

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

In the matter of an Appeal under and in
terms of section 331 of the Criminal
Procedure Act No. 15 of 1979.

CA CASE No: HCC 366-367/19

HC of Jaffna Case No: HCJ/2572/18

The Democratic Socialist Republic of Sri Lanka
Complainant

-Vs-

1. Poobalasingham Jeyakumar *alias* 'Ravi'
2. Selvarasa Kirubakaran *alias* 'Sadriraas'

Accused

AND NOW

1. Poobalasingham Jeyakumar *alias* 'Ravi'
2. Selvarasa Kirubakaran *alias* 'Sadriras'

Accused-Appellants

v.
The Attorney General
Attorney General's Department
Colombo 12

Respondent

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

Counsel : Ershan Ariaratnam for the Accused- Appellant
Azard ASG, PC for the Respondent

Written 18.05.2022 (by the Accused-Appellant)

Submissions: 11.02.02026 (by the Respondent)

On

Argued On: 12.02.2026

Judgment On: 12.05.2026

JUDGEMENT

B. Sasi Mahendran, J.

The Accused Appellants (herein after referred to as the 1st and 2nd Appellants) were indicted before the High Court of Jaffna on or about 28th May 2010, causing the death of Somasundaram Subramaniam and committing robbery by taking Rs. 10,000/- from the possession of the deceased, punishable under Section 296 and Section 380 read with Section 32 of the Penal Code.

Upon conclusion of the trial, the Learned High Court Judge, by judgment dated 30.09.2019, found both Appellants guilty on both counts and imposed the death sentence for the first count and a sentence of 10 years of rigorous imprisonment and a fine of Rs. 10,000/- and 10 months of rigorous imprisonment in default for the second count.

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

1. The learned High Court Judge has failed to consider the circumstantial evidence are insufficient to conclude the appellant committed the crime.
2. The learned High Court Judge has failed to analyze whose burden it is to prove one's case.
3. The learned High Court Judge has failed to analyze the defence version.
4. The learned High Court Judge has failed to give reasons as per Sec 283 of the CCPA

The prosecution presented this case based on circumstantial evidence to prove both counts. Therefore, it is necessary to consider the principles governing cases of 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.”

Having regard to the principles laid down in the above judicial decisions, I hold that in a case of circumstantial evidence, if an inference of guilt is to be drawn, such an inference must be the one and only irresistible and inescapable conclusion that the accused committed the offence. When the evidence adduced at the trial is considered, the one and only irresistible and inescapable conclusion that can be arrived at is that the accused committed the murder of Somasundaram Subramaniam.

According to the prosecution, the wife of the deceased, PW3, Subramaniam Dharmalakshmi, testified that on 28.05.2010, she accompanied the deceased to Kasinathan, PW1's shop, around 1.30 p.m. to purchase alcohol. Thereafter, PW 1 had informed the deceased that nothing was available, and shortly thereafter, the 1st and 2nd appellants arrived at the shop on a bicycle, where the deceased asked them for Arak. One appellant replied that liquor was available further away, and according to the witness, she couldn't identify the appellant specifically. Thereafter, the deceased took money from his shorts, during which a 2000-rupee note fell, which he picked up and returned to his pocket. According to the witness, the deceased was wearing a sarong and a shirt at that time. He then handed over 200 rupees to buy a quarter of a bottle. The 1st appellant asked him to accompany them. PW 3 added that the deceased had 10,000 rupees with him to redeem a pawned chain. He asked her to remain at the shop and left around 2.00 p.m., following the appellants, who had gone ahead on their bicycle.

Later, PW3 testified that she learned the deceased had been assaulted and killed in the jungle near Pillayar Kovil, close to Kannahaiamman temple, with stones used in the attack. She stated that after the deceased left the shop, she remained there for about an hour, not searching for him as she did not know his whereabouts.

Afterwards, she sought help from others to locate him. A boy from Kannahaiamman temple then informed her that he had seen a blue Bata slipper and blood near Pillayar Kovil, though he had not seen the deceased himself. Subsequently, the deceased's body was discovered in the jungle.

According to the witness, while she was later near PW1's shop, the 2nd appellant arrived, and she identified him as the individual who had taken the deceased. At that time, an army officer was present nearby, and she informed him that the appellant had taken her husband, who had Rs. 10,000 in his possession and was still missing, requesting that the officer question him. The witness further stated that she only saw the deceased's body afterwards. Subsequently, the 1st appellant was also apprehended, and both appellants were handed over to the Kyte Police.

PW1, Ramiah Rasanayagam, testified that he owned a shop at Aladi Junction in Pungudutivu. Around 9.00 a.m., the deceased arrived there with PW3, dressed in a shirt and sarong. The deceased inquired whether liquor could be purchased nearby. The witness replied that there was no such place but mentioned that liquor was available at certain nearby houses. At that time, the 1st and 2nd appellants arrived at the shop on a bicycle. The witness stated that the deceased spoke with them and then walked away in their company to purchase liquor. He further observed PW3 standing near the shop.

The witness further testified that the deceased did not return until about 2.00 p.m., when the 2nd appellant arrived on a motorcycle. The witness observed that Appellant was then dressed in a yellow T-shirt and blue shorts, although earlier he had been wearing a sarong. When questioned about the deceased, the 2nd appellant stated that the deceased had gone with them but later returned, and that he did not know where he had gone, adding that he himself went home thereafter. Suspicion then arose, and the appellant was apprehended and questioned. Shortly afterwards, the 1st appellant also arrived at the scene, and both appellants were handed over to the Kyte Police.

According to the evidence of both witnesses, they stated that the deceased left with the appellants around 2.00 p.m. Later, the body of the deceased was discovered in

the jungle, at the location where the appellants had taken him. This evidence was not rebutted by the defence. This evidence was not challenged or rebutted by the defence, and therefore stood uncontroverted in the record.

PW13, Dr Kandiah Ratnasigham, the Judicial Medical Officer, testified that he conducted the post-mortem examination on 29.05.2010. According to him, the death of the deceased would have occurred around 2.16 p.m on 29.05.2010. It should be noted that the post-mortem was conducted on the same day at 3.00 p.m. The witness identified eight injuries in total. Of these, injuries 1, 2, and 7 were caused by a heavy blunt weapon, while injuries 3, 4, and 8 were stab wounds. He further noted that the stomach of the deceased contained a yellow fluid with the odor of liquor. According to him, the deceased had consumed alcohol approximately six hours prior to death. The cause of death was determined to be intracranial bleeding and a skull fracture resulting from the application of blunt force.

This finding is corroborated by the testimony of PW 1 and PW 3. Through this witness, the prosecution has established both the time of death and the fact that the deceased was last seen in the company of the Appellants. The presence of liquid with the odor of liquor in the stomach of the deceased further suggests a strong likelihood that death occurred several hours after the deceased had gone with the Appellants. It is also significant that the post-mortem examination was conducted on the same day, within hours of the body being discovered. Accordingly, the Court can conclude that the prosecution has successfully established the time of death through the evidence of the JMO.

PW14, Eshini Marasinghe, the Government Analyst, testified that she examined the sarong worn by the 2nd appellant and identified that the bloodstains found on it were of human origin.

Upon the conclusion of the evidence of the prosecution, the 1st appellant, in his dock statement, claimed that while travelling along the main road, the 2nd appellant gave him a ride on his bicycle and they stopped at PW1's shop. The deceased inquired about alcohol, to which he replied that all shops were closed. He then went to the market to collect money owed to him and returned home by bus.

Later, when he went to the shop to settle money owed by him, a member of the EPDF approached, took him to where the 2nd appellant was tied up, and thereafter he too was tied and assaulted.

The 2nd appellant testified that his mother had given him Rs. 5,000 to purchase groceries. On his way, he met the 1st appellant and gave him a ride on his bicycle. Together, they arrived at PW1's shop, where the deceased asked for arrack. Thereafter, they all went to a place where arrack was sold, and he dropped the deceased at the shop before leaving to buy groceries. He stated that the 1st appellant mentioned he was going to Jaffna. The appellant further stated that he later returned home, rested, and then went to a shop in the 10th ward. There, a person informed him of a problem and took him to Aladi Junction, where members of the public tied him to a lamp post and assaulted him. Subsequently, the 1st appellant also arrived, was tied up, and assaulted. The 2nd appellant claimed that the 1st appellant was bleeding and that his blood splattered onto him.

It is established that the deceased was in the company of both Appellants shortly before his death. PW13, the Judicial Medical Officer, indicated that the death occurred at 2.16 p.m., a time when the deceased was last seen with the appellants.

At this stage, it is appropriate to refer to judicial precedents that have examined and applied the *'last seen theory'*.

In the case of **State of Uttar Pradesh v Satish** [AIR 2005 SC 1000] by Ajith Pasayat J,

"The last seen theory comes into play where the time gap between the point of time when the Accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the Accused being the author of the crime becomes impossible."

It was followed by Justice S.B Sinha, J in **Remreddy Rajeshkhanna Reddy v State of Andhra Pradesh**, AIR 2006 SC (2) 1656, held that;

"The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen

alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case Courts should look for some corroboration.”

In the instant case, according to PW 14, human bloodstains were found on the clothing worn by appellants at the relevant time. The 1st appellant did not explain this, while the 2nd appellant's explanation was rejected by the learned High Court Judge. The prosecution further established that the death of the deceased occurred around the time he was last seen in the company of the appellants. The post-mortem examination also confirmed that the deceased had consumed alcohol prior to his death.

Upon perusal of the learned High Court Judge's judgment and the evidence placed before the High Court, it is evident that the prosecution has proved its case beyond reasonable doubt. Both appellants were found to have caused the death of the deceased, and the Learned High Court Judge correctly evaluated the evidence in reaching that conclusion.

For the above-mentioned reasons, I am disinclined 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