

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

**In the matter of an Appeal in terms of
Section 331 of the Code of Criminal
Procedure Act No. 15 of 1979.**

The Democratic Socialist Republic of
Sri Lanka

Complainant

Court of Appeal Case No.:

CA/HCC/0096/2023

Vs.

High Court of Hambantota

Case No.:

HC 18/2016

Nakulugama Yapage Suraj Priyantha

Accused

AND NOW BETWEEN

Nakulugamuwa Yapage Suraj Priyantha,
(Presently detained at the
Angunukolapalassa Prison)

Accused-Appellant

Vs.

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

Complainant-Respondent

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

Counsel: Asthika Devendra with Aruna Madushanka for the Accused-Appellant.

Hiranjana Pieris, S.D.S.G for the State.

Argued on: 17.06.2025

Decided on: 14.07.2025

JUDGMENT

AMAL RANARAJA, J.

1. The Accused-Appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Hambantota* in High Court case number HC 18/2016.
2. The charge in the indictment is as follows,

Charge 01

That on or about March 23,2004, at *Sisilasa Gama*, within the jurisdiction of this Court, the accused along with another, by stealing of cash and jewellery valued at Rs. 137,750.00 belonging to one *Sarath Hewarathne* by using firearms, committed the offence of robbery with an attempt to cause death or grievous hurt, an offence punishable under and in terms of section 383 of the Penal Code read with section 32.

3. At the conclusion of the trial, the Learned High Court Judge has convicted the appellant of the charge and sentenced him to five years

rigorous imprisonment and also imposed a fine of Rs.5000.00 with a term of six months rigorous imprisonment in default. The Learned High Court Judge has also ordered the appellant to pay a sum of Rs.137,750.00 as compensation to PW01 with a term of one year rigorous imprisonment in default. Further, he has also ordered that the terms in default shall run consecutively.

4. Aggrieved by the conviction and the disputed judgment together with the sentencing order, the appellant has preferred the instant appeal to this Court.

Case of the prosecution

5. On March 23,2024, PW01, a businessman, has returned to his residence at around 8.00pm after completing his daily business activities.
6. His paddy-mill where he conducted his operations has been located on the ground floor of the same building while his residence occupied the second floor.
7. At approximately 08.15pm that evening, two armed intruders have entered PW01's residence. Notably, the intruders have purportedly been exposing their faces suggesting a level of confidence in their actions. They have gathered the household members into the living area and immediately begun to demand valuables.
8. During the robbery, the intruders have targeted the gold-chain and the gold-ring that PW01 was wearing at that time. Although they have attempted to seize the pair of earrings worn by PW01's daughter, i.e. PW03, they have relented upon PW01's request.

9. In addition to these items, the intruders also have robbed various pieces of jewellery from the residence and a sum of cash amounting to Rs. 44,000.00 before making their escape.

Case of the appellant

10. The appellant has asserted that he has been falsely implicated in the charge outlined in the indictment.

Grounds of appeal

11. When the matter was taken up for argument, the Learned Counsel for the appellant urged the following grounds of appeal;

- i. The Learned High Court Judge has failed to consider that the identification of the appellant has not been established.
- ii. The erroneous findings of the Learned High Court Judge have adversely affected the appellant.
- iii. The Learned High Court Judge has arrived at his judgment without properly considering the dock statement of the appellant.
- iv. The prosecution has failed to prove the charge beyond a reasonable doubt.

12. It has been acknowledged that the identification parade in connection to the incident in question has been held 8 years after the occurrence. During this parade, PW01 along with his now deceased wife have

participated as witnesses. It is important to note that PW01's wife was unable to provide testimony at the trial due to her passing prior to the proceedings.

13. In his testimony, PW01 has referred to the identification parade, affirming that he identified the appellant, during that event. In open Court, he has reiterated that the individual he identified as the perpetrator was indeed the same person standing in trial. However, during cross-examination, significant inconsistencies, in PW01's testimony has come to light. It has been revealed that he had contradicted himself regarding the physical features of the appellant when describing him in Court, compared to earlier descriptions made during his statement, to the investigating officers.
14. Additionally, PW01 has disclosed that the appellant has visited his business premises on two prior occasions. This revelation raised questions about his ability to confidently identify the appellant at the identification parade, as it was information not included in his initial statement to the investigation officers. These discrepancies call into question the reliability of PW01's identification and whether his identification of the appellant was influenced by prior encounters rather than by identification parade itself.
15. The identification of the appellant further raises critical issues regarding the credibility of witness's testimony as well as the integrity of the identification parade, especially given the 8 year delay between the incident and the parade. The inconsistencies of PW01's testimony and the absence of corroborating testimony from his deceased wife further underscore the complexities.

16. In the case of *Queen vs V.P.Julis* [1953] 65 NLR 505 at 510-511, Basnakaye, C.J. has held that,

“The identification of the accused at a parade held before the trial is not substantive evidence at the trial. The fact that the witness has been able to identify the accused at the identification parade is only a circumstance corroborative of the identification at the trial. The jury can act only on the evidence given before them. There is no section of the evidence ordinance which declares proceedings at an identification parade to be evidence as to the fact of identity. The principal evidence of identification is the evidence of the witness given in court as to how and under what circumstances he came to pick out a particular accused person and the details of the part which the accused took in the crime in question”.

17. In the landmark case of *Rex vs Turnbull* [1997] QB 224 important guidelines were established for trial Court Judges regarding the handling of disputed identification evidence. Accordingly, a Judge should be mindful that;

- *A witness who is honest, maybe wrong even if the witness is convinced that he is right.*
- *A witness who is convincing may still be wrong.*
- *A witness who recognizes the defendant even when the witness knows the defendant very well, maybe wrong.*

The Judge should direct the jury to examine the circumstances in which the identification by each witness can be made. Some of these circumstances may include;

- *The length of time the accused was observed by the witness.*
- *The state of the light.*
- *The length of time elapsed between the original observation and the subsequent identification of the accused.*

18. In considering the testimony of PW03, it is important to note that she has not only made a dock identification of the appellant but has also exhibited inconsistencies regarding her description of the appellant's features and her account of previous encounters with the appellant before such identification.

19. During her testimony PW03 has provided a description of the appellant that appear contradicting her prior statement to the investigating officers. Such discrepancies undermine the credibility of her identification as they suggest a lack of clarity in her memory or a possible mischaracterisation of the appellant.

20. Additionally, as PW01 has done, PW03 has also mentioned having previously accosted the appellant on two previous occasions before making the identification. However, PW03 has not been able to consistently articulate the nature of these encounters. In those circumstances, it also raises legitimate concerns regarding the validity of her identification.

21. In *Munirathne and Others vs. The State*, [2001] 2 SLR 382, Kulathilake, J, has held,

“Jurists on evidence have expressed the view that it is undesirable and unsafe for the Court to rely upon the identification of an accused in Court for the first time or dock identification. The reason being that a witness may well think to himself that the police must have got hold of the right person and it is, so easy for a witness to point to the accused in the dock.

In this connection, vide- Cross on Evidence 06th Edition page 44-45; Archbold-Criminal Pleadings, Evidence and Practice 2000th Edition paragraph 14-2, 14-10 page 1303-1304; Phipson on Evidence 15th Edition 14-17 page 321 and also R vs. Howick 1970 Cr. L.R.403.”

22. In reviewing the Learned High Court Judge’s judgment, it appears evident that there has been reliance on the perceived weaknesses within the appellant’s case, suggesting that the inconsistencies in the appellant’s case were leveraged to strengthen the prosecution’s position.

23. It is a fundamental tenet of legal proceedings that the burden of proof lies squarely with the prosecution. The responsibility to establish a case beyond a reasonable doubt, fall upon the prosecution, irrespective of any shortcomings or inconsistencies that may arise in the appellant’s case. The focus should not be on the appellant’s alleged inconsistencies but rather on whether the evidence presented by the prosecution meets the requisite standard for a conviction.

24. This reliance on the weaknesses of the appellant's case is not only a misapplication of legal principles but also undermines the integrity of the judicial process. The prosecution should be able to substantiate its claims without invoking the flaws of the opposing argument.

25. Due to the matters referred to above, I am inclined to interfere with the disputed judgment together with the sentencing order. I set aside the conviction and the disputed judgment together with the sentencing order and acquit the appellant of the charge.

Appeal allowed.

I make no order regarding cost.

26. The Registrar is directed to communicate this judgment to the *High Court of Hambantota* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree,

Judge of the Court of Appeal