

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

The Democratic Socialist Republic of Sri
Lanka

Complainant

CA Case No: CA/HCC/284-285-15

HC of Chillaw Case No:

HC 38/2005

Vs.

1. Wijesinghe Mudianselage Roy Rexi Miller
alias Kopparaya
2. Jayasinghe Dissanayakalage Sunil
Shantha

Accused Appellant

AND NOW BETWEEN

1. Wijesinghe Mudianselage Roy Rexi Miller
alias Kopparaya (2A)

2. Jayasinghe Dissanayakalage Sunil
Shantha (3A)

Accused- Appellant

Vs.

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

Respondent

Before : **B. Sasi Mahendran, J.**
 Gihan Kulatunga, J.

Counsel: Indica Mallawaratchy for the 1st Accused-Appellant
 Neranjan Jayasinghe with Randunu Heellage and Imangsi Senarath for
 the 2nd Accused-Appellant
 Azard Navavi, A.S.G, for the Respondent

Argued On: 03.06.2025,14.07.2025,21.07.2025,23.07.2025, and 05.08.2025

Decided On: 23.09.2025

JUDGEMENT

B. Sasi Mahendran, J.

The Accused Appellant (herein after referred to as “the 2nd and 3rd Accused”) was indicted together with Kachchakaduwe Pradeep Chaminda Sumith, who is dead (1st Accused), before the High Court of Chillaw for the alleged murder of one Dehiwattage Ajith Shantha Kumara, which is punishable under Section 296 read with Section 32 of the Penal Code.

The Prosecution led the evidence through nine witnesses and marking productions from P1 to P2, and thereafter closed its case. The Accused, in their defence, made dock statements. At the conclusion of the trial, the Learned High Court Judge, by judgment dated 01.12.2015, found both Accused guilty of murder and imposed the death sentence.

Being aggrieved by said judgment and sentence, this appeal was preferred by the 2nd and 3rd Accused. The following Grounds of Appeal were urged by the counsel for the Accused.

1. Learned Trial Judge failed to comply with Section 48 of the Judicature Act relating to the adoption of proceedings.
2. Evidence of the sole eye-witness wholly conflicts with the evidence of PW 2 and police evidence with regard to the crime scene, thereby creating a serious doubt in the version of the eye-witness.
3. Evidence of the sole eye-witness is plagued with serious infirmities which render the conviction wholly unsafe.
4. Learned Trial Judge was totally oblivious to the highly contradictory evidence between the prosecution witnesses and the unreliable nature of the testimony of the said witness

During the course of the argument, the principal contention advanced by the counsel for the accused was that the sole eyewitness, PW 01, the brother of the deceased, failed to disclose the names of the Accused to the police at the earliest opportunity. It

was submitted that this omission casts serious doubt on the credibility of his testimony and renders his evidence unreliable.

Before proceeding to evaluate the merits of this submission, it is necessary to set out the factual narrative as presented by the prosecution.

The facts and circumstances of the case are as follows:

According to PW 01, Dehiwattage Premasiri, the brother of the deceased, who is the only eyewitness, the death occurred on 10th February 1999. On that date, the deceased was residing at a relative's residence. The incident in question transpired between approximately 3:00 p.m. and 4:00 p.m. along the Weherekala Temple Road. At the time, the witness had arrived at the location on a bicycle, while the deceased was approaching from the direction of the Daduruoya Road. They subsequently encountered each other near the junction leading to Anamaduwa Road. At that moment, three Accused approached them on a red bicycle. The witness stated that he had known the 1st Accused since childhood, and had been acquainted with the 2nd and 3rd Accused for approximately fifteen years. This witness revealed the nicknames of the Accused, stating that the 1st Accused was known as 'Meeya', 2nd Accused as 'Kopparaya'.

The witness acknowledged that there had been ongoing tensions between the residents of his village and those of the Accused's village. Upon observing the Accused approaching, and fearing for their safety, the witness and the deceased halted their bicycle. The witness then abandoned the bicycle, fled down a nearby byroad, and concealed himself behind a coconut tree. At that point, the Accused reached the deceased. The witness testified that he observed the 3rd Accused stab his brother three to four times in the chest, while the other Accused restrained him. After the deceased collapsed to the ground, he was further stabbed in the back. Subsequently, the 2nd Accused also stabbed the deceased while the 1st Accused continued to hold him.

This witness later returned to the scene in the company of his relatives and neighbours. Upon his return, he observed that the body of the deceased had been moved and was now situated approximately 20 to 30 feet from the location where he had initially seen it. While the witness and others were present, the police arrived at the scene. At that point, this witness did not disclose the names of the Accused to the PW 06. It should be noted that the next day he has revealed the names of the accused to the police when he made a statement.

During the cross-examination, the witness admitted that the deceased and another brother known as Hubert were suspects in the murder of the brother of the 3rd Accused. Further, the witness admitted he left the bicycle and ran to the byroad, but the 1st accused had caught the deceased with his shirt coming towards while driving. Further denied the statement that they first met the deceased, which was recorded in the police statement. During the cross-examination, the witness saw one knife in the hands of the 3rd Accused that was 8 inches long. And the witness stated that he couldn't remember who was in the front when he and the deceased were riding a bicycle.

According to the testimony of PW 02, Dehiwatte Manjula Pradeep, a relative of the deceased, got to know that the deceased had been stabbed only after the news spread in the village and stated that the incident occurred on land belonging to Premasiri, situated within the village. The three accused were known to him as they were from the adjoining village. Upon arrival at the scene, the deceased was found lying face down on the ground and was unable to speak. The deceased was subsequently admitted to Negombo Hospital.

According to the testimony of PW 5, Nihal Upatissa Abeweera Gunasinghe, who was serving as Inspector of Police at Chilaw at the relevant time, he was informed of the incident via a telephone call. He thereafter dispatched PW 6, Nishantha Weerasingha to the location. Upon receiving confirmation that the individual in question was dead, the witness proceeded to the scene. On arrival, he observed bloodstains in proximity to the body, behind the residence of one Premasiri, and near a coconut tree situated

behind an unfinished house. According to PW 05, despite being present at the scene, no witness mentioned any names of the Accused. During cross-examination, the witness conceded that he could not state with certainty the precise location at which the incident occurred. It was further admitted that the witness did not proceed to the scene accompanied by any other eyewitnesses, but went there solely in the company of PW 06.

PW 6, Nishantha Weerasinghe, who was serving as a Sub-Inspector at the relevant time, testified that upon informing the appropriate police officer of the incident, the officer proceeded to the scene at Weherakale at approximately 3:40 p.m., accompanied by four other officers. He observed that, upon arrival, the deceased was lying on the ground with visible injuries to the face and body. At around 5:00 p.m., PW 6 commenced recording his observations at the location when he inquired from the crowd there. PW 1 had indicated to him that he was with the deceased at the time of the incident, and a group of individuals had apprehended the deceased and attacked him with a knife, but he had not mentioned the names of the accused.

The question is whether the failure to disclose the accused's names to the police officer at the very first opportunity, and later implicating them by name, will affect the trustworthiness of this witness.

As a general principle, the court expects that a reasonable and prudent individual will promptly disclose any information they possess, particularly concerning a crime, to the police without undue delay. Such immediate disclosure reflects spontaneity and credibility in the communication of facts. However, if the individual fails to mention key details initially and only reveals significant information at a later stage, their testimony may be deemed inconsistent. This principle is governed by Section 157 of the Evidence Ordinance, which addresses the relevance of previous statements made to authorities.

This concept was discussed in **The Law of Evidence, Volume II, Book 2, E.R.S.R. Comaraswamy, at page 758:**

“(3) Reason for rule in Section 157

The section proceeds upon the principle that consistency is a ground for belief in the veracity of a witness, just as inconsistency is a ground for disbelieving him. But the corroborative value of such previous statements varies and depends on the circumstances of each case. A person can adhere to falsehood, once uttered, when he has a motive for it.

(4) The two circumstances set out in Section 157

Section 157 requires that the former statement must have been made

(A) At or about the time when the fact took place, or

(B) Before any authority legally competent to investigate the fact.

(A) At or about the time when the fact took place

Generally, statements made immediately or soon after the occurrence of an event, so that it could not have been made for the purpose of creating evidence, contain truth, for sufficient time may not have elapsed for concoctions and fabrications to creep in. Therefore, such statements are a legitimate means of corroboration on the basis of consistency. They support the credibility of the person whose evidence is corroborated. The object of this part of the section is to admit statements made at a time when the mind of the witness is still so connected with the events as to make it probable that his description of them then would be accurate. But lapse of time sufficient for reflection would make the statement of very little value and even dangerous, as being capable of fabrication.

The statement must be made at once or at least shortly after when a reasonable opportunity presents itself. What is a reasonable time is a question of fact in each case. It should be made "at or about the time" and not "at any time after the event.

.....

The question whether the statement was made "about the time when the fact took place" is a question to be decided by the judge at the time when the evidence is tendered.

The words "about the time" give the judge a latitude in this matter."

We note that PW 01's assertion that he disclosed the names of the Accused at the scene of the incident.

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ප්‍ර: ඉන්පසුව නමුත් ඒ සිද්ධිය ගැන පොලිසියට ප්‍රකාශයක් දුන්නාද?

උ: ඔව්.

ප්‍ර: කොහේ පොලිසියට ද?

උ: හලාවත. මවරිදීත් දුන්නා.

ප්‍ර: මහේස්ත්‍රාත් අධිකරණ පරීක්ෂණයේදීත් දුන්නාද ඒ ස්ථානයේදී පැවැත්වූ?

උ: නැහැ.

ප්‍ර: එම ස්ථානයේදී සාක්ෂි සටහන් කිරීමක් කලේ නැහැ?

උ: නම් සටහන් කර ගත්තා.

The PW 01's evidence is not corroborated by PW 5 nor PW 6, who was present at the location shortly after the incident and commenced official observations.

We note that, according to PW 01, he has come back to the scene with relatives, where PW 06 questioned them with regard to the incident. But according to the PW 06, no one mentioned the names of the Accused at that point. This suggests that PW 01 has failed to disclose the names of the accused to those who accompanied him.

PW 6 makes no mention of any identification of the Accused by PW 01 at that time.

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ප්‍ර:දැන් තමන් ඒ අවස්ථාවේ වැටී සිටි පුද්ගලයා කවද කියලා හොයා බැලුවද?

උ: එසේය. මේ සෙනඟ අතරේ සිටි ප්‍රේමසිරි කියලා පුද්ගලයෙක් දැනුම් දුන්නා මොහු එම පුද්ගලයා සමග එතනට ආවා කියලා. ඒ අවස්ථාවේදී එතනට ආ පුද්ගලයන් ප්‍රේමසිරි අල්ලාගන්න ලැස්තිවෙලා. ප්‍රේමසිරි එතනින් පැනගියා. ඉන් පස්සේ වැටිලා හිටි පුද්ගලයා පස්සේ එලවාගෙන ගිහින් තුවාල සිදුකල බව.

ප්‍ර: තුවාලකරු ඒ අවස්ථාවේ තුවාල සහිතව සිටි බව ප්‍රකාශ කළා. ඔහු මියගොස් හිටියාද?

උ: පුද්ගලයා මියගොස් ඇති බව දැනගත්තා. නිරීක්ෂණ සටහන් කරගෙන අවට පරීක්ෂා කළා.

PW 05 also asserted that he went along with his officers only and not with any other witnesses, and that he did not mention any witness by name, including the Accused, at that time.

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ප්‍ර: ඔය ස්ථානයට මහත්මයා සාක්ෂිකරුවන් සමග ගියාද?

උ: පිටස්තර සාක්ෂිකරුවන් සමග ගියේ නැහැ පොලිස් නිලධාරීන් සමග ගියා.

ප්‍ර: පිටස්තර සාක්ෂිකරුවන් සමග ස්ථානය නිරීක්ෂණය කලේ නැහැ?

උ: නැහැ.

ප්‍ර: මහත්මයාගේ විමර්ශන වලින් මෙම අපරාධය සිදු වූ ස්ථානය නිශ්චිතව කියන්න හැකියාවක් නැහැ කියලා යෝජනා කරනවා.

උ: මට දක්නට ලැබුන ස්ථානයේ නිරීක්ෂණය අනුව සටහන් කලා.

According to police evidence gathered during the investigation, shortly after the incident occurred, officers questioned the crowd present at the scene. Witness No. 01, who was among the crowd, did not disclose the names of the accused at that time, despite having the opportunity to do so. It was later established that the accused individuals were known to him.

Subsequently, the witness informed the court that the deceased had been involved in the murder of a relative of the accused. However, he only identified the accused to the police the following day—approximately 24 hours after the incident. He did not provide any explanation for his initial failure to name the accused.

Given the absence of a justification for this delay, the court must consider whether the witness genuinely observed the incident or is fabricating evidence against the accused.

During the course of the argument, the Learned Senior Deputy Solicitor General drew the attention of this Court to the following case.

Kahadagamage Dharmasiri Bogahahena v. The Republic of Sri Lanka, SC Appeal No. 04/2009, Decided on 03.02.2012. In the said case, the 1st witness in his statement did not reflect the identity of the appellant. Though he was known to her. And the statement of the 2nd witness was recorded belatedly.

The belatedness of identification was considered by Shiranee Tilakawardane, J. she has stated that:

“This Court accepts that the statement of the 1st witness did not reflect the identity of the 1st appellant, though he was known to her and the statement of the 2nd witness was recorded belatedly. When considering the belated evidence or a belated statement, one cannot neglect the basis for such delay which transpired in the evidence. The Courts must look at the broader spectrum and must take into account the holistic picture of the occurrences that the family had been affected by, not forgetting the civil unrest and political tension in the country during 1980's to early 1990's during which the JVP (Janatha Vimukthi Peramuna, a Marxist Sinhalese Political Party) insurrection took place accounting to a large number of killings (Gunaratna, R. (1990), Sri Lanka, a lost revolution?. The inside story of the JVP, Institute

of Fundamental Studies, Sri Lanka). The famous Embilipitiya abduction and murder case, Dayatanda Lokugalappaththi and eight others v. The state [2003] 3 Sri.L. R362, illustrates the dark and bleak time period that brought consternation and struck an almost unshakable fear into the hearts of the people of Sri Lanka.

It was in the backdrop of such times, that the husband of the deceased was murdered in 1989 and four years later, in this particular incident, the deceased was murdered at her residence, in front of her mother and her 9 year old son, who were the main eyewitnesses at the trial in the High Court.

The first witness, the mother of the deceased, conceded at the trial that she had not disclosed the identity of the appellant in her first statement as the Appellant had instilled the fear of death into her, when, after shooting the deceased, he had aimed the same gun at her and threatened them with death. If she informed or divulged his identity or his complicity to the police, The witness avers that she was so terrified, that even though she knew the identity of this assailant, she did not disclose his identity even to her youngest daughter Ranjinie, who was dispatched to the police station to report the murder.”

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In the present case, PW 01 did not state that he was in fear following the incident. Furthermore, there is no evidence on record explaining his failure to disclose the names of the accused.

We note that PW 01 claims to have known the 1st Accused since childhood, and the others for over fifteen years. It is reasonable to expect that a person of ordinary prudence, having witnessed the murder of his own brother, would have immediately named the Accused to the police. The absence of such disclosure at the earliest opportunity casts doubts on the spontaneity and reliability of his testimony.

Furthermore, PW 01 admitted during cross-examination that he did not proceed to the scene with any other eyewitnesses and was accompanied only by PW 6. This

further weakens the credibility of his account, as it suggests a lack of independent corroboration at the time of the alleged identification. The delay in naming the Accused, despite the witness's familiarity with them and the gravity of the incident, raises serious concerns about the authenticity of his narrative. In light of these inconsistencies, the Court finds that PW 01's evidence must be approached with caution and cannot be accepted as wholly reliable.

We hold that the Learned High Court Judge erred in failing to adequately consider a material aspect of the evidence, namely, that the sole eyewitness, PW 01, the brother of the deceased, did not disclose the names of the Accused to the police at the earliest opportunity and misdirected himself.

For the aforementioned reasons, we set aside the conviction and sentence against the accused imposed on 01.12.2015.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

I agree,

Gihan Kulatunga, J.

JUDGE OF THE COURT OF APPEAL

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