

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

Court of Appeal
Case No. CA HCC 358/2017

Complainant

Vs.

High Court of Galle
Case No. 3819/13

M. M. Chaminda Ravindra

Accused

AND NOW BETWEEN

M. M. Chaminda Ravindra

Accused-Appellant

Vs.

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

Complainant-Respondent

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

Counsel: Neranzan Jayasinghe with Imangsi Senarath and Randunu
 Hellage for the Accused-Appellant.

Shanaka Wijesinghe, A.S.G. for the Respondent.

Argued on: 02.10.2025

Judgment on: 28.10.2025

JUDGMENT

AMAL RANARAJA, J.

1. The accused appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Galle* in High Court case number HC 3819/2013.

The charges in the indictment are as follows,

Charge 01

That on or about May 11, 2005, in the District of *Galle* within the jurisdiction of this Court, the appellant committed murder by causing the death of one *Polwatta Gallage Birty Gunathilake*, and thereby committed an offence punishable under Section 296 of the Penal Code.

Charge 02

That in the course of the same transaction as above, the appellant committed robbery of Rs. 128400.00, property in the possession of *Janaki Hemamala Gunaratne*, and thereby committed an offence punishable under Section 380 of the Penal Code.

2. At the conclusion of the trial, the learned High Court Judge has convicted the appellant of the charges and sentenced the appellant to death in respect of the first charge and a term of 10 year rigorous imprisonment and a fine of Rs. 1000.00 with a term of 1 week in default of payment of the fine in respect of the second charge.
3. Aggrieved by the conviction, the disputed judgment and the sentencing order, the accused appellant has preferred the instant appeal to this Court.

Case of the prosecution

4. PW02 and PW01 are husband and wife. They are the parents of a child. PW02 has been a teacher and PW01 has been the director of an educational institute. The child has been of school going age.
5. In those circumstances, there had been no one in the house occupied by PW02 and his family during the day on weekdays.
6. As such, the deceased has been employed as a caretaker. The deceased had reported to work in the morning and left at the time PW02 returned home with the child after school in the afternoon.
7. On May 11, 2005, PW02 along with the child has returned home in the afternoon. On his return, he has observed that the house had been ransacked by an unknown person/persons. The doors that were locked broken open, and the lifeless body of the deceased lying on the floor of the kitchen.

8. Subsequent searches by PW01 and PW02 have revealed that some items of jewelry and other belongings have been removed by the person or persons who ransacked the house.
9. Following a complaint, an investigation has commenced and an item of jewelry that had been removed from the cupboard it was stored in the house, taken into custody from the possession of PW05, who had allegedly purchased it from the appellant and another individual. This item of jewelry has been identified by PW01, the person who possessed it and marked as 03.

Case of the appellant

10. The appellant asserts that he was approached by two individuals who presented him with various items of jewelry and a camera. They have sought his assistance in disposing of those items to help one of the individual's sister secure funds to travel abroad. The appellant has agreed to their request and received a payment of Rs. 2000.00 for the assistance he provided.

Grounds of appeal

11. When the matter was taken up for argument, the Counsel for appellant raised the following grounds of appeal,
 - i. The learned High Court Judge had arrived at a wrong conclusion that the items of circumstantial evidence adduced by the prosecution were sufficient to arrive at the one and only inference that the accused appellant was the person who had committed the murder and robbery.

- ii. The learned High Court Judge had allowed to place inadmissible evidence, and the learned High Court Judge had failed to comply with section 33 of the Evidence Ordinance.
 - iii. The learned High Court Judge had rejected the dock statement on unreasonable grounds.
12. The item of jewelry marked as ວຸ03 has been confirmed as stolen from the home of PW01 and PW02 on the day of the break in, specifically on May 11, 2005. This item has been taken from the cupboard where the valuables were stored. On the same day in the same incident, the deceased has also been found smothered in the kitchen of the house.
13. In his testimony, PW05 has stated that on May 12, 2005, between 11.00 and 12.00 hours, the appellant along with another individual approached him with an offer to sell various items, including jewelry. PW05 had subsequently purchased those items.
14. Notably among the items bought has been the item of jewelry marked ວຸ03, which PW05 has identified during the Court proceedings.
15. In those circumstances, applying the provisions in section 114 of the Evidence Ordinance No. 15 of 1895 and the matters eluded in illustration 'A', the appellant being charged with murder and committing robbery in the same transaction, the learned High Court Judge has concluded that the recent unexplained possession of a stolen property i.e. the item of jewelry marked ວຸ03 is presumptive evidence against the appellant for the robbery charge and would similarly serve as evidence against him for the murder charge.

16. However, the Counsel for the appellant has raised concerns regarding the prosecution's failure to establish through compelling evidence, the appellant's recent and unexplained possession of the item of jewelry marked as පැ03.

17. He has directed the Court's attention to the inconsistencies surrounding the timing of the appellant's arrest and the recovery of the item of jewelry from the possession of PW05 among other discrepancies. PW05, a civilian and PW10, an investigator in their testimony has stated as follows,

ප්‍ර: ඇවිල්ලා මෙයාලාගෙන් ගත්ත බඩු ටික දෙන්න කීවා. සල්ලි ටික වියදම් වුනා කීවා. බඩු ටික දෙන්න කීවා. මම දුන්නා.

ප්‍ර: 12ට ආවේ?

උ: පැය එකහමාරක් ඇතුළත ආවා.

ප්‍ර: කීයටද බඩු මිලදී ගත්තේ?

උ: 11ත් 12ත් අතර බඩු මිලදී ගත්තේ.

ප්‍ර: පොලිසියෙන් එනකොට කීයට විතරද?

උ: 12.30 1.30ත් අතර.

ප්‍ර: කවුරු කවුරුද පොලිසියේ ආවේ?

උ: මෙන්ඩිස් මහත්තයායි තව තුන්දෙනෙක් ආවා.

ප්‍ර: තව කාත් එක්කද ආවේ?

උ: මේ දෙන්නා සමඟ. එක්කෙනෙක් ආවා.

[vide page 394 of the Appeal Brief]

ප්‍ර: මහත්මයාට හොඳටම විශ්වසයි මේ දෙනිනා ආවේ 10.00 න් 10.30 න් අතරේ?

උ: නැහැ 11.00 න් 12.00 න් අතරේ.

ප්‍ර: එතකොට පොලිසියෙන් ආවේ?

උ: 01.30 න් 02.00 න් අතර. ඉස්කෝලේ අරින ටයිම් එකේදි පොලිසියෙන් ආවේ.

[vide page 405 of the Appeal Brief]

ප්‍ර: ප්‍රකාශ ගත්තේ පොලිසියේදි?

උ: පොලිසියේදි.

ප්‍ර: සවස තුන, හතර වුණා?

උ: එහෙමයි.

ප්‍ර: පොලිසිය තමාලාගේ ගෙදරට රැ ආවේ නැහැ?

උ: නැහැ

ප්‍ර: රැ 11.30ට ආවේ නැහැ?

උ: නැහැ.

ප්‍ර: එක්කෙනයි අරගෙන ආවේ?

උ: එක්කෙනයි.

ප්‍ර: ඒ පළවෙනියා?

උ: 01 වෙනියා.

ප්‍ර: තමාගෙන් කට උත්තර ගත්තේ පොලිසියට ගෙනැල්ලා?

උ: එහෙමයි.

[vide page 406 of the Appeal Brief]

ප්‍ර: දැන් මහත්මයා කීව්වා නෙවිල් කරුණාරත්න යන අයගෙන් හොයාගෙන අංක: 53/2/ඒ, කොළඹ පාර, කලුවැල්ල, ගාල්ල කියන ලිපිනයට ගියා කියා?

උ: එහෙමයි.

ප්‍ර: කියටද එම ස්ථානයට ගියේ?

උ: පැය 23.05ට ඔහුගෙන් ප්‍රකාශයක් සටහන් කර ගත්තා.

ප්‍ර: කාගේ උපදෙස් මතද එම ප්‍රකාශය සටහන් කර ගත්තේ?

උ: උප සේවා ප්‍රධාන පොලිස් පරීක්ෂක මෙන්ඩිස් මහතාගේ නියෝගය මත.

ප්‍ර: කවුද ඒ වෙලාවේ එතන හිටියේ?

උ: උප සේවා ප්‍රධාන පොලිස් පරීක්ෂක මෙන්ඩිස් මහතා, පොලිස් පරීක්ෂක ගිණිගේ මහතා සහ මා ඇතුළු කණ්ඩායම.

ප්‍ර: සැකකරුවන් කවුද හිටියේ ඒ අවස්ථාවේ?

උ: දෙදෙනාම හිටියා.

ප්‍ර: ඒ වෙලාවේ නෙවිල් කරුණාරත්න යන අයගෙන් භාණ්ඩ භාර ගැනීමක් වුනාද?

උ: එහෙමයි.

ප්‍ර: කවුද භාර ගත්තේ?

උ: මෙන්ඩිස් මහතා විසින් නඩු භාණ්ඩ භාර ගත්තා.

ප්‍ර: ඒ භාණ්ඩ මොනවාද කියා දන්නේ නෑ මහත්තයා?

උ: රන් භාණ්ඩ බව දන්නවා.

ප්‍ර: ඒවා දැක්කේ නෑ?

උ: දැක්කා.

[vide pages 472, 473 of the Appeal Brief]

18. According to PW05, the appellant has sold several items, including the item of jewelry marked 3703 on May 12, 2005, between 11.00 and 12.00 hours.
19. The investigating officers have confronted PW05 approximately an hour and a half later. At this time, the item of jewelry marked 3703 has been handed over to an investigating officer by PW05.
20. However, as per PW10, an investigating officer, it has been stated that he alongside PW09, *I.P. Ginage*, the appellant and another individual visited PW05's residence for the first time on May 12, 2005, at 23.05 hours. Subsequently, an investigating officer has proceeded to record PW05's statement at 23.15 hours on the same day.
21. PW09 has also been involved in the investigation of the incident referred to in the charges. When the case went to trial, this officer had been abroad, making it impossible to secure his attendance without significant delay.
22. Consequently, the learned High Court Judge has ostensibly invoked the provisions in section 32(2) of the Evidence Ordinance No. 15 of 1895, allowing the prosecution to submit his notes, made in the course of his professional duty, from the information book maintained at the designated police station as evidence. These notes had been accepted as substantive evidence in the proceedings.
23. In his notes (written statement), PW09 has noted that the appellant was arrested on May 12, 2005, at 19.05 hours.
24. Upon considering the testimonies of PW05, PW10 and the written statements of PW09, it is evident that there are contradictions regarding

the time of the appellant's arrest and the recovery of the item of jewelry marked 303 from PW05's possession.

25. These inconsistencies not only raise doubts about the specific timeline but also impact the credibility of the testimony provided by PW05. Since the prosecution heavily relies on presumptive evidence to establish its case, such discrepancies undermine the very foundation of the prosecution's argument.
26. The integrity of witness testimonies is crucial in legal proceedings and any conflict in evidence presented can lead to significant concerns about reliability.
27. In this instance, the inconsistencies in the timing surrounding the sale and recovery of the item of jewelry marked 303 create uncertainty. Such uncertainty casts a shadow over PW05's credibility and lead the Court to question the overall validity of the prosecution's claims.
28. To build a strong case, it is essential for the prosecution to present clear and consistent evidence. The reliance on presumptive evidence further complicates matters; when the supporting testimony is contradictory, it becomes increasingly challenging to establish guilt of the accused beyond a reasonable doubt.
29. Therefore, these discrepancies are not merely trivial issues; they strike at the core of the prosecution's case.
30. Presumptive evidence is indirect or circumstantial evidence that allows a conclusion to be drawn about a fact based on the existence of other related facts, rather than directly proving it.

31. Though presumptive evidence is useful, it is also inherently fragile. To act upon such evidence, it must meet the standard of certainty that leaves no room for doubt. Therefore, it is crucial that this evidence withstands vigorous scrutiny and maintains a high degree of reliability before any action is taken based on such evidence.

32. Unfortunately, the presumptive evidence the prosecution relies on to establish its case is lacking in such attributes.

33. In those circumstances, I am inclined to interfere with the conviction, the disputed judgment and the sentencing order and I set aside the same accordingly.

Appeal allowed.

I make no order regarding costs.

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

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree

Judge of the Court of Appeal