

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

In the matter of an Appeal to the Court of Appeal against the Judgment and the Sentences dated 29th November 2024 of the High Court in Colombo in terms of Section 331 of the Code of Criminal Procedure Act No 15 of 1979 as amended.

Attorney General
Attorney General's Department,
Colombo 12.

COMPLAINANT

Court of Appeal CA Case No :

CA/HCC/72-77/2025

HC of Colombo

Case No. HC-1797-20

Vs.

01. Pitchchei Varuna Sampath
02. Anthony Muththu Napoleon Peter
Croos
03. Sundararaja Pradeep Kumar
04. Sundararaja Ganesh Kumar
05. Sundararaja Shantha Kumara alias
Sujeewa alias Sujee
06. Kokmaaduwage Suraj Madhusanka

ACCUSED

AND NOW BETWEEN

01. Pitchchei Varuna Sampath
02. Anthony Muththu Napoleon Peter
Croos
03. Sundararaja Pradeep Kumar
04. Sundararaja Ganesh Kumar
05. Sundararaja Shantha Kumara
Aliyas Sujeewa alias Sujee
06. Kokmaduwage Suraj Madhusanka

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDANT.

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

Counsel: Priyantha Nawana, PC, with Ravihansa Wijesinghe for the 1st, 2nd,
and 6th Accused-Appellants.

Neranjan Jayasinghe with Randunu Heellage and Pravindika
Kalarathne for the 3rd, 4th, and 5th Accused-Appellants.

Yohan Abeywickrama, DSG for the Respondent.

Written : 21.07.2025 (by the 1st, 2nd, 6th Accused – Appellant)
Submission 21.07.2025 (by the 3rd, 4th, 5th Accused-Appellant)
On 27.10.2025 (by the Complainant - Respondent)

Argued On: 15.05.2026

Judgment On: 03.06.2026

JUDGEMENT

B. Sasi Mahendran, J.

The 8 Accused-Appellants were indicted before the High Court of Colombo under Section 140, Section 146/296, and 32/296 of the Penal Code, causing the death of Vidane Arachchilage Manjula and Section 146/315 of the Penal Code; and voluntarily causing hurt to Unagolla Devage Sriyani Menike, Mandawala Arachchige Duminda Dinesh, and Weeratunga Arachchige Dananjaya Priyadarshana in terms of Section 314 read with Section 146 of the Penal Code.

At the conclusion of the trial, the Learned High Court Judge found the Appellants guilty on all the charges and convicted them accordingly.

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

1. Absence of proper evaluation of the evidence and the material by the learned trial judge
2. Misdirection on the burden of proof cast on the prosecution
3. Failure to apply legal principles correctly relating to Sections 140 and 146 of the Penal Code in imputing liability on each of the appellants
4. Failure to apply legal principles correctly in finding each appellant guilty of the charge of murder in Count No 2 in the absence of murderous intention

in inter alia in the context of a sudden fight, according to the evidence in the case

5. Misapplication of the law in imposing consecutive sentences for offences committed in the course of the same transaction in disregard of the sentencing principles
6. Manifest grave error by pronouncing and recording the sentence of death on the 6th accused-appellant, who was under 18 years of age as at the date of commission of the alleged offence (i.e., 20 July 2016), in contravention of Section 53(1) of the Penal Code, as amended by Act No 25 of 2021; and, by omitting to act under its Section 53(2) and make an appropriate order, instead (vii) Evidence of the prosecution witnesses fails the test of credibility and the test of consistency
7. Learned Trial Judge had misconstrued the evidence elicited by the prosecution witnesses themselves.

When the matter came up for argument before us on 15.05.2026, the learned Deputy Solicitor General who appears for the Attorney General submitted that, maintaining the high tradition of the Attorney General's Department, the State would not seek to support the convictions against the 2nd, 3rd, 4th, and 5th Appellants.

I am mindful that the learned High Court Judge rejected the evidence of PW2 based on the truthfulness and credibility of that witness.

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මෙම පරස්පරතා සියල්ල සාක්ෂිකරුගේ සාක්ෂිය සලකා බලන විට එම සාක්ෂියෙහි හරයට බලපාන්නා වූ කරුණු වන අතර ඒවා සාක්ෂිකරුගේ සාක්ෂියෙහි ඒකමතිකභාවය පිළිබඳ බරපතල ගැටලුවක් ඇති කරයි.

The facts and circumstances of this case are as follows,

PW1, Pradeep Sanjeewa, who was injured and the victim, the brother of PW2 and brotyher in law of the deceased, testified that he and PW2 were near the Community Hall when approximately 20–30 people were gathered about 100

meters away from them. On two or three occasions, members of that group questioned the witnesses as to why they would not allow them to keep the body. PW1 stated that he denied any such allegation. Subsequently, the group attacked them. After that, among the crowd, the witness identified Sampath (the 1st appellant), Suraj (the 6th appellant), Sudda (the 1st accused), who is dead, and Sudda's brother as the individuals who assaulted him. He further stated that he had identified the 1st and 6th appellants and known them since childhood, while the others are now deceased, the 1st Accused and the father of the 6th Appellant.

PW1 testified that the 1st appellant struck him with a pole during the attack. Further, he stated that he and PW2 were surrounded by a large group of people near the Community Hall. During this confrontation, the 1st accused struck his right leg with a manna knife. PW1 stated that he subsequently lost consciousness and cannot recall events clearly. He further explained that while he and PW2 were surrounded, PW7 (his sister) called out to the deceased.

He stated that he could not remember whether the deceased was present there. Upon regaining awareness, he saw PW2 lying on the ground and immediately took him to the hospital. PW1 identified the 1st appellant and the 6th appellant as among those who attacked them. He stated that, apart from these two, others in the group surrounded them with poles and knives. At the hospital, PW1 gave a statement, but he emphasized that he had limited memory at that time due to his condition.

During cross-examination, PW1 stated that at the Community Hall, he was accompanied by PW2 and his friend Dinesh. The defence suggested that PW1 had a dispute concerning the funeral arrangements at the 1st appellant's mother's house, but PW1 denied this allegation. PW1 testified that they were attacked with poles, after which he fainted. Upon regaining consciousness, he observed a severe cut wound on his leg. PW1 further explained that, among the group, he could not identify who specifically struck him with a pole. He also stated that when the group surrounded him, the deceased was not present, and he did not witness any attack on the deceased. He recalled PW7 only after the witness was attacked, and PW1 called out to the deceased.

I note that through this evidence, the prosecution established that the 1st and 6th Appellants, along with the 1st accused, were present among the crowd and were attacking them. He further stated that he saw the crowd attacking PW2.

PW 05, Dananjaya Perera, stated that he was residing near the Community Hall. On the day in question, while he was reading a newspaper, four people arrived, and a verbal commotion ensued, but they later left after the witness became involved. Among them, the 6th Accused was there, while the two others were unknown to him, and he could not identify them. Afterwards, another group of people came, and a fight broke out. During this, he was injured by a stone while trying to settle the dispute.

According to him, 2–3 members of that group were known to him. PW 05 further testified that PW 1 and PW 2 were present near the community hall. Among the group, along with the 6th accused, the 1st accused, the first appellant, and the third appellant were also there. The witness said the 1st appellant attacked PW 1 and PW 2 with his hands. About 5–10 minutes later, Manna knives were brought to the scene. At that stage, the first appellant attacked PW 1, while the third appellant attacked the witness's wife and stated that he was holding a cricket stump.

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ප්‍ර : එතකොට ප්‍රදීප් කුමාර් ඒ වෙලාවේ කලු සුදු එක්ක මොකක්ද කලේ ? ඒ කියන්නෙ ඔය තුන්වෙනියා හැටියට හඳුනා ගන්න කෙනා.

උ : එයාගේ අතේ තිබුණා පොල්ලක්. ක්‍රිකට් පොල්ලක්.

ප්‍ර : ඒ පොල්ලෙන් මොකක්ද කලේ ?

උ : මගේ බිරිඳට ගැහුවා මෙතනට. මගේ බිරිඳත් ආවා දුවගෙන ගෙදර ඉඳන්. ඊට පස්සේ එයාටත් පොල්ලෙන් ගැහුවා මෙතනට. එයා මාස ගානක් විතර දුක් වින්දා ඒකට.

ප්‍ර : ඒ ධනාඡය හඳුනා ගන්න තුන් වෙනි විත්තිකරු.

උ : ඔව්.

During cross-examination, the witness admitted that he had not mentioned any involvement of the third appellant in his police statement.

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ප්‍ර : ඒ අයට තමන් මේ අධිකරණයේ අද කීව්වා වගේ තමන් මේ පොලීසියට කට උත්තර දෙන වෙලාවේ තමන් කීවද තමන්ගේ බිරිඳට පහරක් වැදෙනවා දැක්කා කියලා පොලීසියට කීවද ?

උ : මතක නැහැ.

ප්‍ර : මම අහන්නේ කීවද නැද්ද කියලා.

උ : ඒක මම කීවේ නැහැ.

ප්‍ර : තමන්ගේ බිරිඳට පහරක් වැදුනයි කියලා කීවේ නැහැ. ඊට පස්සේ මහේස්ත්‍රාත් අධිකරණයේදී තමුන් කට උත්තරයේ ඇහුවද කියවලා දීලා මහේස්ත්‍රාත් තුමා ඇහුවා නේද තමන්ට ගහපු අය හඳුනනවදල දන්නවද කියලා ඇහුවද?

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උ : එහෙමයි.

ප්‍ර : ඒ අහන වෙලාවේ තමුන් කීව්වද ඔය මෙතන ඉන්න කෙනෙක් මගේ බිරිඳට ගැහුවයි කියලා කීව්වද?

උ : ඒ වෙලාවේ කීවේ නෑ එගෙන් ප්‍රශ්නයක් ඇහුවේ නෑ.

ප්‍ර : තමුන් පිළිගන්නවා ඒ වෙලාවේ කීව්වේ නැහැ කියලා ?

උ : එහෙමයි කීවේ නැහැ.

He mentioned the 3rd Appellant only during his testimony before the Court and not in his statement to the police. Further, his wife was not summoned to corroborate his evidence, and no medical report was produced.

PW07, Manori Suraweera, the wife of the deceased and sister of PW1 and PW2, testified that on 20.07.2016, during a funeral, a small commotion broke out. A relative mentioned another disturbance involving PW1 and PW2, so she went to see what was happening. The witness stated that Nirosha Udaya Kumari pushed her, causing her to fall to the ground. When she regained herself and got up, she noticed PW1 and PW2 lying on the ground. She approached one of her brothers and told others not to assault him. At that point, someone came with a knife who could not identify, and another person shouted that she was pregnant. The witness further stated that the deceased went to pick up her daughter, and then the deceased came. The witness was on the ground; the deceased was about 10–20 meters ahead, kneeling. The witness stated she did not see the deceased coming towards her.

She stated clearly that she did not see who assaulted her brothers. From a blow to the head, she was knocked out, and then the deceased and the witness were taken to the hospital. According to the witness, she did not see anyone assaulting the deceased and also stated that she could not recognize anyone who assaulted her. She mentioned that she saw weapons in the hands of people in the crowd. In the Magistrate's Court identification parade, the witness identified all the accused but stated that only the 1st appellant and the 6th appellant were known to her by name. She noted that the 1st accused and the 6th appellant were carrying weapons, while the 1st appellant was not. The 6th appellant had a hockey stick. The witness further stated that the 2nd appellant attacked PW1 and PW2, which she learned from her brothers, though she did not see him carrying any weapon. She also stated that the 2nd, 3rd, 4th, and 5th appellants were assaulting PW1 and PW2, but were not seen with any weapons. Finally, she confirmed that all the accused present in the courtroom were among the crowd at the scene.

During cross-examination, the witness stated that on 21.07.2016, she gave a statement to the police while she was in the hospital. In that statement, she

mentioned the 1st accused and the 6th appellant, noting that the 6th appellant was carrying a hockey stick.

I note that she identified only the 1st appellant and the 6th Appellant. I also observe that, during the non-summary inquiry, she stated that the 1st and 6th appellants were present among the crowd.

PW8, Nesha Kumara Prakash, stated that he saw the 1st accused attacking Kalu, PW 1, with a manna knife.

Upon the conclusion of the prosecution's case, when the defence was called, all the appellants opted to remain silent.

When I analyse the evidence, the 1st accused, the 1st Appellant, and the 6th Appellant have been clearly identified by the eyewitnesses as they were members of an unlawful assembly who had weapons and attacked both PW 1 and PW 2. The learned counsel for the 6th appellant in his written submission has stated that PW 7 has stated that the 6th appellant has a hockey stick in his hand without attacking. I am mindful of the observation made by Sansoni J, in the case of *Queen v N.K.A. Appuhamy* (1961) NLR page 484 at 490, which held that

“Once they were apprised of the illegal object of the others, it was their duty to withdraw; when they failed to do so, their continued presence could reasonably have been construed as that of persons who intentionally remained in order to further the common object of the assembly. It would be unreasonable to hold, in these circumstances, that they were not at least, leading their aid to their associates who were acting in a criminal fashion”

According to the testimony of PW7, she observed the 1st accused and the 1st appellant assaulting the witnesses, while the 6th appellant was present at the scene. Applying the above dictum, it follows that the 6th appellant also shared the common object of causing injuries to PW1 and PW2.

It should be noted that all the witnesses have spoken about the injuries caused to PW1 and PW2. However, there is no direct evidence linking the Appellants to the murder of the deceased. It has been established that the 1st and 6th appellants,

together with the 1st accused and certain unidentified persons, shared a common object and thereby caused injuries to PW1 and PW2, namely Kaludurage Pradeep Sanjeewa and Kaludurage Waruna Sampath.

It is true that there exists a disparity between the evidence of PW1, PW5, and PW7 with regard to whether the assailants were armed with weapons. Nevertheless, I am mindful that PW1, when he gave evidence, was consistent in asserting that the 1st appellant struck him with a club.

I am mindful of the following judgements.

State of Uttar Pradesh v. M.K. Anthony, reported in Supreme Court Journal 1984 (2) page 498,

“While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ

with individuals. Cross examination is an unequal duel between a rustic and a refined lawyer.”

Samaraweera V. The Attorney General 1990 (1) SLR, 256 at page 260, P.R.D. Perera, J, held that

“Where however the maxim set out above is applicable it must be borne in mind that all falsehood is not deliberate. Errors of memory, faulty observation or lack of skill in observation upon any point or points, exaggeration or mere embroidery or embellishment must be distinguished from deliberate falsehood. Nor does it apply to cases of testimony on the same point between different witnesses. (Vide The Queen v. Julis (1) C. C. A.).”

I am mindful that the learned High Court Judge accepted the evidence of PW1 as that of a truthful witness. During the course of the trial, the Judge had the opportunity to observe PW1 and his demeanour an opportunity which this Court does not possess. In particular, the trial judge was able to assess the demeanour of PW1 while he was subjected to cross-examination. In fact, the learned High Court Judge disbelieved the evidence of PW2 and accordingly rejected his testimony. There is no reason for this Court to disbelieve the evidence of PW1. I further note that the defence was unable to mark any contradiction or omission during the course of PW1’s testimony.

In relation to the injuries sustained by PW1 and PW2, the prosecution produced Medico-Legal Reports (MLRs), which were duly admitted under Section 420 of the Code of Criminal Procedure. The learned High Court Judge carefully considered the MLR pertaining to both PW1 and PW2. It is pertinent at this stage to refer to the relevant portion of the said judgment.

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ඉදිරිපත් වී ඇති සමස්ත සාක්ෂි සලකා බැලීමේදී කලුදුරගේ ප්‍රදීප් සංචිත නමැති අයට ඉහත කී නීති විරෝධී රැස්වීමේ සාමාජිකයෙකු විසින් පහර දීම හේතුවෙන් ඔහුගේ දකුණු කකුලට සිදුවී ඇති තුවාලය මොට ආයුධයකින් සහ කැපීම් හේතුවෙන් සිදු වී ඇති බවට පැ. 05 ලෙස ලකුණු

කර ඇති වෛද්‍ය වාර්තාවෙන් පෙනී යයි. එම වෛද්‍ය වාර්තාවේ අන්තර්ගතයද විත්තිය කිසිදු ආකාරයකට හබයට ලක් කර නැත.

The prosecution has established that the 1st and 6th appellants, together with the 1st accused, inflicted injuries on PW1 and PW2, acting beyond reasonable limits and as members of an unlawful assembly.

For the above-mentioned reasons, I hereby set aside the judgment and the sentences imposed by the learned High Court Judge in respect of the 2nd, 3rd, 4th, and 5th Appellants and allow the appeal.

I further set aside the convictions entered against the 1st and 6th Appellants on counts 2, 5, 6, 7, 8, and 9 and affirm the conviction on 1st, 3rd and 4th counts.

Appeal party allowed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE.

JUDGE OF THE COURT OF APPEAL