

**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  
Criminal Procedure Act No. 15 of  
1979**

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

**Complainant**

Court of Appeal  
**Case No. CA HCC 222-223/2023**

Vs.

High Court of Chilaw  
**Case No. HC 49/2013**

Magistrate Court of Marawila  
**Case No. B846/10**

1. Rajapaksha Mudiyansele Mahesh  
Duminda Rajapaksha
2. Rajapaksha Mudiyansele  
Pushpakumara
3. Rajapaksha Mudiyansele Arjuna  
Rajapaksha
4. Thilakarathna Mudiyansele Tikiri  
Bandage Prasanna Sisira Kumara

**Accused**

**AND NOW BETWEEN**

Rajapaksha Mudiyansele  
Pushpakumara

**2<sup>nd</sup> Accused-Appellant**

Thilakarathna Mudiyansele Tikiri  
Bandage Prasanna Sisira Kumara

**4<sup>th</sup> Accused-Appellant**

Vs.

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

**Complainant-Respondent**

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

**Counsel:**    Anil Silva P.C. with Avindra Silva for the 2<sup>nd</sup> and 4<sup>th</sup>  
                  Accused-Appellants.

Suharshi Herath, D.S.G. for the Respondent.

**Argued on:**     18.09.2025

**Judgment on:** 22.10.2025

**JUDGMENT**

**AMAL RANARAJA, J.**

1. The second and the fourth accused appellants (hereinafter referred to as "Appellants") have been indicted in the *High Court of Chilaw* together with two others in High Court case number HC 49/13.

The charge in the indictment is as follows:

Charge 01

That on or about, July 27, 2010, at *Pothuwatawana* in the District of *Puttalam* within the jurisdiction of this Court, the appellants have committed murder by causing the death of

one *Senarath Gunasekara Arachchilage Sarath* and have thereby committed an offence punishable under Section 296 of the Penal Code.

2. At the conclusion of the trial, the learned High Court Judge has found the appellants and one other (third accused) guilty of the charge, convicted the appellants and the other of the same and proceeded to sentence them to death.
3. Aggrieved by the conviction and the disputed judgment together with the sentence, the appellants have preferred the instant appeal to this Court.

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

4. On July 27, 2010, the deceased, accompanied by PW01 has visited a boutique located in the bazaar at *Pothuwatawana* junction to purchase some provisions. At that time, the fourth accused appellant has been in the vicinity.
5. He has made contact with another individual via a mobile phone after which the third accused named in the indictment has arrived at the location shortly thereafter.
6. The third accused together with the fourth accused appellant have argued with the deceased and pushed him onto the ground. When the deceased was fallen on the ground, the first accused and the second accused appellant too have arrived at the scene.
7. The first accused has proceeded to slap the deceased on his face while the second accused appellant and the third accused have assaulted the deceased with sharp edged weapons.

8. Consequent to such attack, the appellants together with the other accused, have fled the scene.
9. Though the deceased has been rushed to hospital for treatment, he has succumbed to his injuries.
10. PW06, *Dr. W. R. A. S. Rajapaksha, Assistant Judicial Medical Officer* has conducted the post-mortem examination on the deceased and opined that the cause of death was:

- i) Bilateral hemothorax
- ii) Multiple stab injuries to the abdomen

The post-mortem report has been presented as an exhibit marked “P1”.

### **Case of the appellants**

11. The appellants have denied any involvement in the incident referred to in the charge and have submitted pleas of alibi to support their claims.
12. When the matter was taken up for argument, the counsel for the appellants has raised the following ground of appeal.
  - i) Has the prosecution failed to prove the presence of the appellants at the scene of the incident and therefore has the case against the appellants not been proved beyond a reasonable doubt?
  - ii) Has the learned High Court Judge misdirected herself in applying the legal principles applicable to the defence of alibi?

13. A plea of alibi is a vindication in a criminal case where the accused claims he was physically somewhere else at the time of the alleged crime was committed, making it impossible for him to have been at the crime scene.
14. Accordingly, in the legal realm, a plea of alibi serves as a critical defence strategy that asserts the accused person's presence in a different location at the time the crime was committed.
15. One fundamental principle surrounding this plea is that there is no burden placed on the accused to prove his alibi.
16. Instead, the onus rests entirely with the prosecution. It is the responsibility of the prosecution to establish beyond a reasonable doubt that the accused person was present at the crime scene when the crime occurred.
17. This principle underscores the presumption of innocence that is foundational to a justice system.
18. The accused person does not need to offer evidence or witnesses to corroborate his alibi; rather, the prosecution must work to dispel the reasonable doubt that may arise from such claim.
19. Hence, if the accused pleads an alibi, the prosecution is challenged to provide compelling evidence that negates the possibility of the accused being elsewhere.
20. In *Banda and Others v Attorney General* [1999] 3 SLR 169, F.N.D. Jayasuriya, J. has held:

*“There is no burden whatsoever on an accused person who puts forward a plea of alibi and the burden is always on the prosecution to establish beyond reasonable doubt that the accused was not elsewhere but present at the time of the commission of the criminal offence.”*

21. Also in *Punchibanda v The State* [1973] 76 NLR 293 at 308, G.P.A. De Silva, S. P. J. (as he was then) has held:

*“Where the defence is that of an alibi, the accused person has no burden as such of establishing any fact to any degree of probability.”*

22. Further when an accused sets up a plea of alibi, J. A. N. De Silva C.J. in *Jayatissa v Attorney General* [2010] 1 SLR 279 at 283 has suggested three postulates;

- i) If the evidence is not believed the alibi fails,*
- ii) If the evidence is believed, it succeeds,*
- iii) If the alibi evidence is neither believed nor disbelieved, but would create a reasonable doubt, the accused should get the benefit of the doubt.*

23. Matters relating to a plea of alibi being as discussed above, now leads me to turn my attention to the disputed judgment.

24. In the trial at hand, the appellants have submitted pleas of alibi. The learned High Court Judge has outlined these pleas and subsequently evaluated their credibility.

25. During this evaluation, the learned High Court Judge has applied various tests commonly used to assess the reliability of evidence,

indicating an implicit expectation that the burden lies on the appellants to substantiate their alibi.

26. Also, it is crucial to point out that the High Court Judge has not considered the appellants' pleas of alibi in a holistic manner. The thorough examination of the alibi should not only focus on individual credibility of the plea but also take into account the entirety of the prosecution's case.

27. By failing to integrate the alibi alongside the prosecution's testimonies and evidence, the learned High Court Judge has inadvertently overlooked important contextual factors that could strengthen the credibility of the appellants' claim.

28. Moreover, the learned High Court Judge has not come to a finding or concluded that the identity of the appellants at the scene of the crime had been established beyond a reasonable doubt. This raises significant concerns regarding the due consideration of the pleas of alibi.

29. If the prosecution's evidence regarding the identities are not compelling, then the pleas of alibi should warrant a more careful analysis.

30. In light of these observations, it appears that the learned High Court Judge's approach has led to a superficial evaluation of the pleas of alibi.

31. A more balanced consideration that weighs both prosecution's evidence and the pleas of alibi is necessary to ascertain whether the pleas of alibi hold up against the standard of reasonable doubt. The dismissal of the pleas of alibi without a robust examination against the entirety of the evidence presented has led to an unjust outcome.

32. In such circumstances, the learned High Court Judge has misdirected herself regarding the law.

33. The offence for which the appellants are charged is of a serious nature, carrying the possibility of capital punishment upon conviction. Given these circumstances, acquitting the appellants solely on the ground that the learned High Court Judge has misdirected herself regarding the law is not justified.

34. Therefore, a retrial is necessary to ensure that all legal considerations are adequately addressed.

*I set aside the conviction, the disputed judgment together with the sentence and order a retrial accordingly.*

*Retrial ordered.*

*I make no order regarding costs.*

35. The Registrar of this Court is directed to send this judgment together with the original case record to the *High Court of Chilaw* for compliance.

**Judge of the Court of Appeal**

**B. SASI MAHENDRAN, J.**

I agree

**Judge of the Court of Appeal**