

**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 Code of
Criminal Procedure Act No. 15 of
1979.**

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

Complainant

Court of Appeal No.

CA/HCC 56/2023

H.C. Embilipitiya
Case No.HC 85/2013

Vs.

Mudiyansele Samantha Kumara
Bandara

Accused

AND NOW BETWEEN

Mudiyansele Samantha Kumara
Bandara

Accused-Appellant

Vs,

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

Respondent-Respondent

Before: **Amal Ranaraja, J.**
 Dr. Sumudu Premachandra, J.

Counsel: Ershan Ariyaratnam for the Accused-Appellant

 Azard Navavi, PC, ASG for the Respondent

Argued on: 10.09.2026

Judgment on: 30.09.2026

Judgment

Amal Ranaraja, J.,

1. The accused-appellant (hereinafter referred to as the appellant) has been indicted in the High Court of *Embilipitiya* together with another in High Court Case No. HC 85/2013. The charges in the indictment are as follows;

01. On or around the 18th of July, 2007, within the jurisdiction of this Court, in *Katagal Ara*, you have caused injury to one *Egodawaththa Aarachchige Weerarathna*, using deadly weapons, particularly a gun and a knife, while threatening to rob him of a motorbike in his possession; thereby you have committed an offence punishable under Section 382 of the Penal Code of Sri Lanka read with Section 32.

02. At the same time, place, and course of action as the above first charge, you did stab one *Egodawaththa Aarachchige Weerarathna* with a knife, with such intention or knowledge and

under such circumstances that had you by such an act caused the death of said *Egodawaththa Aarachchige Weerarithna*, you would have been guilty of murder, and that you by such an act caused hurt to the said *Egodawaththa Aarachchige Weerarithna*; thereby you have committed an offence punishable under Section 300 of the Penal Code.

03. At the same time, place, and course of action as the above first charge, you did commit the robbery of a motorbike valued at Rs. 25,000.00 in the possession of *Amudawana Aarachchige Jayarithne*, thereby committing an offence punishable under Section 380 of the Penal Code and in the commission of such offence by using deadly weapons, particularly a knife or a gun, you have committed an offence punishable under Section 383 of the Penal Code read with Section 32.

2. At the conclusion of the trial, the learned High Court Judge has convicted the appellant of the charges and sentenced him as follows;

- i. 15 years rigorous imprisonment and a fine of Rs.15,000.00 together with a term of 12 months simple imprisonment in default, for the first charge.
- ii. A term of 20 years rigorous imprisonment and a fine of Rs.15,000.00 together with a term of 12 months simple imprisonment in default, for the second charge
- iii. Term of 10 yrs rigorous imprisonment and a fine of Rs.15,000.00, together with a term of 12 months simple imprisonment in default for the third charge.

It has also been directed that the terms of rigorous imprisonment in respect of first and second charge run concurrently.

The appellant has been further directed to pay a sum of Rs.100,000.00 as compensation to PW02, with a term of 12 months simple imprisonment in default.

3. The appellant aggrieved by the conviction, disputed judgement together with the sentencing order has preferred the instant appeal to this court.

Case of the Prosecution

4. PW01 has been directly and adversely affected by the incident described in the third charge and PW02 has been affected by the incidents described in the first and second charge.
5. On the date stated in the charges, PW01 has set out to attend Court on his motorbike. On the way ,he has been accosted by two individuals, one armed with a firearm and the other with a sharp edged weapon (knife).
6. When the individuals approached PW01, the person with the sharp edged weapon has held it against PW01's stomach. Sensing danger, PW01 has got off the motorbike. At that moment, the two individuals have fled the scene on PW01's motorbike.
7. Thereafter, PW01 has run in the direction the individuals had fled with his motorbike. A short distance away, he has observed another motorbike on the road and a bloodied person in a nearby ditch. PW01 has informed this person of his intention to file a police complaint and then departed from the location. PW01 has subsequently identified the individual who was armed with the sharp edged weapon as the appellant and the other person as the one who carried the firearm.

8. PW02 has been returning to “*Akkara Pansiya*” area from *Embilipitya*, when he had been accosted by two persons. One of them has pointed a firearm at him and demanded that the motorbike PW02 was riding, be handed over to them. At that point PW02 has switched off the motorbike and thrown its keys. A scuffle has then ensued and PW02 stabbed. To escape from the attackers, PW02 has jumped into a nearby canal.
9. Thereafter, PW02 has witnessed his attackers pushing his motorbike away from the location. Sometime later, PW02 has come out of the canal. At that point, he has also witnessed a person walking past the location of the incident and has informed PW02 that he was going to make a police complaint.

Case of the Appellant

10. The appellant has maintained that he was not involved in the incidents stated in the charges.

Grounds of Appeal

11. When the matter was taken up for argument, the counsel for the appellant, urged the following grounds of appeal
 - I. Have the victims identified the appellant properly?
 - II. Has the learned High Court judge applied the principles relevant to a Section 27 recovery in the proper perspective?
 - III. Is the sentence imposed on the appellant excessive?
12. The identification of an offender is a pivotal aspect of the criminal justice system. It serves not only to ensure the accountability of

individuals who commit crimes but also to uphold the rule of law and maintain societal order.

13. First and foremost, the identification of an offender is necessary to facilitate the prosecution of crime. Without the ability to identify offenders, the judicial process becomes ineffective, and victims may find themselves denied justice. Also, wrongful accusations can occur without proper identification methods, leading to potentially devastating consequences for innocent individuals.
14. There are various methods by which offenders can be identified. Traditional approaches include eyewitness testimony, where individuals who witness a crime can help in the identification process.
15. Forensic science has revolutionised offender identification introducing advanced techniques, such as fingerprint analysis, DNA profiling and ballistics. Fingerprint analysis remains one of the most established methods, enabling law enforcement to match prints discovered at the crime scenes with those in existing databases. DNA profiling offers an even higher degree of accuracy, as DNA found at a crime scene can be compared against databases containing genetic information from known offenders. These forensic methods reduce the margin of error in offender identification and increase the likelihood of apprehending the correct individual.
16. In addition to forensic techniques, modern technology plays a crucial role in offender identification. Surveillance systems equipped with high-definition cameras have become commonplace in urban settings. They provide visual evidence that can aid investigations. Facial recognition technology further enhances the ability to identify offenders by automating the comparison of images captured by security cameras against those in digital databases.

17. In the current case, the prosecution has attempted to utilise the traditional approach in the identification process. Eyewitness testimony of individuals who have witnessed the crime have been assisted in identifying the appellant and the other individual allegedly involved in the offences stated in the charges. In that regard, PW01 and PW02 have testified as follows;

ප්‍ර: විත්තිකරුවන් හඳුනා ගත්තද?

උ: ඔව්.

ප්‍ර: කී දෙනෙක් හඳුනා ගත්තද?

උ: එක්කෙනෙක්.

ප්‍ර: ඒ හඳුනාගන්න පුද්ගලයා මොනවා කරපු පුද්ගලයාද?

උ: මගේ ඉදිරියට ආපු පුද්ගලයා.

ප්‍ර: ඉදිරියට ඇවිල්ලා ඔහු මොනවාද කලේ?

උ: පිහිය බඩට තිබ්බා.

ප්‍ර: ඒ අය නැවත දුටුවොත් හඳුනා ගන්න පුළුවන්ද?

උ: පුළුවන්.

ප්‍ර: අද දින ගරු අධිකරණයේ පනි සිටිනවද?

උ: ඔව්.

ප්‍ර: කී වෙනියටද ඉන්නේ?

උ: දෙවෙනියට. (2 වන වූදින හඳුනාගනී)

Vide Page 154 of the Brief

ප්‍ර: ඊට අමතරව ඔය තැනැත්තා මොන වගේ කියලද තමන් කිව්වේ?

උ: කොණ්ඩේ වචපු කෙනෙක් සුදු කෙට්ටු එක්කෙනෙක් කියලා කිව්වා.

ප්‍ර: යෝජනා කරනවා තමන් ලගට ඇවිත් පිහිය දික් කරපු පුද්ගලයා සුදු කෙනෙක් කියලා පොලීසියට කියලා නැහැ කියලා (එය උන්නාවයක් වශයෙන් ගරු අධිකරණයේ අවධානයට යොමු කරනවා)

Vide Page 158 of the Brief

ප්‍ර: ... කිව්වා සාක්ෂිකරු තමන් මුලින් එන කොට පුද්ගලයින් දෙන්නෙක් ඉදිරියට ඇවිත් බයිසිකලේ ගත්තා කියලා?

උ: ඔව්.

ප්‍ර: බයිසිකලේ ඉල්ලුව පුද්ගලයින් දෙන්නා හඳුනා ගැනීමේ පෙරෙට්ටුවේදී හඳුනා ගත්තාද?

උ: ඔව්.

ප්‍ර: නැවත දුටුවොත් හඳුනා ගත හැකිද?

උ: දෙවෙනි විත්තිකරු පෙන්වයි.

Vide Page 176 of the Brief

ප්‍ර: ඒ ඒය තුබුණේ කාගේ අතේද? කියලා කියන්න පුළුවන්ද?

උ: පලවෙනි විත්තිකරු අතේ.

ප්‍ර: ගරු අධිකරණයේ පිහිය අතේ තිබුන පුද්ගලයා ඉන්නවාද?

උ: ඉන්නවා

ප්‍ර: කී වෙනියටද ඉන්නේ?

උ: පලවෙනියා.

Vide Page 177 of the Brief

18. PW01 has identified the appellant as the individual who was armed with the sharp edged weapon and held it against the witness's stomach during the incident described in the third charge.
19. After the appellant was arrested, taken into police custody and accused of the offences detailed in the charges, investigators have presented him for an identification parade. During this parade, PW01 serving as a witness has identified the appellant. PW01 has further explained the appellant's involvement, stating that the appellant was armed with a sharp edged weapon and held it against PW01's stomach before fleeing the scene on his motorbike. Hence, PW01's identification of the appellant has been consistent and is corroborated by the identification parade notes.
20. Regarding PW02's testimony, he has stated that it was not the appellant, but the other individual present, who was armed with the sharp edged weapon. However, during the identification parade, PW02 serving as a witness has explained that the appellant was in fact armed with the sharp edged weapon.
21. Furthermore, while testifying in Court, PW02 has also referred to the specific features he relied upon to identify the offenders. During cross-examination, however, the Courts attention has been drawn to several material omissions regarding these identifying features in PW02's statement to the investigators.

22. The learned High Court Judge has identified the material discrepancies in PW02's testimony. He has consequently, decided against relying on it. Which has resulted in PW02 being unable to identify the offenders involved in the incidents described in the first and second charges.
23. Although, PW01 has consistently identified the appellant as one of the individuals involved in the incident described in the third charge, the learned High Court Judge has also considered the discovery of PW01's motorbike, which was found following information received from the appellant during his police custody for an offence. The learned High Court Judge has further concluded that this discovery allows the court to draw a presumption, as outlined in the illustration (a) of Section 114 of the Evidence Ordinance No. 14 of 1895.
24. Section 27 of the Evidence Ordinance No. 14 of 1895 (as Amended) provides as follows;

"27.

- (1) Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.*
- (2) Subsection (1) shall also apply mutates mutandis, in the case of information received from a person accused of any act made punishable under the Forest Ordinance, or the Excise Ordinance, when such person is in the custody of a forest officer or an excise officer, respectively."*

25. As such, Section 27 of the Evidence Ordinance No. 14 of 1895 (as Amended), allows a specific portion of a statement made by a person accused of an offence, in police custody to be admitted as evidence, if it directly leads to a discovery/recovery of a physical fact or item. Although Sections 25 and 26 of the Evidence Ordinance No. 14 of 1895 (as Amended), state that confessions made to a Police officer, Forest officer, Excise officer, or while in police custody, are generally not admissible, Section 27 of the Ordinance acts as a vital exception.
26. When any fact deposed to, is discovered in consequence of information received from a person accused of an offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered/recovered may be proven.
27. The key requirements for the application of the provisions in Section 27 of the Evidence Ordinance No. 14 of 1895 (as Amended), are that the accused must be formally in the custody of a police officer when giving the information. Only the exact words that point directly to the discovered object or place are allowed to be produced as evidence. Though, general confessions or unrelated admissions are barred, physical facts such as a hidden weapon, stolen property or an item of clothing worn by a victim must be newly found, as a direct result of the information.
28. Furthermore, a recovery made under Section 27, establishes that the information given by a person accused of an offence, and in police custody, was true and the person providing it had knowledge of the existence and location of the fact discovered.
29. In the case of *H.M Heen Banda vs. The Queen* 75 NLR 54, Sirimane J, held,

“Where part of a statement of an accused person is put in evidence under section 27 of the Evidence Ordinance, it is the duty of the trial Judge to explain to the Jury that such a statement is only evidence of the fact that the accused knew where the article discovered could be found, and nothing more.”

30. Similarly, in *Ranasinghe vs. Attorney-General* [2007] Sri LR 218, Sisira de Abrew J, has held,

“...discovery in consequence of a section 27 statement only leads to the conclusion that the accused had the knowledge as to the weapon being kept at the place from which it was detected.”

31. In the case of *Samson Atygala vs. Attorney General* [1986] 1 Sri. LR 390, Bandaranayake J, has held,

“For the purposes of s.27 of the Evidence Ordinance the person making the statement should be a person accused of an offence, and be in police custody”

32. Section 114 of the Evidence Ordinance No. 14 of 1895 provides as follows;

114. *The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business in their relation to the facts of the particular case.*

Illustrations

The Court may presume- (a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

33. Under section 114 illustration (a), of the Evidence Ordinance No. 14 of 1895, a Court may presume that a person in possession of stolen goods after the theft is either the thief or has received the goods knowing them to be stolen unless he can reasonably account for their possession.

34. For a court to safely apply the presumption under illustration (a) the prosecution must conclusively establish three criteria;

- i. The prosecution must prove that the property in question was indeed stolen or robbed.
- ii. The stolen items must be found in the direct, conscious and exclusive possession of the accused.
- iii. The length of time between the theft and the discovery of the items is critical. "Soon after" is relative, depending on whether the items were easily transferable or distinct and cumbersome.

35. Once the prosecution establishes recent possession a Court can evaluate the situation based on how the accused responds. If the accused offers no explanation or, gives an explanation that a Court finds completely false, the Court may safely infer guilt of theft or retaining stolen property.

36. An accused does not need to prove his innocence beyond a reasonable doubt. If he offers an explanation that might reasonably be true, the presumption is rebutted.

37. In the case of *King vs. Jayasena* 48 NLR 241, Howard C.J., held;

"That even if the theft and dishonest receiving were not committed in the same transaction the joinder of all the accused in one charge was in order, and that it was open to the court under sections 181 and 182 of the criminal procedure code to find some of the accused guilty of theft and some of dishonest receiving.

...

Where, in a prosecution for dishonest receipt of stolen property, It is established that accused was in possession of goods stolen the burden is on the accused to give an explanation which in the opinion of the court, might reasonably be true and which is consistent with innocence."

38. As stated elsewhere in the judgement, a recovery made under Section 27 of the Evidence Ordinance No. 14 of 1895 primarily establishes that the individual providing information possessed knowledge of the discovered item's existence and location. Such a recovery does not however, permit a Court to attribute exclusive possession of the item to that person. Therefore, in these circumstances, the learned High Court Judge has erred in law by presuming that the motorbike stolen from PW01 was in the appellant's possession at a particular point of time.

39. However, the prosecution has established beyond a reasonable doubt, through the eyewitness account of PW01, that the appellant was involved in committing the offence stated in the third charge. As for the first and second charges, PW02 has been unable to identify the offenders. Consequently, the prosecution has failed to establish, through direct evidence, the appellant's involvement in those particular offences. Furthermore, no

circumstantial evidence has been produced to infer the appellant's involvement in committing those offences.

40. In those circumstances, I affirm the conviction of the appellant in respect of the third charge and acquit the appellant of the first and second charges.

41. I also adjust the sentencing order accordingly.

42. The sentence imposed in respect of the third charge shall remain unchanged and the substantial term of 10 years rigorous imprisonment shall commence from the date of conviction. The sentence imposed in respect of the first, together with the second charge and the compensation ordered to be paid to PW02 is set aside.

Appeal partly allowed.

43. I make no order regarding costs.

44. The Registrar of this Court is directed to send this Judgement to the High Court in *Embilipitiya* for compliance.

Judge of the Court of Appeal

Dr. Sumudu Premachandra, J.

I agree

Judge of the Court of Appeal