

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

**In the matter of an appeal against the  
Judgment of the High Court of  
Anuradhapura in terms of Section 331  
(1) 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 00108/2022**

High Court of Anuradhapura  
HCR HC 49/2013

Vs.

Dingiri Bandage Ranaweera,  
Kandugahawewa,  
Halmiiawetiya,  
Kebithigollewa.

**Accused**

**AND NOW BETWEEN**

Dingiri Bandage Ranaweera,  
(Presently at Bogambara Prison)

**Accused-Appellant**

Vs.

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

**Respondent**

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

**Counsel:** Nadeesha Kannangara for the Appellant.

Sudarshana De Silva, D.S.G. for the Respondent.

**Argued on:**     02.04.2025

**Judgment on:** 14.05.2025

## **JUDGMENT**

**AMAL RANARAJA, J,**

1. The Accused-Appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Anuradhapura* in HC Case No. 49/2013.

2. The charges in the indictment are as follows;

### Charge 1

That on or about 23.05.2007, at *Hemillawetiya*, within the jurisdiction of this Court, the appellant did commit robbery of two loaded T-56 magazines, property in the possession of one

*Dhanapalage Somaratne*, thereby committed an offence punishable under section 380 of the Penal Code.

#### Charge 2

That the appellant did at the same time, same place and in the course of the same transaction as in the 1<sup>st</sup> charge, use a T-56 type firearm, in the commission of the offences laid in the charges 3 to 7, thereby committed an offence punishable under section 383 of the Penal Code read with section 380.

#### Charge 3

That on or about 23.05.2007, within the jurisdiction of this Court, the appellant did commit murder by causing the death of one *Ukkubandage Sunethra Kanthi*, and have thereby committed an offence punishable under section 296 of the Penal Code.

#### Charge 4

That the appellant did at the same time, same place and in the course of the same transaction as in the 3<sup>rd</sup> charge, within the jurisdiction of this Court, commit murder by causing the death of

one *Ukkubandage Anoma Kanthi* and thereby committed an offence punishable under section 296 of the Penal Code.

Charge 5

That the appellant did at the same time, same place and in the course of the same transaction as in the 3<sup>rd</sup> charge, within the jurisdiction of this Court, commit murder by causing the death of one *Buddharalage Seelawathie* and thereby committed an offence punishable under section 296 of the Penal Code.

Charge 6

That the appellant did at the same time, same place and in the course of the same transaction as in the 3<sup>rd</sup> charge, within the jurisdiction of this Court, commit murder by causing the death of one *Manik Ralage Suraweera* and thereby committed an offence punishable under section 296 of the Penal Code.

Charge 7

That at the same time, same place and in the course of the same transaction as in the 3<sup>rd</sup> charge, within the jurisdiction of this

Court, the appellant did shoot one *Wimalasenage Nuwan Sanjeewa* with the said T-56 type firearm, with such intention or knowledge and under such circumstances that had he by such act caused the death of the said *Wimalasenage Nuwan Sanjeewa*, the appellant would have been guilty of murder, and that the appellant by such act caused hurt to the said *Wimalasenage Nuwan Sanjeewa*; and thereby committed an offence punishable under section 300 of the Penal Code.

3. At the conclusion of the trial, the Learned High Court Judge has convicted the appellant of all charges and sentenced him as follows:

Charge 1	A term of 02 years rigorous imprisonment and a fine of Rs. 1000.00 with a term of 3 months imprisonment in default of the payment of the fine.
Charge 2	A term of 02 years rigorous imprisonment and a fine of Rs. 1000.00 with a term of 3 months imprisonment in default of the payment of the fine.

Charges 3, 4, 5 and 6	The appellant has been sentenced to death.
Charge 7	A term of 05 years rigorous imprisonment and a fine of Rs.2500.00 with a term of 3 months imprisonment in default of the payment of the fine.

4. The appellant being aggrieved by the judgment and the sentencing order has preferred the instant appeal to this Court.

#### **Case of the prosecution**

5. The deceased named in the 3<sup>rd</sup> charge, *Sunethra Kanthi* is the wife of the appellant. The deceased named in the 4<sup>th</sup> charge, *Anoma Kanthi* is the sister of the appellant's wife. The deceased named in the 5<sup>th</sup> charge, *Buddharalage Seelawathie* is the mother of the appellant's wife. Lastly, the deceased named in the 6<sup>th</sup> charge, *Manik Ralage Suraweera* is the brother-in-law of the sister of the appellant's wife.
6. On 23.05.2007, the appellant has gone to his in-law's house to fetch his wife. However, because the appellant was under the influence of

alcohol, his wife has offered to return the next day. In that moment, the appellant has become angry and threatened to kill everyone in that household the next day before leaving.

7. Later that same day, around 10.30 pm, the appellant has gone to the house of PW 01 armed with a T56 weapon. He has pointed the weapon at PW 01, threatened to shoot him, and has taken away two loaded T56 magazines from PW 01.

8. In the early hours of the next day, when there was a light at the crack of dawn, the appellant had returned to his in-law's house. Upon seeing her husband with the T56 weapon the appellant's wife has run toward her sister's house and hid in the garden. The appellant has approached her, grabbing her by the hair and tried to drag her away. At that moment, the sister of the appellant's wife and the brother-in-law of the sister have intervened and warned the appellant. The appellant has been warned against doing anything untoward to his wife, *Sunethra Kanthi*. At that moment, the appellant has discharged his weapon at the deceased as mentioned in charges 3, 4, 5 and 6. The deceased have

suffered fatal gunshot wounds due to the shooting. PW 04 has also sustained injuries to his leg during the incident.

9. Following the shooting, the appellant has escaped into the nearby jungle and evaded capture until he was arrested by officers from the *Kabithigollawa Police Station*.

10. *Dr. S. B. Bopitiya*, affiliated with the *Kandy General Hospital*, and *Dr. R. D. N. Wijekoon*, a medical officer at the *Kabithigollawa Rural Hospital*, have conducted the post-mortem examinations on the deceased. The post-mortem reports have been marked ප්‍ර.04, ප්‍ර.05, ප්‍ර.06 and ප්‍ර.07.

### **Case of the appellant**

11. The appellant has maintained that his intention to visit his in-law's house was to fetch his wife. At that moment, a crowd has allegedly gathered intent on assaulting him. In a bid to escape the imminent danger, the appellant has discharged his firearm into the air to fend off the attackers.



12. Once the crowd dispersed, the situation has remained tensed. The appellant's wife, her sister along with the brother-in-law of the sister (*Suraweera*) have chosen to stay with the appellant. *Suraweera* has attempted to seize the firearm from the appellant escalating the already volatile situation.

13. The initial gunfire has attracted the attention of nearby police officers who were present for road clearance duty. In an unfortunate turn of events, the officers have mistakenly discharged their weapons in the direction of the appellant and the others present. The appellant has then witnessed the horrifying moment when both his wife and her sister were struck by police gunfire. Desperate and pleading for help, the appellant has found himself in a precarious position. Fearing for his safety, he has decided to withdraw into the nearby jungle, seeking refuge from the chaos surrounding him.

### **Grounds of appeal**

14. When the appeal was taken up for argument, the Learned Counsel for the appellant urged the following grounds of appeal:

- i. That the judgment of the Learned High Court Judge is erroneous and bad in law.
- ii. That the Learned High Court Judge has misdirected himself and erred in law and in fact.
- iii. That the prosecution has failed to prove the case and discharge its burden of proof beyond reasonable doubt.
- iv. That the Learned High Court Judge has failed to examine and evaluate the evidence placed before Court by the prosecution in accordance with well settled principles of criminal law.
- v. That the Learned High Court Judge has misdirected himself with regard to the evidence placed before Court to establish the ingredients of the charges.
- vi. That the Learned High Court Judge has failed to consider the prosecution's failure to establish beyond reasonable doubt the evidence pertaining to the incident.
- vii. That the Learned High Court Judge has failed to consider the material contradictions of the evidence given by prosecution witnesses.

viii. That the evidence placed before the Court by the prosecution itself has created a reasonable doubt with regard to the guilt of the accused.

ix. That the Learned High Court Judge has failed to give the benefit of the doubt to the accused and thereby acted contrary to well-established principles of criminal law.

15. The Learned Counsel for the appellant has argued that the appellant had not instilled a fear of immediate death, injury or unlawful restraint in PW 01 before taking away the two loaded T-56 magazines from the latter. It is stated that this is evident from the invitation extended by PW 01 to the appellant for a potluck gathering. Furthermore, the Learned Counsel contends that the prosecution has relied solely on interested witnesses. Despite having the opportunity to call independent witnesses, that the prosecution has failed to do so. Additionally, the witnesses presented by the prosecution have provided inconsistent testimony. The Learned Counsel for the appellant has drawn the attention of Court to several points in order to substantiate

the claim that the witness presented by the prosecution have provided inconsistent testimony.

Firstly, that it is notable that PW 01 has not mentioned in his statement to the police that the appellant had threatened him with death if he stepped outside the house during the incident involving the robbery. It is argued that this omission raises questions about the credibility of his account. Furthermore, although PW 01 has claimed that he subsequently hid in the jungle, yet this detail is contradicted by his earlier statements. Additionally, even though PW 01 has allegedly informed four other individuals about the robbery involving two loaded T56 magazines, but the context and specifics of these communications remain unclear.

16. Moving on to PW 03, the Learned Counsel contends that it is significant that his statement to the police did not include the detail that the appellant allegedly visited his house for the second time around midnight on the day before the incident involving the shooting of the deceased and such discrepancy complicates the prosecution's narrative. Moreover, while PW 03 has noted that his daughter, who is

the wife of the appellant spent the night in the jungle to evade potential harm, PW 04 has stated that his aunt stayed at her parent's house that night. This contradiction, it is contended further undermines the reliability of the witness evidence.

17. Moving onto PW 04, the Learned Counsel contends that he has failed to mention in his police statement that his mother, aunt and uncle were lined up and shot by the appellant. It is urged that this lack of detail is concerning and suggests inconsistencies in the testimonies presented by prosecution witnesses.

18. As for PW 06, who is the husband of the sister of the appellant's wife, the Learned Counsel contends that he has testified that on the day prior to the incident, the appellant had an argument with his father-in-law at their home. However, in his statement to the police, PW 06 has reported that an argument took place with both appellant's parents-in-law and his wife. It is argued that this highlights further inconsistencies in the testimonies.

19. Also the testimony of PW 06 during the examination indicated that he has heard shots being fired while he was on his way to the *Police Post* to report the appellant. However, in his statement to the police, he has claimed that he heard the shots on his way back. This inconsistency, it is argued, raises questions about the accuracy of PW 06's account. Furthermore, PW 06 has contradicted himself regarding the manner of his return, stating at one point that he returned on foot, at another that he used a bus.

20. Additionally, PW 06 has further testified that he instructed his wife to take their children to her mother's house. However, his police statement contradicted this as he has stated that he directed her to go to her sister's house.

21. These discrepancies, it is argued, undermine the reliability of PW 06's testimony and call into question the validity of his observations and actions during the incident.

22. The Learned Counsel for the appellant has also contended that, given the evidence that third parties were present at the scene of the crime armed and discharged their weapons, it is incumbent upon the prosecution to demonstrate that these shots did not cause the fatal injuries sustained by the deceased.

23. The Learned Senior Deputy Solicitor General in reply has maintained that the prosecution witnesses have provided their evidence after a lapse of nine years since the incident occurred. This lengthy delay gives rise to crucial questions about the witnesses' ability to accurately recall events, as they may struggle to remember critical details. The natural process of forgetting can lead to contradictions and omissions in their testimony.

24. Furthermore, the Learned Senior Deputy Deputy Solicitor General has highlighted that one particular witness i.e. PW 04 was only eight years old at the time of the incident. That such a young age may impair a child's capacity to remember and recount events with clarity. The contradictions and omissions identified in witness testimony do not fundamentally undermine the prosecution's case. He has further

asserted that the core elements of the prosecution's argument remain intact.

25. Additionally, the Learned Senior Solicitor General has also maintained that the appellant's claim that third parties were present at the scene of the incident, armed and allegedly responsible for discharging weapons that resulted in the fatal injuries to the deceased should be called into question since such an assertion was not brought up during the cross examination of the prosecution witnesses. Also, the fact that such a narrative did not arise at an earlier stage leads to the conclusion that it may be an afterthought introduced by the appellant.

26. PW 01 and the appellant have been neighbours for some time and have been well acquainted with one another. This familiarity has contributed to a misunderstanding when the appellant pointed a firearm at PW 01. PW 01 has initially believed that the appellant was joking. However, as the situations escalated, PW 01 has quickly realized that the appellant was not joking, leading to a sudden surge of fear for his life and well-being.



27. In an instinctive reaction to this insinuation, PW 01's wife has taken action. She has thrown the loaded ammunition magazines toward the appellant, an act of desperation to protect her husband and assert their safety. The appellant has taken possession of the magazines before leaving the scene.

28. The scenario involves the appellant with an intention to gain wrongfully has moved two loaded ammunition magazines, movable property, out of the possession of PW 01 without his consent consequent to causing fear of instant death/ hurt in PW 01.

29. A protracted duration before the evidence was presented can raise significant concerns. Nine years or more is an extensive period, during which memories may fade, details can be lost and the context of events may be forgotten. This delay can lead to questions about the accuracy of the testimonies. Witnesses may struggle to recall specifics after a significant time gap. Memories can change, leading to inaccuracies in testimony. Stress, trauma and natural passage of time can all affect how events are remembered. One of the witnesses has been only eight

years old at the time of the incident. Children often have different capabilities for memory and factual recall compared to adults. Their understanding of events may be limited, and they could misinterpret or misunderstand what they witnessed. This could lead to testimonies that lack detail or clarity. New evidence or accounts from others that contradict the earlier comprehension of facts can also create confusion, or that therein recollections could have been influenced by later discussions or pressures.

30. Further, the discrepancies discussed earlier do not have a direct bearing on the prosecution's case. The contradictions and omissions identified do not pertain to the key elements that are necessary for establishing the prosecution's case beyond a reasonable doubt. Consequently, these discrepancies should be deemed irrelevant and disregarded in the context of the case.

31. It is essential to focus on the fundamental aspects that constitute the prosecution's case. In legal proceedings, the burden of proof lies with the prosecution, and they must establish each essential element of the crime charged with clarity and certainty. Therefore, any discrepancies

that not directly impact the core issues at hand should not undermine the integrity of the prosecution's case.

32. The principle set out in section 134 of the Evidence Ordinance No.14 of 1895 emphasizes that the number of witnesses required to substantiate a claim or fact is not fixed or premeditated. The principle allows for flexibility in the presentation of evidence. It acknowledges that a single witness's testimony can be sufficient to establish the truth of a fact, depending on the credibility of that witness. The focus shifts from the quantity of evidence to its quality. A credible witness can provide more compelling evidence than multiple witnesses who may lack reliability.

33. Further, in contemporary society, there is a growing trend in which individuals exhibit reluctance to engage in litigation, whether as contesting parties or as witnesses. This reluctance has profound implications, particularly when it comes to assisting investigators in crime. This could significantly hamper the effectiveness of law enforcement efforts. Additionally, this aversion extends to the reluctance of individuals to provide witness accounts regarding

criminal acts. Several factors contribute to this pervasive reluctance. Fear of retaliation, the legal system being intimidating and lengthy, causing potential witnesses to feel overwhelmed or reluctant to participate, are reasons for such reluctance.

34. Consequently, the prosecution's examination of witnesses during the trial who were essential to its case.

35. In the realm of criminal justice, the testimony of witnesses is vital for the integrity of legal proceedings. However, it is not uncommon for witnesses to withhold specific details such as the date of the offence until it is suggested to them by the Counsel. Several factors can justify this reluctance to provide information.

36. Human memory is inherently unreliable specially when it pertains to specific details like dates. Witnesses may struggle to recall exact dates due to the overwhelming stress of witnessing a crime. When a Counsel suggests a date, it can serve as a cognitive cue, triggering recollections that the witness might have otherwise overlooked. Therefore, this

hesitation is not necessarily an indication of deceit but a reflection of complexities of human memory. Further emotional distress can impair the ability of a witness to recall details clearly. When a Counsel suggests a date, it may provide the witness with a sense of security, allowing a witness to be more confident in his response. Thus, the initial reluctance can be understood as a natural response to high-stress circumstances. Also, a witness may feel overwhelmed by the formality and pressure of proceedings in a Court house. As a result, a witness might wait for prompts to provide information that the witness believed is expected or necessary. This behaviour aligns with the common psychological tendency in high pressure situations to rely on external cues for guidance.

37. Recognizing these distinctions allows for a fairer interpretation of the reliability and intentions of witnesses in judicial proceedings.

38. The Counsel for the appellant has contended that the appellant's initial discharge of his firearm into the air inadvertently drew the attention of nearby police officers, who were engaged in road clearance duty at the time. This act which was likely intended as a warning,

resulted in a tragic unforeseen series of events. Due to a misunderstanding involving mistaken identity, the police officers, believing themselves to be responding to a threat, have discharged their weapons in the direction of the appellant and the deceased. The appellant has subsequently witnessed the horrifying moment when the deceased was struck by police gunfire. While the appellant has presented this narrative as a critical part of his defence, it is important to note that key elements of this account have not been brought up during the cross examination of prosecution witnesses. The omissions of the appellant's perspective during this critical phase of the trial raises significant concerns about the credibility of his claims. Furthermore, the failure to address this omission leaves unanswered questions regarding the reliability of the appellant's account, which appears to be an afterthought rather than a well-integrated part of the defence of the appellant.

39. In light of these considerations, it becomes evident that relying solely on the appellant's narrative may not be advisable. The unexplained gaps in the appellant's testimony, calls into question the accuracy of this story. Consequently, it is imperative that the Court approach this narrative with caution, weighing the available evidence carefully before drawing any conclusions about the appellant's involvement in this incident.

40. Due to the circumstances set out above, I am not inclined to interfere with the disputed judgment together with the sentencing order.

*Accordingly, I dismiss the instant appeal.*

*I make no order regarding costs.*

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

**Judge of the Court of Appeal**

**B. SASI MAHENDRAN, J.**

I agree.

**Judge of the Court of Appeal**