

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

In the matter of an Appeal made under
Section 331(1) of the Code of Criminal
Procedure Act No.15 of 1979 read with
Article 138 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

The Democratic Socialist Republic of
Sri Lanka

COMPLAINANT

Vs

Court of Appeal No:
CA/HCC/0009/2023
High Court of Balapitiya
Case No: HC/708/2004

1. Puwakwaththa Gamage Ranjith
alias Patty
2. Gatawara Kandage Priyantha alias
Adwin Priyantha

ACCUSED

AND NOW BETWEEN

Puwakwaththa Gamage Ranjith alias
Patty

ACCUSED-APPELLANT

Vs

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

RESPONDENT

BEFORE : **P. Kumararatnam, J.**
R. P. Hettiarachchi, J.

COUNSEL : **Anil Silva, P. C. with Isuru Jayawardena,**
Sarith Wadugedera and Arinda Silva for the
Appellant.
Sanjeewa Dissanayake, D. S. G. with Jehan
Gunasekara, SC for the Respondent.

ARGUED ON : **27/05/2025**

DECIDED ON : **04/07/2025**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) along with the second Accused with four other dead persons and persons unknown to the prosecution were indicted in the High Court of Balapitiya as follows:

1. That on or about the 29.01.1998 at Kahaduwa, the accused with four dead persons named in the indictment and with persons unknown to the prosecution were members of an unlawful assembly with the common object of causing hurt to Kalahipadi Kankanamge Somadasa thereby committing an offence punishable under Section 140 of the Penal Code.
2. At the same time and same place and in the course of the same transaction the accused by being a member of an unlawful assembly caused the death of the above-named Kalahipadi Kankanamge Somadasa and thereby committed an offence punishable under Section 296 read with Section 146 of the Penal Code.
3. At the same time and same place and in the course of the same transaction the accused by being a member of an unlawful assembly caused the death of the abovenamed Kalahipadi Kankanamlage Chaminda Kumara and thereby committed an offence punishable under Section 296 read with Section 146 of the Penal Code.
4. At the same time and same place and in the course of the same transaction the accused by being a member of an unlawful assembly caused the death of the abovenamed Kalahipadi Kankanamlage Nalini Kumari and thereby committed an offence punishable under Section 296 read with Section 146 of the Penal Code.
5. At the same time and same place and in the course of the same transaction the accused by being a member of an unlawful assembly caused the death of the abovenamed Kalahipadi Kankanamlage Sanath Kumara and thereby committed an offence punishable under Section 296 read with Section 146 of the Penal Code.
6. At the same time and same place and in the course of the same transaction the accused by being a member of an unlawful assembly caused the death of the abovenamed Kalahipadi Kankanamlage Nalika Kumari and thereby committed an offence punishable under Section 296 read with Section 146 of the Penal Code.

7. At the same time and same place and in the course of the same transaction the accused by being a member of an unlawful assembly caused the death of the abovenamed Kalahipadi Kankanamlage Sampath Kumara and thereby committed an offence punishable under Section 296 read with Section 146 of the Penal Code.
8. At the same time and same place, and in the course of the same transaction the accused being a member of an unlawful assembly attempted to commit the murder of Kalahipadi Kankanamlage Nirosha Syamali and thereby committed an offence punishable under Section 300 read with Section 146 of the Penal Code.
9. At the same time and same place, and in the course of the same transaction the accused caused the death of the afore named Kalahipadi Kankanamlage Somadasa and thereby committed an offence punishable under Section 296 read with Section 32 of the Penal Code.
10. At the same time and same place, and in the course of the same transaction the accused caused the death of the afore named Kalahipadi Kankanamlage Chaminda Kumarage and thereby committed an offence punishable under Section 296 read with Section 32 of the Penal Code.
11. At the same time and same place, and in the course of the same transaction the accused caused the death of the afore named Kalahipadi Kankanamlage Nalini Kumari and thereby committed an offence punishable under Section 296 read with Section 32 of the Penal Code.
12. At the same time and same place, and in the course of the same transaction the accused caused the death of the afore named Kalahipadi Kankanamlage Sanath Kumarage and thereby committed an offence punishable under Section 296 read with Section 32 of the Penal Code.

13. At the same time and same place, and in the course of the same transaction the accused caused the death of the afore named Kalahipadi Kankanamlage Nalika Kumari and thereby committed an offence punishable under Section 296 read with Section 32 of the Penal Code.
14. At the same time and same place, and in the course of the same transaction the accused caused the death of the afore named Kalahipadi Kankanamlage Sampath Kumara and thereby committed an offence punishable under Section 296 read with Section 32 of the Penal Code.
15. At the same time and same place, and in the course of the same transaction the accused attempted to commit murder of Kalahipadi Kankanamlage Nirosha Siyamali and thereby committed an offence punishable under Section 300 read with Section 32 of the Penal Code.

The trial commenced before the Judge of the High Court of Balapitiya as the Appellant had opted for a non-jury trial. The 2nd Accused who was tried in absentia after completing all necessary formalities as per Section 241(1) of the Code of Criminal Procedure Act No. 15 of 1979.

The trial commenced on 22.02.2012, and the prosecution had called 08 witnesses and marked P1 to P5 and P7 to P8. After the conclusion of the prosecution's case, the learned High Court Judge had called for the defence. The Appellant had made a dock statement and had denied the charges. Additionally, he had called one witness on his behalf.

After considering the evidence presented by both parties, the learned High Court Judge had convicted the Appellant and the 2nd Accused for counts 1-8 in the indictment. No order had been made in respect of counts 9 - 15 as those are alternative counts. The Appellant and the 2nd Accused were sentenced as follows:

- For the first count: 06 months rigorous imprisonment each.
- For the second count to seventh counts: death sentence passed against both.
- For the eighth count: 15 years rigorous imprisonment with Rs.20,000/- fine with a default sentence of 01-year simple imprisonment imposed against the Appellant and the 2nd Accused. Additionally, the court ordered Rs.500,000/- compensation payable to PW2 by the Appellant and the 2nd Accused.

The Court had further issued an open warrant against the 2nd Accused. Being aggrieved by the aforesaid conviction and sentence, the Appellant preferred this appeal to this court.

The learned President's Counsels for the Appellant informed this court that the Appellant had given consent for this matter to be argued in his absence.

Background of the Case

In this case, all the deceased are the father and the children of the same family. PW2 is one of the surviving members of the family and an eye witness to the incident. According to her, all family members had gone to bed, tired at 8.p.m. following a function that was held at her house. She and her brother PW3 had slept in the dining room. One of her other brothers, PW1 and her father had slept in the living room. A bottle lamp was burning when the incident had taken place. Her father had alerted the others when he had heard the cries of the people. At that time, she had witnessed her relation Priyashantha, (now dead), the Appellant and the 2nd Accused forcibly break into the house and Priyashantha stabbing the inmates of the house. The Appellant and the 2nd Accused prevented the inmates of the house leaving the premises during the incident. According to her, the Appellant who was armed with a pole actively participated in preventing the inmates and PW2 escaping from Priyashantha who was attacking all members of the

family. Another person called Chaminda (Now dead) also prevented the inmates escaping the gruesome attack. PW2 witnessed this incident with the help of a bottle lamp which was burning at that time.

PW2 sustained serious injuries to her abdomen but was able to escape from the scene. After drinking some water from a nearby creek, she had heard gun shots from the direction of her house. She had also seen her deceased brother being taken to the hospital after the police arrived at the scene. PW2 had given her full statement on 11.02.1998 while receiving treatment at the hospital.

The reasons for the deaths were gunshot wounds and multiple cut injuries according to the JMO who held the postmortem examination.

PW1 and PW3 had managed to escape the gruesome event upon alerted by their deceased father Somadasa. According to PW3, when he came to his house after the arrival of the police, he had seen that his house was burnt and that the bodies of his father and his siblings were piled up on top of the other and had been burnt inside the house.

According to the police four Suspects died due to the shoot-out with the police. Their names are mentioned in the indictment as deceased Accused. According to the police, Somadas's house was the third house attacked that night. In the first house four people were murdered and in the second house three people had been murdered. All murders had taken place in a similar fashion as to what happened at Somadasa's house.

The First Appellant had filed the following grounds of appeal.

1. Has the prosecution proved their case beyond a reasonable doubt?
2. Has the prosecution proved the involvement of the Appellant beyond a reasonable doubt?

As this case mainly rests on the evidence given by PW2, her evidence needs to be considered very carefully. PW2 was 14-year-old back in 1998 when this macabre incident occurred. She had witnessed her father and five siblings

being murdered in a gruesome manner. Further, she too had sustained serious injuries for which she was hospitalized and was even unable to attend the funeral of her loved ones. Further, she is an eye witness to the incident.

Eyewitness testimony, as a firsthand observation of a criminal event, is often regarded as a critical component of evidentiary material in criminal trials. Although such testimony can carry substantial persuasive weight with juries, its reliability is not infallible and may be compromised by a range of cognitive, psychological, and situational factors. Accordingly, a comprehensive understanding of both the probative value and the potential limitations of eyewitness testimony is essential in safeguarding the integrity of the fact-finding process and ensuring the fairness of judicial proceedings.

The learned President's Counsel highlighting the portion of evidence given by PW6 and the history given to the JMO by the eye witness PW2 contended that the eye witness's evidence cannot be believed as there is very serious doubt as to whether she is telling the truth. Further, he contends that PW2 is an interested witness. The relevant portion of the evidence of PW6 is reproduced below:

Page 248 of the brief: 01

- ප්‍ර : ඔබ සඳහන් කලා මේ කේ. පී. කේ. නිරෝෂා යන අය කොහේද තුවාල වී සිටියේ?
- උ : නිවස ඉහලින් සැකග වී සිටියා ස්වාමිණි.
- ප්‍ර : කොයි වගේ වට පිටාවක ද සැග වී සිටියේ ?
- උ : තේ වගාව ඇති ප්‍රදේශයක.
- ප්‍ර : ඇයට කතා කිරීමට පුළුවන් කමක් තිබුනද ?
- උ : ඒ අවස්ථාවේ දී හොඳ මානසිකත්වයෙන් සිටියේ නැහැ. තුවාල ලබා සිටියේ.
- ප්‍ර : ඒ තැනැත්තිය ඒ අවස්ථාවේ දී යමක් ප්‍රකාශ කලා ද ?
- උ : ඇයගෙන් මම විමසුවා. වමන්ද, ප්‍රියශාන්ත වෙඩි තැබූ බවත් ගෙට ගිණි තැබූ බවත් කියා සිටියා.
- ප්‍ර : මේ තුවාල කරුවන් සම්බන්ධයෙන් යම් පියවරක් ගත්ත ද ?
- උ : එම තුවාලකරුවන් දෙදෙනා වහාම රෝහලට රැගෙන යාමට පියවර ගන්නා.
- ප්‍ර : ඉන් අනතුරුව මෙම අපරාධය සම්බන්ධයෙන් සැකකරුවන් අත්අඩංගුවට ගැනීමට කටයුතු කලාද ?

උ : එහෙමයි උතුමාණෙනි. මා ඇතුළු විශේෂ නිලධාරීන් කණ්ඩායමක් පිටව ගියා.

PW10, JMO who gave evidence over the MLR of PW2, described the injuries sustained by PW2 as follows:

Page 329-330 of the brief-02.

ප්‍ර : එම රෝගියා විසින් ලබාදෙන ලද කෙටි ඉතිහාසය කුමක්ද යනුවෙන් තමාට ප්‍රකාශ කිරීමට හැකියාවක් තියෙනවාද ?

උ : එහෙමයි .

මේ තැනැත්තිය 98.01.29 වන දින රාත්‍රි නිදා ගෙන සිටින විට ප්‍රියන්ත නැමති අය දොර කඩා බලහත්කාරයෙන් නිවසට ඇතුළු වී ඇයට සහ නිවසේ සිටි අයට ඇනුම් තුවාල සිදුකර ඇත.

ප්‍ර : මෙම තැනැත්තියගේ බාහිර පරීක්ෂාව සිදු කිරීමෙන් පසුව මූලික වශයෙන් නිරීක්ෂණය කිරීමට ඇති තුවාල කුමක්ද යනුවෙන් තමාට කිව හැකි ද ?

උ : එහෙමයි.

මෙම වාර්තාව අනුව මූලිකව මෙම තැනැත්තිය මා යටතේ මහාවාරිය නිරිඇල්ල මහතා විසින් පරීක්ෂා කර ඇත. හදිසි උදර ශෛලය කර්මයක් සිදු කල බවට. තුවාල වල ප්‍රමාණය හැඩය හා ගැඹුර මා හට ලබා දිය නොහැක. ඊට අමතරව ඇයට ලබා දී ඇති වෛද්‍ය වාර්තාව අනුව කරාපිටිය ශික්ෂණ රෝහලේ වාරිටු අංක 08 හි ඇද නිස පත් අංක 7236 දරන අධිකරණ වෛද්‍ය වාර්තාව අනුව, ඒ අනුව 01 තුවාලය වම් පියයුරේ වූ ඇනුම් තුවාලයක්.

02 වන තුවාලය පපුවේ දකුණු ඉදිරි පියයුරට පහලින් වූ ඇනුම් තුවාලය.

තුවාල අංක 03 ඉදිරි උදරයේ බිත්තියේ ඉහල මධ්‍ය ප්‍රදේශයේ වූ ඇනුම් තුවාලයක්.

04 වන තුවාලය පපුවේ වම් පස වූ කැපුමක් සහ ඒ තුළින් යැවූ අන්තර් පාර්ශ්වක බටය.

05 තුවාලය දකුණු පූර්ව බාහුවේ කෙළවර හා ඇතුලට වන්නට පිහිටා තිබුණු මැහුම් දමන ලද කැපුම් තුවාල 02 ක්.

06 වන තුවාලය දකුණු කකුලේ දහනිසට පහලින් වූ මැහුම් දමන ලද කැපුම් තුවාලය.

07 වන තුවාලය වම් කකුලේ දහනිසට පහලින් වූ මැහුම් දමන ලද කැපුම් තුවාලයක්. බාහිරව සඳහන් කර තියෙන තුවාල එපමණයි.

According PW10, the injuries sustained by PW2 are quite serious and could cause death in the ordinary course of nature. The relevant page is reproduced below:

Page 335 of the brief-03.

- ප්‍ර : ඒ අනුව රෝගියාට සිදුව ඇති අධික රුධිර වහනයෙන් මරණය සිදු වීමට හැකියාවක් තිබෙනවා ද ?
- උ : එහෙමයි .
- ප්‍ර : මහත්මයා ඉදිරියේ තිබෙන අධිකරණ වෛද්‍ය වාර්තාවේ බරපතල තුවාල වශයෙන් වර්ගීකරණය අනුව පීඩනයට අනතුරක් වියහැකි තුවාල වශයෙන් සටහන් වී තිබෙන්නේ කිනම් තුවාල ද ?
- උ : තුවාල අංක 02 සහ 03.
- ප්‍ර : ඒ අනුව වෛද්‍යතුමනි මෙම තුවාල සියල්ල සමස්තයක් වශයෙන් ගත්තම රෝගියාට සිදුව ඇති සියළු හානි හේතුකොටගෙන මරණය සිදු විය හැකි තුවාල වශයෙන් නිගමනය කිරීමට හැකියාවක් තිබෙනවා ද ?
- උ : සාමාන්‍ය තත්ත්වය යටතේ මරණය ගෙන දිය හැකි තුවාල වශයෙන් නිගමනයකට එළඹිය හැකියි.

It is significant to mention that when PW6 CI/Hettiarachchige found PW2 hiding under tea bushes with injuries, PW2 informed him that Chaminda and Priyashantha shot them and set the house on fire.

The Learned President's Counsel for the Appellant argued that since PW2 had not mentioned the presence of the Appellant when inquired by PW6 at that time, it would weaken the case against the Appellant.

It is not worthy, that when PW6 found PW2 lying with injuries, she was never questioned about the people who were present there at the time of committing the offence. PW2 simply related who shot her family members. Given the injuries sustained by PW2, her age and ordeal she had faced, one cannot reasonably expect more details of the crime from a person like PW2 and that time.

Considering above cited portion of evidence it is evident that PW2 only informed the major part of the incident to PW6 and PW10. She was not in a good condition to divulge all facts covering the whole incident she had

witnessed. Further, the police could only record her incident upon her full recovery. Therefore, relying on her evidence has not caused any prejudice to the Appellant.

The learned President's Counsel for the Appellant further argues that the evidence given by PW2 is not corroborated by any other witnesses.

The Section 134 of the Evidence Ordinance states as follows;

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

In the case of **Sumanasena v. The Attorney General** [1999] 3 Sri.L.R 137 held that;

“Evidence must not be counted but weighted and the evidence of a single solitary witness if cogent and impressive could be acted upon by a Court of Law”

In the case of **Madduma Siripala and another v. The Attorney General** CA/125-126/10 decided on 27/10/2017, Justice Thurairaja held that:

“With reference to the above-mentioned section, there is no requisite number of witnesses needed to be called to prove a fact. In fact, the evidence of a single witness is sufficient to prove a fact provided the evidence of the witness is uncontradicted, truthful, independent and reliable to court”.

In the case of **Chacko Alias Aniyann Kunju & others v. State of Kerala**-[2004] INSC 87 (21st January 2004) held that:

“The provision clearly states that no particular number of witnesses is required to establish the case. Conviction can be based on the testimony of single witness if he is wholly reliable. Corroboration may be necessary when he is partially reliable. If the evidence is unblemished and beyond all possible criticism and the Court is satisfied that the witness was

speaking the truth then on his evidence alone conviction can be maintained”.

In this case PW2 had clearly witnessed the incident and had given evidence at the trial. When the incident had happened, she was only 14 years of age. Hence, the evidence given by the eye witness PW2 is convincing and not tainted with any ambiguity or uncertainty.

With reference to above cited judicial decisions, it is abundantly clear that the trial court can act on the evidence of a single witness whose evidence is truthful and impressive to come to a correct finding.

The learned President’s Counsel for the Appellant referring to the evidence given by PW2 argues that there are some deviations existing in the evidence given by her.

In this case the eye witness PW2 had stated during the trial that the Appellant was carrying a club at the time of the incident. But in her statement to the police, she had failed to mention that the Appellant was carrying a club. This was brought to the notice of the court as an omission by the defence.

Next the learned President’s Counsel highlighted the contradiction marked in the trial. In the non-summary inquiry PW2 had stated that the Appellant was seen carrying a knife at the time of the incident. But in the trial, she had stated that the Appellant had carried a club in his hand.

The learned Counsel for the Appellant contended that the omission and contradiction highlighted are important and sufficient to affect the credibility of PW2. The learned High Court Judge in his judgment had accurately considered the said omission and contradiction and had correctly held that the omission and contradiction highlighted are not sufficient enough to disturb the core of the case.

The injured PW2 was only 14 years of age when she witnessed the incident. Also, she had lost her family members and was recovering mentally as well as physically when she had given her statement to the police and subsequently at the non-summary inquiry. Her position was that the Appellant and the 2nd Accused prevented PW2 and the inmates of the house from escaping the scene of crime. As the Appellant actively participated and helped the deceased Accused Priyashantha to carry out the gruesome attack on her father and the siblings of PW2, the omission and the contradiction highlighted, are insufficient to create a doubt over the prosecution case.

In **Bandara v. The State** [2001] 1 SLR 63 the Court held that:

“Discrepancies and inconsistencies which do not relate to the core of the prosecution case, ought to be disregarded especially when all probability factors echo in favour of the version narrated by a witness”.

The learned High Court Judge in his judgment had clearly analysed the evidence given by the lay witnesses against the Appellant. Further, the learned High Court Judge, after considering the legal analysis of unlawful assembly had correctly found that the Appellant including 2nd Accused guilty under the charges levelled against them.

In this case, PW2 had clearly identified the Appellant through the lights emanating from the oil lamp lit inside the house. Further, the investigating officer had arrived at the scene of crime immediately after the information was received and had duly observed the light conditions of the premises. The learned High Court Judge in his judgment had considered the evidence very clearly and accurately and given plausible reasons as to why he believed the evidence given by PW2.

In this case the evidence given by PW2 is cogent without any ambiguity on material points. Even though PW2 was only 14 years old when this gruesome incident happened where her father and siblings had been killed in front of

her, she had given evidence without any contradiction pertaining to the main incident. As such, the Trial Judge is correct to conclude that the prosecution had presented a prima facie case against the Appellant.

In this case the learned High Court Judge had considered the evidence presented by both parties to arrive at his decision. He had properly analyzed the evidence given by both sides in his judgment. As the evidence adduced by the Appellant failed to create a doubt over the prosecution case, the conclusion reached by the learned High Court Judge in this case cannot be faulted.

As discussed under the appeal grounds advanced by the Appellant, the prosecution had adduced strong and incriminating evidence against the Appellant. The learned High Court Judge had correctly analyzed all the evidence presented by all the parties to arrive at a correct finding that the Appellant was guilty of the charges levelled against him. Therefore, I dismiss the Appeal and affirm the conviction and the sentence imposed on him on 25.08.2022 by the learned High Court Judge of Balapitiya.

The Registrar of this Court is directed to send this judgement to the High Court of Balapitiya along with the original case record.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL