

**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(1) of the Constitution of the
Democratic Socialist Republic of Sri Lanka
and Section 11 of the Special Provisions
Act No 19 of 1990

Court of Appeal CA Case No :
CA/HCC/0302/24

HC of Ratnapura Case No.
HRC/76/2013

Democratic Socialist Republic of Sri
Lanka

COMPLAINANT

Vs

01. Karupaiah Balaraja alias Michel alias
Kurupaiah Balaraj
02. Subrayam Wijeraman alias Chandrabos
03. Malavi Appan Mogan Raj alias Baby
alias Palani Appan Mogan Kumar
04. Balasubramanium Prasad alias Ranjith
05. Mawedage Philip Weerasinghe alias
Chuti alias Philip Weerasinge.
06. Rathnam Nishadan alias Deera
07. Kathigeshan Niroshan
08. Arjunan Jegan
09. Thangavelu Ananda Wijekumar alias
Vitharana
10. Rohan Raj Kumar

ACCUSED

AND NOW BETWEEN

Subrayam Wijeraman alias Chandrabos

ACCUSED-APPELLANT

Vs.

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

RESPONDANT.

Before: Hon Justice B. Sasi Mahendran, J.
Hon Justice Amal Ranaraja

Counsel : Neranjan Jayasinghe with Randunu Heellage and Pravindika
Kularathne for the Accused-Appellant.
Disna Warnakula, DSG for the Respondent.

Written

Submission: 20.11.2025 (by the Accused – Appellant)

On

Argued On: 27.03.2026

Judgment On: 20.05.2026

JUDGEMENT

B. Sasi Mahendran, J.

The Accused-Appellant (hereinafter referred to as the Appellant), along with nine other accused persons, were indicted before the High Court of Ratnapura in respect of the murder of one Nadaraja Sellambaram on 04.09.2009, on the basis that they were members of an unlawful assembly punishable under Section 140 of the Penal Code and that in the course of the same unlawful assembly they committed culpable homicide not amounting to murder, thereby rendering them liable under Section 297 read with Section 146 of the Penal Code.

At the conclusion of the trial, the Learned High Court Judge, by judgment dated 27.08.2024, found the Appellant guilty and acquitted all other 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 High Court Judge erred in law in convicting the Accused-Appellant for the charges of unlawful assembly.
2. The Learned High Court Judge had failed to take into consideration that the evidence of the prosecution witnesses failed the tests of credibility and consistency.
3. The Learned High Court Judge failed to adduce reasons in rejecting the dock statement of the Accused-Appellant.

The facts and circumstances of this case are as follows,

PW1, Selvarajan Ajantha, the niece of the deceased, testified that on 04.09.2009, a festival was being held at the village kovil. The witness stated that he had gone to work and returned home; he did not attend the festival. According to the witness, at about 5.00 p.m., while he was at PW3, Bappa's house together with the deceased, a group of individuals, namely Chandraboss, (appellant), Chutiya,

Balasubramaniam, baby, Witharana, Ranjith, Morgan, Edra and Jegon (8th accused), arrived at the said place, broke open the door, and entered armed with weapons including poles and swords. The witness stated that the appellant was in possession of an axe.

He further stated that thereupon he and the deceased escaped through the back window. According to the witness, the accused persons subsequently apprehended the deceased, whereupon the Chutiya, 5th accused, dealt a sword blow on the chest and neck of the deceased. He further stated that the appellant struck the deceased on the face with the blunt side of an axe, while the Nishandan and other accused persons assaulted the deceased with poles. According to witness Niroshan, Witharana caught the deceased. Thereafter, all the assailants left the scene. The witness further stated that prior to the incident, there had been a minor commotion between his brother and the 10th accused. He also stated that the distance from the kovil to the scene of the incident was approximately 250 meters. The witness identified the accused except the 3rd Accused and stated that the incident was witnessed in moonlight and the generator light of the kovil.

During cross-examination, the counsel for the 1st, 4th, and 8th Accused suggested that the 1st Accused was not present at the scene and was instead at work. The witness admitted that he had given two statements to the police. An omission was marked in relation to the allegation that the 8th accused attacked the deceased, as this fact had not been mentioned in his police statement. The defence suggested that the 1st, 4th and 8th accused were not at the scene and did not attack the deceased. An omission was marked by the defence that in both police statements, the witness had not mentioned that the 8th accused attacked the deceased. The witness admitted that he had gone to the kovil briefly and that there had been a commotion there. And the witness stated that he went to the Kovil festival at 5.00 p.m. A contradiction was marked from the inquest statement, where he had stated that he did not go to the kovil.

The witness admitted that he had given two statements to the police on 08.09.2009 and 16.09.2009, explaining that the second statement was recorded because he had failed to mention certain names of the accused in the first statement. This, in

itself, raises doubt as to the truthfulness and consistency of the witness's version. The witness further stated that the 8th accused attacked him, prompting him to escape through the window together with the deceased.

The defence suggested that the witness had failed to mention the names of the 7th, 8th, and 9th accused in his first police statement. In response, the witness stated that he had omitted four names from his initial statement to the police.

PW3, Sidambaran Jeganadan, the uncle of the deceased, testified that on the date of the incident, he heard a scream coming from the direction of the kovil. Shortly thereafter, he heard a noise and saw the deceased run towards the area outside. He also stated that the appellant arrived with about four to five others and inquired about the deceased. At that time, the deceased allegedly jumped out of the window and fled. The witness further stated that the appellant was in possession of an axe at that moment, and that he was able to identify the appellant under lamp light and moonlight. Thereafter, they heard a noise from the road and later saw the deceased lying dead on the road.

PW5, Suppaiah Subramaniam, testified that on the date of the incident, he had gone to the Kovil festival with the deceased. He stated that at one point the band had stopped playing, and he had questioned the reason for the stoppage, requesting them to continue playing. According to the witness, a commotion subsequently arose between the 4th accused and himself, during which the 4th accused struck him with a pole. He further stated that the 8th accused and the deceased began to fight, and that the appellant and the 3rd accused were also present at the scene. The witness stated that he later saw the injured deceased lying on the ground and had given a statement to the police on 05.09.2009.

During cross-examination, two omissions were marked in his police statement dated 05.09.2009: first, that he had failed to mention that the 8th accused and the deceased were fighting; and second, that he had not stated that the appellant was present during the commotion.

Upon the conclusion of the prosecution's case, the Appellant made a statement from the dock, wherein he stated that PW1 was falsely implicating all the accused

in order to save his brother, and further alleged that the 10th accused had in fact been assaulted by the brother of PW1, who had struck him on the head, resulting in his hospitalization.

The question arises as to the basis on which the learned High Court Judge convicted the appellant for being a member of an unlawful assembly, while acquitting the other accused.

The learned High Court Judge acquitted the 1st, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, and 10th accused of the charge of unlawful assembly, while convicting the appellant for being a member of the said unlawful assembly. In this regard, it is pertinent to refer to the impugned judgment of the learned High Court Judge.

එක් එක් විත්තිකරුවන් අන් අය සමඟ (Common murderous intention) පොදු මරණීය වේතනාවකින් කටයුතු කළ බවට සමස්ථයක් වශයෙන් පැමිණිල්ලේ සාක්ෂිවලින් සාධාරණ සැකයෙන් ඔබ්බට ඔප්පු කිරීමට ප්‍රමාණවත් සාක්ෂි ඉදිරිපත් කර නොමැති බවටද නිරීක්ෂණය කරමි.

බවට සාක්ෂි ඉදිරිපත් වී නොමැත. තවද, එකී එක් එක් විත්තිකරුවන් වෙන් වෙන් වශයෙන් මරණකරුට මරණය ගෙන දීමට හේතු වූ තුවාල සිදු කිරීමට දැක්වූ අපරාධමය දායකත්වය සම්බන්ධයෙන්, අධිකරණයට පිළිගත හැකි ආවේශ්‍යගත සාක්ෂි, සාධාරණ සැකයෙන් ඔබ්බට ඔප්පු කිරීමට පැමිණිල්ල අපොහොසත් වී ඇති බවට තීරණය කරමි.

.....

එසේ හෙයින්, 01, 03, 04, 05, 06, 07, 08, 09 සහ 10 එක් එක් විත්තිකරුව ඔවුන්ට එරෙහි අධිචෝදනා පත්‍රයේ 01 වන 02 වන සහ 03 වන එක් එක් අධිචෝදනා වලින් නිදොස් කොට නිදහස් කරමි.

බවට සාක්ෂි ඉදිරිපත් වී නොමැත. තවද, එකී එක් එක් විත්තිකරුවන් වෙන් වෙන් වශයෙන් මරණකරුට මරණය ගෙන දීමට හේතු වූ තුවාල සිදු කිරීමට දැක්වූ අපරාධමය දායකත්වය සම්බන්ධයෙන්, අධිකරණයට පිළිගත හැකි ආවේශ්‍යගත සාක්ෂි, සාධාරණ සැකයෙන් ඔබ්බට ඔප්පු කිරීමට පැමිණිල්ල අපොහොසත් වී ඇති බවට තීරණය කරමි.

එසේ හෙයින්, 01, 03, 04, 05, 06, 07, 08, 09 සහ 10 එක් එක් විත්තිකරුව ඔවුන්ට එරෙහි අධිචෝදනා පත්‍රයේ 01 වන 02 වන සහ 03 වන එක් එක් අධිචෝදනා වලින් නිදොස් කොට නිදහස් කරමි.

The 2nd accused appellant was convicted on the count of unlawful assembly. Since the 1st, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, and 10th accused were acquitted for all counts, including unlawful assembly, and also without the phrase in the indictment that is “with those unknown to the prosecution”, whether this court affirms the conviction only against the 2nd accused -appellant for unlawful assembly. This court is mindful that to form an unlawful assembly, there should be five or more persons according to Section 138 of the Penal Code. This concept was articulated in the following cases.

The *Queen v. Appuhamy* 62 NLR 484, Sansoni, J held;

“A common object is different from a common intention, in that it does not require prior concert and a common meeting of minds before the offence is committed. If each member of the assembly has the same object, then their object would be common, and if there were five or more with this object, then they would form an unlawful assembly without any prior concert among themselves. If these elements are established, the prosecution has then proved the existence of an unlawful assembly with that particular common object: see *Sukha v. State of Rajasthan*.”

In light of the authorities cited above, I hold that the learned High Court Judge has misapplied the principles relating to unlawful assembly and wrongly convicted the appellant on the charge based on unlawful assembly. The learned Judge further stated that he was not convicting on the third charge, as it was framed as an alternative to the first and second counts.

Upon careful consideration, I find that the prosecution has failed to establish, beyond reasonable doubt, that the Appellant was a member of an unlawful assembly.

In the light of the foregoing, the conviction and the sentence imposed by the Learned High Court Judge are hereby set aside. The 2nd accused-appellant is acquitted of the charge on which he was convicted.

Appeal Allowed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL