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

In the matter of an Appeal in terms of 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.

Court of Appeal No:

CA/HCC/0460/17

High Court of Colombo

Case No: HC/2005/2004

Democratic Socialist Republic of Sri Lanka

COMPLAINANT

Vs.

Selvadurai Kirubakaran *alias* Ponnambalam Madhan

ACCUSED

AND NOW BETWEEN

Selvadurai Kirubakaran *alias* Ponnambalam Madhan

ACCUSED-APPELLANT

Vs.

The Attorney General

Attorney General's Department

Colombo 12

RESPONDENT

Before	: Sampath B Abayakoon, J.
	: P. Kumararatnam, J.
Counsel	: Asthika Devendra with Kaneel Maddumage for the Accused Appellant
	: Azard Navavi, D.S.G. for the Respondent
Argued on	: 23-05-2022
Written Submissions	: 25-10-2018 (By the Accused-Appellant)
	: 06-03-2019 (By the Respondent)
Decided on	: 20-07-2022

Sampath B Abayakoon, J.

The accused appellant (hereinafter referred to as the appellant) was indicted before the High Court of Colombo on following counts.

(1) Causing the death of Police Inspector Wijayawarnakulasuriya Sunil Thabru on 23rd June 2003, an offence in terms of section 2(1)(a) and punishable in terms of section 2(2)(ii) of the Prevention of Terrorism (Temporary Provisions) Act No 48 of 1979 as amended by Act No 22 of 1998 and 10 of 1882. (PTA)

(2) At the same time and at the same transaction having in his possession a pistol without a valid permit, punishable in terms of section 2(2)(ii) read with section 2(1)(e), of the PTA.

(3) In the alternative to the second count as above, having in his possession a pistol without a valid permit, an offence punishable in terms of section 22 read with section 22(1) of the Fire Arms Ordinance No 33 of 1916 as amended by Ordinance No 22 of 1966.

(4) At the same time and at the same incident having five bullets in his possession without a valid permit, an offence punishable in terms of

section 9(2) read with section 27(1)(a) of the Explosives Ordinance No 21 of 1956.

After trial, the learned High Court Judge of Colombo found the appellant guilty of the 1st, 2nd and the 4th counts preferred against him, while he was acquitted on the 3rd count as it was an alternative count to the 2nd count for which he was found guilty.

After hearing the parties with regard to the sentence, the learned High Court judge has sentenced the appellant to life in prison on count one, as it was the mandatory punishment that can be imposed on a person found guilty for an offence of this nature. He was sentenced to a term of five years rigorous imprisonment on count two, which was the minimum punishment prescribed. On count four, he was ordered to pay a fine of Rs. 25,000/-, in default he was sentenced to a term of six months simple imprisonment.

Being aggrieved by the sentence and the conviction, the appellant preferred this appeal.

The facts in briefly: -

The deceased, Inspector of Police Sunil Thabru was a police intelligence officer attached to the Dehiwala police station at the time of his death. The appellant was an informant well known to IP Thabru, who used to frequent the police station and a provider of information as to terrorist activities.

On the day of the incident, PW-03 was working attached to the Dehiwala police station as a police matron. The deceased IP Thabru was well known to her as an intelligence officer attached to the Dehiwala police station. She was well aware of the surroundings of the police station as well, as she has been working there for about three years by that time. The police quarters were situated on the right side of the police station when coming from the direction of the Hill Street and the complex had two entrances, one to enter the police station and the other to enter the quarters. PW-03 has reported for duty on the previous night and while

walking out of the main gate of the police station in order to go to the shop owned by one Jhonson she has heard gunshot sounds from the direction of the police quarters. This was around 10.00 in the morning. After hearing the gunshot sounds, she has dashed towards the other entrance, which was the entrance to the police quarters. She has then seen the appellant come running from the direction of the quarters and entering the road from an opening of the 2nd gate. The appellant was known to her as she had seen him at the police station because he used to come to meet the deceased. The appellant has then got into a three-wheeler parked nearby which was parked there for the purposes of hire, and owned by one Raktha. She has seen the three-wheeler going towards the direction of Dehiwala Zoo. She has seen the appellant carrying a small pistol in his hand. Being a person familiar with weapons, she has had no difficulty in identifying the weapon. Seeing the appellant getting into the three-wheeler, she has shouted and had informed the police officers who came there that the appellant fled in the three-wheeler belonging to Raktha. Later, upon seeing the deceased with injuries, she has fainted. At an identification parade held subsequently, PW-03 has identified the appellant as the person who fled after the shooting.

Under cross examination, it has been her evidence that of the two gates, the gate from which the appellant came out was not guarded as it was only used by the police officers, and around 50 police officers were at the station when the incident happened. She has admitted that she was able to see the appellant when he was arrested and brought to the police station after the incident.

PW-02 Sub Inspector of Police Susantha was ill on the day of the incident and was sleeping at the single officers' quarters at around 10.00 a.m. The deceased IP Thabru was also sleeping in a room few feet away from where he was sleeping. He could see the room where IP Thabru was sleeping as there was no door to his room. While in sleep, he has been awakened by the sound of gunshots and the smelling of gun powder. Coming out, he has seen the appellant running out of the quarters holding a short weapon which looked like a revolver or a pistol in

his hand. When seen he was about 20 feet away from him. He has then seen IP Thabru with injuries and had seen the appellant running out of the station from the second gate. According to the evidence of the witness, he has known the appellant previously as a person who used to visit IP Thabru frequently. He too had identified the appellant at the subsequent identification parade held. Both the witnesses have identified the production marked P-01 as a one similar to the weapon carried by the appellant when they saw him. It was his evidence that although he was not able to see the appellant face to face while running away, but by his left-hand side, he was able to identify him. Under cross examination, the witness has stated that he saw the appellant getting into a three-wheeler and fleeing the scene.

It needs to be noted that PW-02 who has commenced his evidence on 01-03-2012 has only concluded his evidence on 03-03-2016. His evidence has been led before several High Court Judges, which has led to the repetition of evidence several times over, may it under cross examination or in the evidence-in-chief, which I do not find as a healthy practice to follow in any trial. The PW-03 who was the first witness called by the prosecution and concluded her evidence on 14-02-2012, has been recalled to face cross examination again on an application by the defence. I am unable to find any material differences in the evidence of the PW-03 in her evidence taken before the Court for the second time.

The Judicial Medical Officer (JMO) who conducted the postmortem as to the death of the deceased has confirmed that the death of the deceased was due to injuries to his head inflicted from a close range. Describing the possible weapon used, he has commented the following;

රයිෆල් වෙපන් එක ස්වාමීනී එහි ඇතුල්වෙන තුවාලය සෙන්ටිමීටර් එකක විෂ්කම්බයක් තිබුණා. එක තුවාලයයි තිබුණේ ඇතුළේ. ඒ ඇතුළේදී අදාළ යකඩ කැල්ල මට හමුවුණේ. එහෙම බලනකොට එවැනි දේවල් සිදුවෙන්නේ රයිෆල් වෙපන් එකකින්. ඒ කියන්නේ එක බුලට් එකක් පිටවෙලා තියෙන්නේ. නමුත් ඒ වෙපන් එකෙන් අනෙක් පැත්තට යකඩ කැල්ල ගිහිල්ල නැහැ. ඒ කියන්නේ රයිෆල් වෙපන්වල

බුලට් පිටවීම වේගය අඩු වෙපන් එකකින්. රිවෝල්වරයක්, පිස්ටල් වගේ එකකින් වෙන්න පුළුවන්. ටී 56 එකක් නොවිය හැකියි ස්වාමීනී. (At page 481 of the appeal brief)

PW-34, the Senior Assistant Government Analyst Gamini Madawala was the person who has examined the possible murder weapon (P-01) and the spent bullets found at the scene of the crime and the fragments found on the body of the deceased. He has identified P-01 as an automatic macro pistol and has opined that the spent bullets marked as P-04(1) and P-04(2) are bullets fired using the weapon marked P-01. He has also opined that the disfigured bullet marked as P-05(1) as another bullet fired using the same weapon.

Rohana, (PW-18) was a three-wheeler driver who used to hire his vehicle from a place in front of the Dehiwala police station. On the day of the incident, while waiting for customers, he has seen a person come running from the direction of the police station and getting into a red-coloured three-wheeler first, and again into the three-wheeler No 21-1888 belonging to the person he knew as Raktha and leaving towards the direction of the Dehiwala Zoo. Later he has heard about an incident at the police station and had informed what he saw and the number of the three-wheeler to police officers Dharmawardana and Somasiri who came subsequently.

PW-09 retired Inspector of Police Dharmawardana was the officer instrumental in arresting the appellant after the incident. After coming to know what happened at the police station, he, along with two other officers has come to the road pursuing the assailant. He has been informed that the person who came running from the police station got into a three-wheeler and went towards the direction of the Dehiwala Zoo. Informed of the number of the vehicle, he has perused it. After coming to the Colombo- Galle main road, he has informed the Army checkpoint, which was near the Dehiwala Girls Convent, to stop the mentioned vehicle. In the meantime, he has observed the said three-wheeler approaching the checkpoint and, when ordered, it has stopped near the roadblock. Approaching the vehicle, he has seen the appellant inside the vehicle,

whom he knew as a person who frequented the police station as an informant of IP Thabru. As he was approaching, he has observed the appellant attempting to swallow something like a Panadol tablet. Reacting immediately the witness has forced his finger into the mouth of the appellant and had been able to take out what he was attempting to swallow. With that, the appellant has fainted. Suspecting that he has swallowed cyanide, the witness has taken immediate steps to take the appellant to the Kalubowila hospital in the three-wheeler he was travelling. Although the appellant was unconscious at that time, he has been revived by the Doctors who attended to him. Later he has produced the appellant at the police station along with the cyanide capsule he was able to extract from the mouth of the appellant.

In this matter, the evidence has been led to establish that, out of the ten fingerprints found at the scene of the crime, one fingerprint found in a mirror that was near the place where the deceased was sleeping matched an index fingerprint of the appellant.

PW-01, Priyadarshana Senanayake was the officer in charge of the Dehiwala police station at the time relevant to the incident. He was the police officer who recovered the pistol marked P-01 and five bullets from a thicket in the Vaidya Road towards Dehiwala Zoo, as pointed out by the appellant during investigations into the crime. He has marked the relevant extract from the statement of the appellant made to him as PQ, in terms of section 27 of the Evidence Ordinance.

The Magistrate who conducted the identification parade where PW-02 and PW-03 has identified the appellant has given evidence in this matter and has marked the relevant report as ID.1.

Apart from the witnesses whose evidence summarized as above, several of the investigation officers and other officers who assisted the investigation and the officers who had the custody of the productions have been called to give evidence in this matter. A total of 24 witnesses has given evidence on behalf of the

prosecution, apart from the several productions produced in order to prove the case for the prosecution.

When called for a defence at the end of the prosecution case, the appellant has chosen to make a statement from the dock. He has denied the charges against him. It has been his statement that his two elder brothers were captured by the LTTE, and because of that, he and his parents came to the government-controlled area in Vavuniya, where he was arrested by the police on suspicion. It was his position that he was questioned by the deceased IP Thabru during his detention for about two months, and later released as he had no connections to the LTTE. He has stated that he and his family came to Colombo in 2002 in order to get passports and he met IP Thabru while in Colombo. He has admitted that he became an informant of IP Thabru with the intention of finding information about his brothers and used to frequent the Dehiwala police station. Admitting that he went to the Dehiwala police station on the day of the incident as IP Thabru wanted him to come in that morning, it has been his position that he was only taken into the police station after a thorough body search by the officers at the gate and he had nothing in his possession when he went in. While seated in order to meet IP Thabru, he heard a gunshot and saw people running towards the road which prompted him also to run towards the road was his statement. It was his position that he, along with some others were arrested at the gate when he reached the gate and severely assaulted and forced to place a fingerprint on a mirror and several other items by the police. It was also his position that when he was subsequently produced before the Magistrate of Mt. Lavinia, the Magistrate, after observing his injuries suffered as a result of the assaults, he was ordered to be admitted to hospital and was treated for ten days. He has pleaded his innocence to the crime, claiming that he is in incarceration for something he has no connection.

On behalf of the appellant, an official of the Magistrate Court of Mt. Lavinia has been called to produce case No B/ 6544 in order to establish the notes of the

learned Magistrate and what was stated in the B report, and also some of the orders made by the learned Magistrate.

The Grounds of Appeal

At the hearing of the appeal, the learned Counsel for the appellant raised the following grounds of appeal for the consideration of the Court.

(1) The items of circumstantial evidence adduced at the trial are not sufficient to find the appellant guilty.

(2) The identification of the appellant by the witnesses is not credible.

(3) The evidence of PW-02 and PW-03 are not credible and trustworthy.

(4) The learned High Court Judge has not properly evaluated the dock statement of the appellant.

It was the submission of the learned Counsel for the appellant that the learned High Court Judge was wrong as to the relevant law where it has been stated that "එළඹිය හැකි එකම අනුමිතිය විත්තිකරුවගේ නිදෝර්ශීභාවය සමග ගැලපෙන්නේ නම්, විත්තිකරු මෙම චෝදනා වලින් නිදොස් කොට නිදහස් කල යුතුය", at the commencement of the judgment.

It was the contention of the learned Counsel that even if the appellant had previous engagements with IP Thabru, there was no possibility for the appellant to carry a weapon as anyone entering the police premises would be subjected to a body search at the gate of the station. It was his position that PW-03 cannot be considered a credible witness since, although she has stated that she saw the appellant running away with a small pistol like weapon in his hand, she has failed to say that to the police when she gave her statement, which had been drawn to the attention of the Court at the trial as an omission. It was his view that her evidence should have been rejected on that material omission alone.

It was also his position that although the PW-02 has stated that he saw the appellant running away through the 2nd gate when giving evidence in the High

Court, his statement to police has been that he saw the appellant fleeing in a green-coloured three-wheeler. (The contradiction marked V-01). It was his view that this contradiction casts a shadow over his evidence as to whether he actually saw the appellant in the manner he claims, which should have been considered in favour of the appellant.

Another argument pursued by the learned Counsel for the appellant was that a reasonable doubt has been created as to the weapon alleged to have been used to commit the crime. Although it was the position of the prosecution that it was the macro pistol marked P-01 that has been used to commit the crime, it had been the view of the learned High Court Judge that it was a rifle type weapon that has been used was his contention. Pointing that the JMO also has stated in his report that it was a rifle type weapon that has been used, which was contrary to the opinion of the Government Analyst (GA) where it has been said that the weapon used was the pistol marked P-01.

It was the position of the learned Counsel that the appellant has provided a reasonable explanation as to the fingerprints found in a mirror and even it was to be rejected, the fact remains that as a frequent visitor to meet IP Thabru, finding his fingerprints cannot be considered a strange occurrence which can be considered against the appellant.

Although the learned High Court Judge has evaluated the dock statement of the appellant, it has not been looked at in the correct perspective was the submission of the learned Counsel for the appellant. Given the infirmities in the evidence of the key witnesses and the fact that the appellant had no reason to kill the deceased and also the fact that the appellant had been subjected to severe assault after his arrest, it was the contention of the learned Counsel that the conviction was not safe to be allowed to stand.

It was the submission of the learned Deputy Solicitor General (DSG) that the fact that the appellant had free access to the police station and the deceased, are not disputed facts. The fact that the appellant was present in the vicinity when the

shooting took place, was also an admitted fact. It was his view that the omission and the contradiction relied on by the appellant are not material enough to create a doubt in the prosecution case which was based on circumstantial and scientific evidence.

It was submitted that the evidence of PW-02 and PW-03 has been corroborated by PW-18 who saw the person who came out of the police station, getting into a three-wheeler and fleeing, whose evidence remain unchallenged. It was the position of the learned DSG that when PW-09 pursued and arrested the appellant at the Army roadblock, the appellant has attempted to consume cyanide, which goes on to show that the stand of the appellant that he was arrested near the gate of the police station has no basis in view of the evidence to the contrary. Commenting that the learned High Court Judge has not determined the matter on the basis that the injuries caused to the deceased have been caused using a rifle, it was the position of the learned DSG that the determination was that it was the pistol marked P-01 that has been used to commit the crime.

Making his submissions as to the evidence adduced at the trial, it was the position of the learned DSG that the appeal has no merit.

Consideration of the Grounds of Appeal

All the grounds of appeal will be considered together as they are interrelated. This is a matter where there are no eye witnesses to the actual shooting of the deceased. The appellant has been found guilty based on the circumstantial evidence adduced before the High Court. It is therefore necessary to the draw the attention to the applicable principles of law when it comes to the proving of a case based on circumstantial evidence.

In the case of **The King Vs. Abeywickrama 44 NLR 254** it was held:

Per Soertsz J.

> *"In order to base a conviction on circumstantial evidence the jury must be satisfied that the evidence was consistent with the guilt of the accused and inconsistent with any reasonable hypotheses of his innocence."*

In **Don Sunny Vs. The Attorney General (1998) 2 SLR 01** it was held:

1) *When a charge is sought to be proved by circumstantial evidence the proved items of circumstantial evidence when taken together must irresistibly point towards only inference that the accused committed the offence. On consideration of all the evidence the only inference that can be arrived at should be consistent with the guilt of the accused only.*

2) *If on a consideration of the items of circumstantial evidence, if an inference can be drawn which is consistent with the innocence of the accused, then one cannot say that the charges have been proved beyond reasonable doubt.*

3) *If upon consideration of the proved items of circumstantial evidence if the only inference that can be drawn is that the accused committed the offence, then they can be found guilty. The prosecution must prove that no one else other than the accused had the opportunity of committing the offence. The accused can be found guilty only if the proved items of circumstantial evidence is consistent with their guilt and inconsistent with their innocence.*

However, when considering the circumstantial evidence, what has to be considered is the totality of the circumstantial evidence before coming to a firm finding as to the guilt of an accused, although each piece of circumstantial evidence when taken separately may only be suspicious in nature.

In the case of The **King Vs. Gunaratne 47 NLR 145** it was held:

> *"In a case of circumstantial evidence, the facts given in evidence may, taken cumulatively, be sufficient to rebut the presumption of innocence, although each fact, when taken separately, may be a circumstance only of suspicion.*
>
> *The jury is entitled to draw inferences unfavourable to an accused where he is not called to establish an innocent explanation of evidence given by the prosecution, which, without such explanation, tells for his guilt."*

In the case of **Regina Vs. Exall (176 English Reports, *Nisi Prius* at page 853)** Pollock, C.B., considering the aspect of circumstantial evidence remarked;

> *"It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in a chain, but that is not so, for then, if any one link brock, the chain would fall. It is more like the of a rope composed of several cords. One strand of the rope might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength."*

With the above principles in mind, I will now proceed to consider the submissions of the learned Counsel for the appellant to find whether it has merit.

I find no basis to agree with the contention of the learned Counsel that the learned High Court Judge got it wrong at the very commencement of the judgment. If one reads the whole of the relevant paragraph of which only a part was taken out in its isolation by the learned Counsel, it becomes clear that the learned High Court judge had not erred in any manner. The relevant paragraph of the judgment reads as follows;

"මෙම නඩුවේ විත්තිකරු මියගිය සුනිල් තාබaa නැමැත්තාට වෙඩි තබනවා දුටු බවට ඇසින් දුටු සාක්ෂි කිසිවක් පැමිණිල්ලෙන් මෙහෙයවා නැත. පැමිණිල්ල විසින් විත්තිකරුට විරුද්ධව නගා ඇති චෝදනා ඔප්පු කිරීම සඳහා සම්පූර්නණයෙන්ම විශ්වාසය තබා ඇත්තේ පරිවේශනිය සාක්ෂි මතය. මෙම නඩුවේ මෙහෙයවා ඇති පරිවේශනිය සාක්ෂිවලින් එළඹිය හැකි එකම අනුමිතිය විත්තිකරුගේ වරදකාරිත්වය සමග ගැලපෙන්නේ නම්, විත්තිකරු චෝදනාවලට වරදකරු කළ යුතුය. එකී මෙහෙයවන

ලද පරිවේශනිය සාක්ෂිවලින් එළඹිය හැකි එකම අනුමිතිය විත්තිකරුගේ නිදෝර්ශීභාවය සමග ගැලපෙන්නේ නම්, විත්තිකරු මෙම චෝදනාවලින් නිදොස් කොට නිදහස් කල යුතුය."

This amply provides that the learned High Court Judge was well possessed of the way circumstantial evidence should be analyzed in order to determine whether the prosecution has proved the case beyond reasonable doubt against the appellant.

I am in total agreement with the learned DSG that the omission pointed out in the evidence of PW-03 and the contradiction marked V-02 are not material that goes into the root of the prosecution case. As I have stated earlier, what needs to be looked at is the totality of the evidence. Apart from PW-03, PW-02 also has seen the appellant running away with a weapon in his hand. Soon thereafter, PW-18 has seen him getting into a three-wheeler and leaving the scene of the crime. When he was arrested, he had attempted to commit suicide by consuming cyanide, but the prompt actions of PW-09 have prevented his attempt.

In the contradiction marked V-01, P-02 has stated in his police statement that he saw the appellant fleeing in a green-coloured three-wheeler, but in his evidence before the Court it has been stated that he only saw the appellant going out from the gate. This can be very well attributed to the fact that he has given evidence some nine years after the actual event and he was no longer a serving police officer at that time. Be that as it may, the evidence of other witnesses has provided that in fact it was in a green-coloured three-wheeler the person who came running out of the police station fled, which makes the contradiction of no material value.

It is settled law that a witness who gives evidence long after the incident is not expected to have a photographic memory as to the sequence of events that took place within a short span of time like in the given incident.

At this stage it is appropriate to refer to the Indian case of **Bhoginbhai Hitijibhai Vs. State of Gujarat (AIR 1983-SC 753 at pp 756-758)** often cited in our Courts. It was held:

1) *By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.*

2) *Ordinarily, so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.*

3) *The powers of observation differ from person to person. What one may notice, and the other may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part another.*

4) *By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purpose of the conversation. It is unrealistic to expect a witness to be a human tape recorder.*

Although an identification parade has been held in this action, there was no need to such a parade in relation to the PW-02 and PW-03 who knew the appellant well as a personal informant of IP Thabru. I do not find merit in the argument that it was not probable for the appellant to come into the police station armed with a weapon either. The weapon used to commit the crime was a macro pistol. For a person well used to the operations of the police station and its surroundings as a frequent visitor, it is very much possible for a determined individual to smuggled in a weapon of this kind in order to commit a crime of this nature.

I find no basis for the argument that a doubt has been created as to the weapon used in committing the crime, which was an argument advanced by the learned Counsel based on the words used by the learned High Court Judge while considering the evidence to describe the weapon used in the commission of the crime. If one reads the relevant parts of the judgment as a whole, it becomes

clear that what the learned High Court Judge has stated was in reference to the evidence of the JMO and what was stated in the postmortem report. As I have highlighted before, the JMO has explained what he meant by the word 'rifle type' due to the entry and the exit wounds observed by him and has commented that the weapon can also be either a revolver or a pistol. The learned High Court Judge has well considered the evidence of the Government Analyst who was a well-recognized expert on ballistics, and the evidence led in relation the recovery of the weapon in terms of a section 27(1) of the Evidence Ordinance to come to a firm finding that it was the macro pistol marked P-01 that has been used in committing the crime.

It is correct to argue that the discovery of an item on a statement made to a police officer by a suspect can only lead to the inference of the knowledge of the maker of the statement to the item or items found. However, when considering the evidence as a whole, it is clear that if not for the direction by the appellant the pistol marked P-01 would not have been recovered from the place it was recovered.

I find that even if the evidence in relation to the finding of an index fingerprint of the appellant on a mirror found near the scene of the crime is disregarded in view of the undisputed fact the appellant had been a frequent visitor to IP Thabru and there is a possibility of having a fingerprint of the appellant in the normal course of events, it had not dented the case of the prosecution. In this action, the other evidence placed before the Court has provided overwhelming evidence in support of the prosecution case.

I am unable to agree with the contention that the learned High Court Judge has failed to properly evaluate the dock statement of the appellant. I find that the learned High Court Judge has given due value to the dock statement of the appellant considering the fact that it was not evidence given under oath and not subjected to the test of cross-examination.

I am of the view that the evidence led in this action has been well considered in the judgment with a view of determining whether the prosecution has proved the charges beyond reasonable doubt against the appellant and whether a reasonable doubt has been created as to the guilt of the appellant or at least a reasonable explanation has been provided as to the incriminating evidence against the appellant.

I find that the evidence led in this action when taken together, irresistibly points towards the only inference that it was the appellant who committed the murder of the deceased.

I find that this was a well-considered judgment, pronounced with a clear understanding of the evidence made available to the Court and the relevant law, which needs no disturbance from this Court.

The Appeal therefore is dismissed as it is devoid of merit. The conviction and the sentence affirmed.

Judge of the Court of Appeal

P Kumararatnam, J.

I agree.

Judge of the Court of Appeal