

**IN THE COURT OF APPEAL OF THE DEMOCRATIC 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.**

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

Complainant

Court of Appeal
Case No. **260-269/2018**

Vs.

High Court of Tangalle
Case No. **11/2002**

High Court of Hambantota
Case No. **55/2002**

1. Liyanapathiranage Ariyadasa alias Gadin Bale
2. Gajanayakage Ajith Kumara alias Tissawadiye Ajith
3. Weerasinghege Nimal alias Wijaya Appu
4. Liyanapathiranage Dayananda
5. Motha Meregnagna Thilak Ananda
6. Sudusinghe Nimal Piyaratna alias Wasantha
7. Dandeniya Gamage Nihal Ajith Kumara

8. Liyana Pathiranage Nandasena alias
Gadin Lokka
9. Maldeniya Kankanamlage Sujith Lakmal
alias Baby
10. Francisku Banduge Jayasena alias
Mahajanaya
11. Dandeniya Gamage Kumarasinghe
12. Radampala Gamage Ariyadasa alias Baby
Malli
13. Wijinige Piyasena alias Bandu Puncha
14. Gurusinghege Jagath Neal Kumara
15. Gunasekara Satharasinghe Ranjiith alias
Handy
16. Chamuinda Rohana Paranamana
17. Liyana Pathiranage Rupasinghe alias
Gadin Puncha
18. Sudusinghe Gunasena alias Jothipala
19. Aluth Arachchige Sujith Kumara alias Kiri
Suda
20. Dandeniya Gamage Chandimal
Thilakaratna
21. Mahinda Ekanayaka
22. Nihal Satharasinghe alias Koratuwa Watte
Ari
23. Ranjith Paranama alias Mahattaya

Accused

AND NOW BETWEEN

1. Liyanapathiranage Ariyadasa alias Gadin Bale
4. Liyanapathiranage Dayananda
8. Liyana Pathiranage Nandasena alias Gadin Lokka
12. Radampala Gamage Ariyadasa alias Baby Malli
14. Gurusinghege Jagath Neal Kumara
15. Gunasekara Satharasinghe Ranjith alias Handy
16. Chaminda Rohana Paranamana
17. Liyana Pathiranage Rupasinghe alias Gadin Pucha
19. Aluth Arachchige Sujith Kumara alias Kiri Suda
20. Dandeniya Gamage Chandimal Thilakaratna

**1st, 4th, 8th, 12th, 14th, 15th 16th,
17th, 19th and 20th Accused-Appellants**

Vs.

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

Complainant-Respondent

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

Counsel: Anil Silva, P.C. for the 1st Accused-Appellant.

Darshana Kuruppu with Tharushi Gangani, Dineru Bandara and Anjana Adhikaramge for the 2nd, 3rd, and 8th Accused-Appellants.

Indica Mallawaratchy with I.B.S.Harshana for the 4th Accused-Appellant

Neranjana Jayasinghe with Imangsi Senarath and Randunu Heellage for the 6th, 7th, and 9th Accused-Appellants (15th, 16th and 19th Accused)

Amila Palliyage with Shabdika Wellappili, Sandeepani Wijesooriya, Savani Udugampola, Lakitha Wakishta Arachchi and Subaj De Silva for the 14th Accused-20th Appellant and 5th Accused-10th Appellant.

Dilan Rathnayake, A.S.G. for the Complainant-Respondent.

Argued on: 18.02.2025

Decided on: 06.03.2025

JUDGMENT

AMAL RANARAJA, J.

1. The 1st, 4th, 8th, 12th, 14th, 15th, 16th, 17th, 19th and 20th accused-appellants (hereinafter referred to as Appellants) with thirteen others named therein as accused, have been indicted in the *High Court of Hambantota* in High Court case no. 55/02. The charges in the indictment are as follows;

- i. On 18.02.1998, at *Dikwewa, Tangalle* being members of an unlawful assembly with the common object of causing hurt to, *Mahantha Gamage Sumanawathie, Palitha Samarasinghe, Priyantha Samarasinghe, Ajith Kumara Samarasinghe, Suranga Samarasinghe and Sanjeevani Samarasinghe*, and thereby committed an offence punishable under section 140 of the Penal Code.
- ii. At the same time, place and in the course of the same transaction they caused the death of *Mahantha Gamage Sumanawathie* while being members of the said unlawful assembly and thereby committed an offence punishable under section 296 read with section 146 of the Penal Code.
- iii. At the same time, place and in the course of the same transaction they caused the death of *Palitha Samarasinghe* while being members of the said unlawful assembly and thereby committed an offence punishable under section 296 read with section 146 of the Penal Code.
- iv. At the same time, place and in the course of the same transaction they caused the death of *Priyantha Samarasinghe* while being members of the said unlawful assembly and thereby committed an offence punishable under section 296 read with section 146 of the Penal Code.
- v. At the same time, place and in the course of the same transaction they caused the death of *Ajith Kumara Samarasinghe* while being members of the said unlawful assembly and thereby committed

an offence punishable under section 296 read with section 146 of the Penal Code.

- vi. At the same time, place and in the course of the same transaction they caused the death of *Suranga Samarasinghe* while being members of the said unlawful assembly and thereby committed an offence punishable under section 296 read with section 146 of the Penal Code.
- vii. At the same time, place and in the course of the same transaction they caused the death of *Sanjeevani Samarasinghe* while being members of the said unlawful assembly and thereby committed an offence punishable under section 296 read with section 146 of the Penal Code.
- viii. At the same time, place and in the course of the same transaction they caused the death of *Mahantha Gamage Sumanawathie* and thereby committed an offence punishable under section 296 read with section 32 of the Penal Code.
- ix. At the same time, place and in the course of the same transaction they caused the death of *Palitha Samarasinghe* and thereby committed an offence punishable under section 296 read with section 32 of the Penal Code.
- x. At the same time, place and in the course of the same transaction they caused the death of *Priyantha Samarasinghe* and thereby committed an offence punishable under section 296 read with section 32 of the Penal Code.
- xi. At the same time, place and in the course of the same transaction they caused the death of *Ajith Kumara Samarasinghe* and thereby

committed an offence punishable under section 296 read with section 32 of the Penal Code.

- xii. At the same time, place and in the course of the same transaction they caused the death of *Suranga Samarasinghe* and thereby committed an offence punishable under section 296 read with section 32 of the Penal Code.
- xiii. At the same time, place and in the course of the same transaction they caused the death of *Sanjeevani Samarasinghe* and thereby committed an offence punishable under section 296 read with section 32 of the Penal Code.
- xiv. At the same time, place and in the course of the same transaction they caused mischief to the goods in the house of *Mahantha Gamage Sumanawathie* while being members of the said unlawful assembly and thereby committed an offence punishable under section 410 read with section 146 of the Penal Code.
- xv. At the same time, place and in the course of the same transaction they caused mischief to the goods in the house of *Mahantha Gamage Sumanawathie* and thereby committed an offence punishable under section 410 read with section 32 of the Penal Code.
- xvi. At the same time, place and in the course of the same transaction they caused damage to the house belonging to *Mahantha Gamage Sumanawathie* by an offensive weapon and thereby committed an offence punishable under section 03 of the Offensive Weapons Act No.18 of 1966 read with section 32 of the Penal Code.
- xvii. At the same time, place and in the course of the same transaction they committed robbery of cash and jewellery worth Rs. 232,500/-

in the possession of *Mahantha Gamage Sumanawathie* while being members of the said unlawful assembly and thereby committed an offence punishable under section 380 read with section 146 of the Penal Code,

- xviii. At the same time, place and in the course of the same transaction they shot at *Gamini Samarasinghe* and thereby committed the offence of attempted murder punishable under section 300 read with section 32 of the Penal Code and section 44a of the Firearms Ordinance No.33 of 1916 as amended by Act No.22 of 1996.
- xix. At the same time, place and in the course of the same transaction they assaulted *Wasantha Samarasinghe* by sharp cutting weapons and committed the offence of attempted murder and thereby committed an offence punishable under section 146 of the Penal Code.
- xx. At the same time, place and in the course of the same transaction they assaulted *Wasantha Samarasinghe* by sharp cutting weapons and committed the offence of attempted murder and thereby committed an offence punishable under section 300 read with section 32 of the Penal Code.
- xxi. At the same time, place and in the course of the same transaction they assaulted *Lalith Abeysekara* by sharp cutting weapons and committed the offence of attempted murder and thereby committed an offence punishable under section 300 read with section 32 of the Penal Code.
- xxii. At the same time, place and in the course of the same transaction they assaulted *Lalith Abeysekara* by sharp cutting weapons and committed the offence of attempted murder while being members

of the said unlawful assembly and thereby committed an offence punishable under section 300 read with section 146 of the Penal Code.

xxiii. At the same time, place and in the course of the same transaction they committed criminal trespass to the house of *Mahantha Gamage Sumanawathie* and committed the offence of house breaking at night and when the said offence was committed they used a gun and thereby committed an offence punishable under section 443 read with section 32 of the Penal Code and section 44b of the Firearms Ordinance No.33 of 1916 as amended by Act No.22 of 1996.

2. Though the indictment was originally forwarded to the *High Court of Hambantota* as the *High Court of Tangalle* had been established pending the commencement of the trial at the *High Court of Hambantota*, the case has been transferred to the newly established *High Court in Tangalle* and the trial commenced therein by the Learned High Court Judge without a jury. At the conclusion of the trial, the Learned High Court Judge has convicted the appellants of the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 18th, 19th, 20th and 23rd charges in the indictment, and proceeded to pass sentence on the appellants as follows;

Charge No.	Sentence
01	six month's rigorous imprisonment
02	death sentence
03	death sentence
04	death sentence
05	death sentence
06	death sentence

07	death sentence
08	death sentence
09	death sentence
10	death sentence
11	death sentence
12	death sentence
13	death sentence
14	two year's rigorous imprisonment
15	two year's rigorous imprisonment
16	20 year's rigorous imprisonment and a fine of Rs.20,000/- with a default sentence of two year's rigorous imprisonment
18	death sentence
19	20 year's rigorous imprisonment and a fine of Rs.10.000/- with a default sentence of one year's rigorous imprisonment
20	20 year's rigorous imprisonment and a fine of Rs.10.000/- with a default sentence of one year's rigorous imprisonment
23	15 year's rigorous imprisonment and a fine of Rs.20,000/- with a default sentence of two year's rigorous imprisonment

3. The appellants being aggrieved by the conviction and the sentences imposed have preferred the instant appeal bearing nos HCC 260 to 269/18 to this Court.

The case of the prosecution

4. The deceased, the injured together with PW3 and PW4 have been asleep in the house that came under attack between 01.30 hrs – 02.30 hrs on 19.02.1998. The people who attacked the house, have demanded that the door of the house be

opened. PW3 being concerned had directed the others in the house against it. PW3 has thereafter attempted to open a window. At that moment an explosive device had been lobbed into the house. The subsequent blast had injured a leg of PW3. Though PW3 had tried to hide under a bed thereafter, as his brother was hiding under the same, he had been unable to do so. Thereafter, PW3 has climbed up to the roof of the house and hid himself there. At that moment, PW3 had supposedly seen the 1st, 2nd, 4th, 8th, 12th, 14th, 16th, 17th, 19th and the 20th accused among others who were initiating the attack on the house the witness was in. The first accused had been armed with a gun. PW4 had been inside the house when an explosive device was lobbed into the house. The blast had injured PW4. Sometime later the several persons have stormed the house. The first accused and some others have purportedly locked up PW4 and the other occupants in a room. Subsequently, a person had dragged PW4 out of the room she was locked up in and had assaulted her. PW4 has become unconscious due to the assault. PW4 also has identified the 1st accused among the persons who stormed the house.

The case of the accused

5. All appellants have denied any involvement in the incident and contended that they have been falsely implicated. The 2nd and the 4th appellants have raised an alibi.
6. When the instant application in appeal was taken up for argument, the Learned Counsel for the appellants raised the following common grounds of appeal;
 1. The Learned Trial Judge had erred by failing to evaluate the deposition given in the Magistrate Court by the deceased PW3 *Gamini Samarasinghe* though it was admitted at the trial before the High Court.

2. The Learned Trial Judge had erred by failing to properly evaluate the evidence of PW4 *Wasantha Samarasinghe*.
7. Upon the case being transferred to the *High Court of Tangalle* it has been re-registered and the case has been allocated with the case no. HC 11/2002. The trial has thereafter commenced and moved forward under the purview of four different High Court Judges.
8. As stated above, the trial has commenced before the 1st Judge and the prosecution has closed its case after the examination of eleven of its witnesses' listed in the back of the indictment. The 1st Judge himself has thereafter considered that there were grounds for proceeding with the trial further and has called upon the appellants and the others named as accused for their defence. The 1st, 4th, 8th, 12th, 15th, 16th, 17th, 19th, 20th appellants and others named as accused have commenced their defence and adduced evidence through the examination of their witnesses. Subsequently, the defence has been closed.
9. The 2nd Judge has been nominated as the *High Court Judge of Tangalle* in due course. An application has been made before the 2nd Judge to resummon and rehear the prosecution witnesses no.'s 3 and 4. The 2nd Judge has granted approval to the action sought by the application. Pending the examination of prosecution witnesses no. 3 and no.4 for the second time, the 3rd Judge has been nominated to preside as the *High Court Judge of Tangalle*.
10. The 3rd Judge has been informed that prosecution witness no.3 had passed away. An inquiry in that regard has been held and the death of prosecution witness no.3 substantiated. Thereafter, the 3rd Judge had made an order as follows on 21.11.2016;

පැමිණිලෙන් ඉල්ලා සිටින්නේ තංගල්ල මහාධිකරණයේ පැ.සා. 3 විසින් ලබා දෙන ලද සාක්ෂි පමණක් ආදේශ කර ගන්නා ලෙසයි. එහෙත් විත්තියෙන් කියා සිටින්නේ

පැ.සා. 3 විසින් තංගල්ල මහාධිකරණයේ සහ මහේස්ත්‍රාත් අධිකරණයේ පැවති ලඝු නොවන පරීක්ෂණයේදී පැ.සා. 3 විසින් ලබා දී ඇති සාක්ෂි යන දෙකම ආදේශ කර ගන්නා ලෙසයි.

තංගල්ල මහාධිකරණයේදී පැ.සා. 3 විසින් ලබා දෙන ලද සාක්ෂි පමණක් ආදේශ කර ගතහොත් විත්තියට එයින් අගතියක් සිදු විය හැකි බව පෙනී යයි. ඒ අනුව මියගිය පැ.සා. 3 විසින් තංගල්ල මහේස්ත්‍රාත් අධිකරණයේ පැවති ලඝු නොවන නඩු විභාගයේදී සහ මෙම මහාධිකරණයේදී පැවති නඩු විභාගයේදී දෙන ලද සාක්ෂි යන දෙකම ආදේශ කර ගැනීමට තීරණය කරමි.

11. In consequence the evidence led in the *High Court* and the deposition given in the *Magistrate Court* by such deceased witness had been admitted in terms of section 33 of the Evidence Ordinance No. 14 of 1895.

12. Further, prosecution witness no.4 has been re-called, examined on behalf of the prosecution for the 2nd time before the *High Court Judge of Tangalle* and cross examined by the appellants and others named as accused in the indictment.

13. Thereafter, the 4th Judge after the conclusion of the trial, has convicted the appellants of the charges referred to above. The 4th Judge has observed/concluded as follows in the disputed judgment dated 11.10.2018;

“පැමිණිල්ලෙන් කැඳවන්නට යෙදුනු ගාමිණි සමරසිංහ නමැති සාක්ෂිකරු (පැ.සා.03) අධිකරණයේ දෙනු ලැබ ඇති සාක්ෂියට අනුව පැහැදිලිව තහවුරු වන කරුණක්...”

...ඉන් පසුව පැමිණිල්ලෙන් කැඳවූ සාක්ෂිකාර වසන්තා සමරසිංහ (පැ.සා.04) මෙම නඩුවට අදාල සිද්ධියේ තවත් සිද්ධිය ඇසින් දුටු, සිද්ධියට මුහුණ දුන් තැනැත්තියක් ලෙස සාක්ෂි දුන් අයෙකි...

...මෙම සාක්ෂිකාරීගේ සාක්ෂිය 3, 5, 12, 15 චූදිතයින් හරස්
ප්රශ්නවලට භාජනය කරන ලද්දේ නැත."

14. Though the 3rd Judge has allowed the evidence of the deceased PW3 given at the *High Court of Tangalle* as well as the deposition given in the *Magistrate Court* to be led in evidence, the 4th Judge when delivering the disputed judgment has only referred to/given thought to the evidence given by the deceased PW3 in the *High Court of Tangalle* and not to the deposition given by such witness in the Magistrate Court. The 4th Judge therefore has acted in total contravention of the order made by the 3rd Judge, as reproduced above. Further, the prosecution witness no.4 has been recalled and cross-examined by the appellants and the others named as accused subsequent to such witness being examined on behalf of the prosecution, for the second time after being resummoned to give evidence at the trial. The 4th Judge delivering the disputed judgment has therefore come to an erroneous conclusion that the said witness has not been cross-examined on behalf of the 3rd, 5th, 12th and the 15th accused. Such circumstances are indicative of the fact that the 4th Judge has failed to evaluate the evidence in total. Thereby, causing serious prejudice to the accused-appellants.

15. The Learned Additional Solicitor General concedes that the 4th Judge has misdirected himself when he failed to evaluate evidence properly and thereby caused serious prejudice to the appellants.

16. The role of a Judge in a criminal case is critical, as such a Judge is responsible for ensuring that justice is served fairly and impartially. One of the most crucial responsibilities of a Judge is the evaluation of evidence presented during a trial. When evidence is not assessed properly the consequences can be profound or far-reaching.

17. To begin with, the failure to evaluate evidence properly can lead to wrongful convictions. When Judges do not scrutinise evidence with due diligence they

may inadvertently contribute to the conviction of innocent individuals. This devastates the lives of those wrongfully accused but also undermines the public trust in the judicial system. If a Judge fails to recognise the relevance or weight of critical evidence, such Judge may dismiss cases that warrant a conviction. Thereby, not only deprived victims of justice but also invigorate offenders. Improper evidence evaluation can also erode the integrity of a judicial system. When judgments are perceived unjust it fosters a sense of disillusionment among the public. Inadequate evaluation of evidence can set dangerous precedence in legal practice if Judges do not adhere to rigorous standards. When assessing evidence, it can affect future cases and contribute to a pattern of judicial responsibility.

18. In pursuit of justice, the integrity of a legal proceeding relies on the accurate evaluation of evidence. As stated above, when the evaluation of evidence is flawed it can lead to wrongful convictions or unfair outcomes that undermine the credibility of the legal system. Therefore, a retrial should be ordered in cases where the evaluation of evidence was faulty. Such action would ensure a fair reconsideration of the evidence adduced and uphold the principles of justice.

19. In those circumstances, I am inclined to set aside the disputed judgment together with the sentences imposed on the appellants and order a retrial.

Retrial ordered.

20. The Registrar of this Court is directed to send a copy of this judgment to the *High Court of Tangalle* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree.

Judge of the Court of Appeal