidence, I hold that the inference of guilt must be the one and only irresistible and inescapable conclusion that can be arrived at, that the 1st Appellant committed the murder of Kuruwesingham Srivanthani and took the jewellery which was mentioned in the indictment.

In my opinion, the prosecution has proved the case beyond a Reasonable doubt. For the above-mentioned reasons, I am disinclined to interfere with the judgment of the Learned High Court Judge against the 1st Appellant, namely Balasingham Naguleswarn.

The learned Additional Solicitor General, who appears for the Attorney General, upholding the best tradition of the Attorney General's Department, submitted to the court that he was unable to support the conviction against the 2nd Appellant, namely, Vijayakumar Chandrapalan.

Having considered all the foregoing matters, I am of the view that the conviction and sentence imposed upon the 2nd Appellant cannot be sustained. Accordingly, the conviction and sentence are hereby set aside, and the 2nd Appellant is acquitted of the charge.

I dismiss the Appeal against the 1st Appellant and affirm the conviction and sentence of the Learned High Court judge dated 07.08.2018 against the 1st Appellant, namely Balasingham Naguleswarn.

Appeal partly allowed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja J,
I AGREE

JUDGE OF THE COURT OF APPEAL