

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

**In the matter of an Appeal in terms of  
Article 138(1) of the Constitution and  
Section 331(3) of the Code of Criminal  
Procedure Act No.15 of 1979.**

Democratic Socialist Republic of  
Sri Lanka

**Complainant**

Court of Appeal  
Case No. **CA HCC 156/2023**

Vs.

High Court of Kalutara  
Case No. **HC 10 /20**

Munusaami David

**Accused**

**AND NOW BETWEEN**

Munusaami David

**Accused-Appellant**

Vs.

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

**Respondent**

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

**Counsel:**   Chamindi Diloka Mannakkara for the Accused-Appellant.

                  Maheshika Silva, DSG for the Respondent.

**Argued on:**  28.01.2025

**Decided on:** 25.02.2025

## **JUDGMENT**

**AMAL RANARAJA, J.**

1. The Accused-Appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Kaluthara* in High Court case no. HC 10/20 on the following count;

That on or about 23.06.2018, at *Galhena*, in the *District of Kaluthara* within the jurisdiction of this Court, you did commit murder by causing the death of *Hettiappan Seetha*; and that you have thereby committed an offence punishable under Section 296 of the Penal Code.

2. Upon the appellant electing to be tried without a jury, the case has been taken up for trial before the Learned High Court Judge. At the conclusion of the trial, the appellant has been convicted of the charge and sentenced to death.
3. Aggrieved by the conviction and the sentencing order, the appellant has preferred the instant appeal to this Court.

### **Case of the prosecution**

4. The deceased is a 71-year-old lady, the appellant her son-in-law, and PW1, an eye witness to the incident, is the grandson of the deceased. PW1 had been 16 years of age at the time of the incident.
5. On 23.06.2018, PW1 who had been at a funeral has been informed by a neighbour that a quarrel was taking place at his home. Thereafter, PW1 has rushed back home. When he went back to his home within about five minutes, he has witnessed the appellant, the step-father of PW1 physically assaulting the deceased, who was the grandmother of PW1, initially with his hands and thereafter with a broomstick. When PW1 asked from the appellant as to why he was physically assaulting his grandmother, the appellant has told PW1 that he was not his biological son and tried to attack PW1 with a coconut scrapper. At that moment, PW1 has gone out of the house. However, when his mother brought him back into the house instantaneously, PW1 has seen the deceased lying on the floor and the appellant stamping on her. The appellant has left the house thereafter. PW1 has taken the deceased who was injured at that time by ambulance to the *Bulathsinhala Hospital*. The deceased has been transferred to the *Horona Base Hospital* and to the *National Hospital* in *Colombo* for further treatment. The deceased while receiving treatment at the *National Hospital* in *Colombo* has succumbed to death due to the injuries, on 26.06.2018.
6. PW3, *Dr. Sriyantha Amararathna* has conducted the post mortem examination of the deceased after the body of the deceased had been identified to be that of the deceased by her daughter and her son. The post-mortem report prepared by *Dr. Sriyantha Amararathna* has been produced in evidence and marked “ඡ.1”.

### **The case of the accused**

7. The accused's case has rested solely on a dock statement which consists of just one line to the effect that the accused was not connected to the incident referred to in the trial.

### **Grounds of appeal**

8. When the matter was taken up for argument, the Learned Counsel for the appellant formulated the following grounds of appeal;
  - i. Has the Learned Hon. High Court Judge failed to consider any evidence that discredited the purported eye witness?
  - ii. Has the Learned Hon. High Court Judge not considered any evidence favourable to the appellant when he found that the prosecution has proved its case beyond a reasonable doubt?
  - iii. Has the Learned Hon. High Court Judge considered the defence taken by the appellant that he did not commit the offence as he was intoxicated and did not have a murderous intention?
9. PW1 has initially witnessed the appellant hit the shoulder of the deceased with his hands. The deceased at that time has sat down and protested to the appellant. The appellant disregarding such protest has thereafter continued to physically assault the deceased with a broomstick. As a result of the forceful impact, the broomstick has broken in the process. The deceased, in that instance, has fallen onto the ground. Thereafter, the appellant has stamped on the deceased who was fallen on the ground, face up.

10. Subsequent to the assault, the appellant has left the house. PW1 together with his mother has dispatched the deceased who was injured at that time to the hospital. The deceased who was receiving treatment at the *Colombo National Hospital* has succumbed to death on 26.06.2018 at 11.20 hrs.
11. PW3, *Dr. Sriyantha Amararathna* has conducted the post-mortem examination on the deceased on 27.06.2018 beginning 14.00 hrs at the *Institute of Forensic Medicine and Toxicology*. At the conclusion of such examination, PW3 has prepared a post-mortem report. The report has been marked “ප්‍ර.1”.
12. *Dr. Sriyantha Amararathna* has opined that the multiple injuries to the head, chest and the abdomen of the deceased has caused the death of the deceased, that those injuries have been caused by forceful hits with a dull or blunt object.
13. The injury to the head of the deceased together with the underlying injuries set out in detail in “ප්‍ර.1” has been classified as necessarily fatal.
14. *Dr. Sriyantha Amararathna* has also clearly excluded the possibility of those injuries being caused due to a fall. He has opined that the injuries could have been caused by forceful hits with a broomstick or a club. When a piece of a broomstick marked “ප්‍ර.2” had been shown to PW3, he has stated that it could have been used to hit the deceased in the physical assault that caused injuries to the latter. He has further stated that the fractures to the ribs of the deceased is consistent with PW1’s version that the appellant stamped on the deceased.
15. In those circumstances, the evidence of PW1 is cogent, convincing, accurate, and credible. In terms of Section 134 of the

Evidence Ordinance No.14 of 1895, a criminal charge against an accused can be proved by one witness alone if such evidence is cogent and credible.

Section 134 of the Evidence Ordinance is as follows,

*“No particular number of witnesses shall in any case be required for the proof of any fact.”*

16. In ***Sumanasena vs. Attorney General* [1993] 3 SLR 137 at page 139**, Jayasuriya, J, has stated,

*“...In our law of evidence, the salutary principle is enunciated that evidence must not be counted, but weighed and the evidence of such single solitary witness if cogent and impressive could be acted upon by a Court of law.”*

Accordingly, due to the matters discussed earlier, the Learned High Court Judge was not impeded from acting on the sole testimony of an eye-witness, i.e. PW1.

17. Though the appellant has been under the influence of alcohol at the time of the incident, when PW1 had tried to intervene and prevent the appellant from physically assaulting PW1's grandmother, i.e. the deceased, the appellant had told him that he was not his biological son, he has tried to attack PW1 with a coconut scrapper, he has also left the house after physically assaulting the deceased and absconded thereafter. Such actions of the appellant clearly demonstrate that the appellant was in a rational mindset and that he was clearly aware of the nature and consequences of his acts.

18. In ***Kathaluwa Weligamage Amararathne vs. Hon. Attorney General, SC Appeal 130/2016, decided on 17.07.2019,*** Aluwihare, J, has stated,

*“On the other hand, even when invoking the Section 79 of the Penal Code in a situation of voluntary intoxication, the burden is on the accused to establish that the degree of intoxication was such that he was incapable of knowing the nature of the act he was committing or that it was either wrong or contrary to law. This was elaborated by Justice S.N.Silva (as he then was) in Dayarathne v. The Republic of Sri Lanka (1990) 2 S.L.R.226, where his Lordship stated, “the accused has to establish that at the material time, his state of intoxication was such that he did not know what he was about or that he imagined the act to be something contrary to its true nature...If the accused succeeds in proving that at the material time, he did not have the capacity to form a murderous intention...Section 79 will apply and he would be imputed the knowledge of a sober man, resulting in a conviction for the offence of culpable homicide”.*

*As there was no material placed before Court to that effect, I hold that the Court of Appeal did not misdirect itself on that issue and accordingly, I answer the question of law raised in sub-paragraph (e) also in the negative”.*

19. The actions of the appellant being as discussed above do not establish that the degree of intoxication was such that he was incapable of knowing the nature of the acts he was committing.

20. In ***King vs. Thajudeen*** 6 NLR page 16 at page 19, Bonser CJ has stated,

*“But it was urged that they did not intend to break the man’s rib and therefore they could not be convicted of grievous hurt. No doubt they had not in their mind at the time they struck him their baton and with their fists any definite idea that they were going to break his ribs or any particular rib; but when people cause injuries to a man, their intent must be judged by the result of their action. They must be deemed in law to have intended what they did”.*

Therefore, the Court can deem that the appellant intended to cause the injury to the head of the deceased together with the underlying injuries, set out in detail in “3.1” which has been classified as necessarily fatal, to cause the death of the deceased or had formed a murderous intention.

21. Due to the reasons stated above, I am not inclined to interfere with the disputed judgment together with the sentencing order and dismiss the appeal.

*The Appeal is dismissed.*

I direct the Registrar of this Court to communicate this judgment to the *High Court of Kaluthara* for compliance.

**Judge of the Court of Appeal**

**B. SASI MAHENDRAN, J.**

I agree.

**Judge of the Court of Appeal**