

**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.

CA Case No: CA -HCC- 53/2018

HC of Kurunegala No: 168/2005

The Democratic Socialist Republic of Sri Lanka

Complainant

Vs.

1. Rajamuni Dewayalage Jayasuriya
2. Walimuni Arachchige Sunil Gunathilake

Accused

AND NOW BETWEEN

1. Rajamuni Dewayalage Jayasuriya

Accused-Appellant

Vs.

The Attorney General

Attorney General's Department

Colombo 12

Complainant-Respondent

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

Amal Ranaraja, J

Counsel : Saliya Pieris, PC, with Pasindu Tilakaratne for the Accused-Appellant
Shanaka Wijesinghe, ASG for the Respondent

Written 10.10.2018 by the Accused Appellant)

Submissions: 09.08.2021 and 24.10.2023 (by the Respondent)

On

Argued On : 21.11.2025

Judgment On: 18.12.2025

JUDGEMENT

B. Sasi Mahendran, J.

The Accused Appellant (hereinafter referred to as ‘the Appellant’), along with another, was indicted before the High Court of Kurunagala on the count of committing the offence of murder of one Rajamuni Dewayalage Pini, on or about 24th December 1995, punishable under Section 296 read with Section 32 of the Penal Code.

The prosecution led the evidence through nine witnesses, and marked productions from P1 to P4 and thereafter closed its case. After the conclusion of the prosecution's case, both accused, in their defence, made a dock statement.

Upon conclusion of the trial, the Learned Judge of the High Court delivered judgment on 26 April 2018. The Appellant was found guilty of the charge and sentenced to death. The 2nd Accused was acquitted.

Being aggrieved by the said conviction and sentence, the Accused had preferred an appeal to this court and submitted the following grounds of appeal:

1. Whether the learned trial judge erred in law by failing to act in terms of Section 196 of Code of Criminal Procedure?
2. Whether the learned trial Judge has failed to consider the contradictory positions taken up by the PW 02 and PW 04 with regard to the Identification of the Appellant in the Identification Parade?
3. Whether the learned trial Judge erred in law by failing to consider the contradictions and omissions marked by the defense, which go to the root of the case?
4. Whether the learned trial Judge failed to apply the test of probability and improbability in respect of the evidence of the Prosecution Witnesses No. 1, 4 and 11 whose evidence was unworthy of credit?
5. Whether the learned trial Judge failed to apply the test of probability and improbability in respect of the evidence of the investigating officers, whose evidence was unworthy of credit?
6. Whether the learned trial Judge failed to consider the dock statement made by the Accused-Appellant?
7. Whether the learned trial Judge failed to consider to the credibility of the prosecution witness no.4 who was the sole eyewitness, since also the learned State Counsel for the prosecution mentioned some issues regarding to PW-04 in his oral submission.

The facts and circumstances of this case are as follows,

PW 4, Surangika Sandamali, the granddaughter of the deceased, the only eyewitness of this case, stated that she was 7 years old at the time of the incident, and the date was 24th December 1995. She stated that she was with the deceased at the shop near her house, named Welekade, at the time of the incident. She stated that the incident occurred between 7.00 and 8.00 in the morning and that the distance from the house to the house was about 25 feet. She states that at that time, her father and her father's younger brother had gone to the Gokarella police station to file a complaint regarding the shop being broken into at night.

The witness said that the deceased had come from the shop and had come out of the shop to go to the main house, asking to speak to her if anyone came, and that at that time a motorbike was stopped. She states that the deceased, who had gone to the upper main house, had stopped it and returned to the small gap between the shop and the main road.

She has stated that at that time she recognized the people who had come on that motorbike, and that she had seen them coming to the shop regularly before that, and had seen them talking to the deceased before. The witness has stated that the deceased called them Jayasuriya and Sunil, and that they are known by that name.

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පු : කොයි වේලාවේද හැඳුනා ගත්තේ ?

උ : රීට කළිනුත් මම දැකලා තියෙනවා කෙසේට නිතරම යනවා එනවා කිරී අම්මාත් එක්ක කතා බහ කරලා ඉන්නවා. ඒ හින්දා අදුර ගත්තා.

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පු : මොකක් කියලද කතා කරන්නේ ?

උ : ජයසුරියයි පුනිල් කියලා තමා කිරී අම්මලා කතා කරන්නේ ඒ නමින් අදුරනවා.

She has stated that a person who stopped the motorcycle on the side of the road and took a knife that was in front of it, and she cannot remember who took it, but both had two knives in their hand. At the trial, we note that this witness cannot identify who was in the front seat and back seat.

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පු : කවිද ගත්තේ?

උ : ගත්තේ කවිද කියලා මතක නැහැ.

පු : රීට පස්සේ?

උ : දෙන්නාම අතේ පිහි දෙකක් තිබුනා එකක් ඉස්සරහ තිබිලා ගත්තා කවිද කියලා මට මතක නැහැ. අනිත් එක්කෙනා පිටිපස්සේ ඩිටපු කෙනා අතේ පිහියක් තිබුනා.

It should be noted that she has identified the 1st accused at the identification parade.

While standing outside, the deceased has uttered මාව මරන්න එපා පුතේ. She has stated that after that, a person named Appellant stabbed the deceased.

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ඕ : කවිද ඇත්තේ?

ස : ජයසුරිය කියන එක්කෙනා.

Even at that time, she had not identified which accused was Jayasuriya.

She further stated that the deceased's hands were cut while she was holding the knife. Accused then stabbed her neck, chest and face. She stated that when Appellant stabbed the deceased, the other person came to stab her with the knife.

At that moment, Jayasuriya remarked, “පොටි පොටි අය නෙමෙ, ලොකු අයගෙන් පලි ගන්න” (“Do not take revenge on small people, but on the big ones”), and both proceeded towards the main house. The witness then shouted, at which point the deceased collapsed on the ground near a sandy area. She further stated that she, too, shouted at the scene. After some time, her cousin arrived.

The witness affirmed that she was unaware of any prior enmity between the deceased and the individual who stabbed her. She confirmed that she had identified both accused during the identification parade, naming Jayasuriya as the first accused and Sunil as the second. Additionally, she stated that she was not aware of any disputes between the accused and her family.

During the cross-examination, the witness stated that the second accused placed a knife to her neck. The defence then suggested that this detail was not recorded in her police statement. The witness further stated that she had identified two individuals in the identification parade, but not by name. In the parade, she identified the first accused and another suspect. It was proposed by the defence that the witness did not identify the second accused even during the inquest proceedings. When questioned as to why she failed to identify the second accused, the witness explained that she did not know the identification parade was being conducted in relation to the death of the deceased.

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ඕ : ඒකෙන්ම ජේනවා සාක්ෂිකාරිය ඔබ හඳුනා ගැනීමේ පෙරවටුවේදී එක්කෙනයි හඳුනා ගන්නේ එන් තමින් නෙමෙ මරණ පරික්ෂණයේ දී ඔබ හඳුනා ගන්නේ මේ නඩුවේ එක වූදිතයෙකු මේ නඩුවට කිසිම සම්බන්ධයක් නැති කළින් නඩුවට හිටපු වූදිතයෙකුයි කියලා?

උ : එහෙම දන්නේ නැහැ කිරී අම්මා මරපු කෙනා විතරක් හදුනා ගන්න කිවාද දන්නේ නැහැ ඒ හින්දාද දන්නේ නැහැ ජයසුරිය කියන තැනැත්තානේ කිරී අම්මාට පිහියෙන් ඇන්නේ අනිත් එක්කෙනා තැති නිසා එහෙම හදුනා ගන්තාද කියන්න දන්නේ නැහැ එහෙම නැත්තම් ඒ දෙන්නා බැඩික් එක් ආවාද කියලා හදුනා ගන්න කිවා නම් ඒ දෙන්නා තමා මම පෙන්වන්න ඇත්තේ.

Upon perusal of the parade notes, it is recorded that counsel for the accused argued there was no necessity to conduct an identification parade since both the accused and the witnesses were from the same village. Nevertheless, the Acting Magistrate proceeded with the parade, in which six suspects participated. When questioned by the Magistrate as to the purpose of her presence, the witness stated that she was there to identify the persons responsible for the death of the deceased and her uncle. In the course of the parade, she identified Jayasuriya, the appellant, as the person who stabbed the deceased. It is noted that she identified another suspect other than the appellant and failed to identify the second accused during the identification parade.

It should be noted that both accused were known by name.

During further cross-examination, the witness stated that the appellant cut the neck of the deceased. It was then recorded as an omission that the witness had previously described how the appellant stabbed the deceased.

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ඉ : තමුන් ඕය සිද්ධිය කොහො ඉදන්ද බලා හිටියේ?

උ : කිරී අම්මා මේ වගේ හිටියනම් මම මේ වගේ හිටියා.

ඉ : ඒ කියන්නේ අඩි 2 ක 3 ක වගේ පරතරයකද හිටියේ?

උ : අඩි 2 ක 3 ක වගේ පරතරයක හිටියේ.

The witness stated that after the appellant stabbed the deceased, she went and hid herself behind the door. She consistently maintained that the deceased fell to the ground and was bleeding. However, it was noted that during cross-examination, she gave a different version, stating that she did not know the individuals who stabbed the deceased by name, although in her earlier testimony, she had stated that she knew them by name.

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ඉ : දැන් සාක්ෂිකාරිය ජයසුරිය සහ සුනිල් කියා පැහැදිලිව කිවිවා ?

C : ඔවුන්.

ඕ : වාසගම් ඇහුවේ නැහැ?

C : ඒ කාලේ වෙනකොට නම් වගයෙන් දන්නේ නැහැ.

PW 01, Susil Premaratne, the father of PW 4 and son of the deceased, testified that his younger brother died on 24 December 1995. He stated that a few days earlier, on 20 December 1995, there had been a robbery at their boutique. During that incident, while he was inside the shop, he recognized Jayasuriya, Wimalasuriya, Gamini, Priyantha, Sunil, and Weerasinghe as the persons who broke into the premises. Since the suspects had not been arrested by 24 December 1995, his younger sister and his younger brother went to the police station to lodge a complaint. At that time, the suspects appeared and stabbed his younger brother, causing his death. He further stated that the second accused also attempted to stab him during the same incident. Later, at the Kurunegala police station, he got to know that his mother had also passed away. At that moment, he stated that this was when he became aware of the deceased's death.

During cross-examination, the defence suggested that no case had been filed against the suspects because they had not committed the robbery. In response, the witness firmly stated that he had personally seen the robbery taking place and further witnessed these suspects murdering his younger brother. The defence further suggested that the witness had coached PW-04 to give evidence in accordance with his own version of events. The witness categorically rejected this suggestion.

PW 11, Rajamuni Dewayalage Somawathi, the sister of the deceased, testified that she saw the dead body of her sister (deceased) lying in front of the shop, fallen on the sand.

Dr Keerthi Kularatne Weerakkodige, the Judicial Medical Officer, testified that upon examination, he observed a total of 14 injuries, including 3 stab wounds. He further stated that there were injuries on the hands which appeared to be defensive wounds, sustained while attempting to ward off the attack. The witness confirmed that injury No. 14 was fatal. When the prosecution produced a knife before him, he stated that injuries of the type observed on the deceased could have been caused by such a weapon.

PW 21, Lalith Chandra Kumara, Sub Inspector, stated that he accompanied the Magistrate to the scene of the incident and observed the dead body of the deceased lying behind the shop. He further testified that on 26 December 1994, the Appellant, along with

another suspect, surrendered to the police. A statement was then recorded from the appellant. The witness emphasized that he did not threaten the appellant at any point. Based on the information provided in the appellant's statement, the witness recovered a knife from Priyantha's room.

When we analyze the evidence of PW 4, who is the only eyewitness in the case, we observe clear contradictions in her testimony. At the beginning, she stated that she identified both the appellant and the second accused as Jayasuriya and Sunil. However, later in her testimony, she changed her position, claiming that although she identified them as the persons who stabbed the deceased, she did not know their names. Furthermore, she asserted that she had identified both the appellant and the second accused during the identification parade. Yet, the parade notes reveal that she had in fact identified only the appellant, and not the second accused.

These inconsistencies between naming the assailants, later denying knowledge of their names, and claiming to have identified both in the parade when only one was actually identified create serious doubt regarding the reliability and consistency of the witness's evidence. As the sole eyewitness, such contradictions materially weaken the credibility of her testimony. I am mindful of the following judgements.

1974 (1) SCR 489, Shivaji Sahebrao Bobade v. Maharashtra (Krishna Iyer,J)

"In our view there is only one eye-witness, P.W. 5, Vilas. Even if the case against the accused hangs on the evidence of a single eye-witness it may be enough to sustain the conviction given sterling testimony of a competent, honest man, although as a rule of prudence courts call for corroboration. It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs. We are persuaded that the PW 5 is a witness for truth but in view of the circumstances that he is interested, we would still want corroboration in this case to reassure ourselves. And that we have in this case."

1999 (3) SLR 137 Sumanasena v. Attorney General, Jayasuriya.J held

"In our law of evidence the salutary principle is enunciated that evidence must not be counted, but weighed and the evidence of a single solitary witness if cogent and impressive could be acted upon by a Court of law. Section 134 of the Evidence Ordinance sets out that "no particular number of witnesses shall in any case be required for the proof of any fact". In an Indian case the conviction for murder was affirmed on the mere circumstantial

evidence given by a solitary witness and a pointed reference was made to the principle which we have adumbrated above vide *Mulluwa v. The State of Madhya Pradesh*. Testimony must always be weighed and not counted and these principles have been followed by Justice G. P. A. De Silva in *Walimunige John v. State; King v. N. A. Fernando*(. Thus, the Court could have acted on the evidence of the solitary witness Nandasena provided the trial Judge was convinced that he was giving cogent, inspiring and truthful testimony in Court.”

In light of the above legal authority, I now address the evidence introduced at trial.

Upon examining the identification parade notes, it is observed that Prosecution Witness No. 4 (PW4) identified the appellant as the individual who stabbed the deceased. In addition, she pointed out another suspect, though notably, this was not the second accused.

However, during her testimony before the court, PW4 stated that at the time of the incident she recognized both assailants by name, specifically Jayasuriya and Sunil, as the persons who attacked the deceased. Yet, under cross-examination, her version shifted: she asserted that she had identified both the appellant and the second accused as the perpetrators of the stabbing, but clarified that she did not know them by their names.

This shifting narrative, first identifying only the appellant, then claiming to have identified both the appellant and the second accused without knowing their names, demonstrates that PW4’s evidence is not consistent and raises doubts about the reliability of her identification.

We observe that although the 2nd Accused was present at the identification parade, the witness failed to identify him. No explanation has been provided as to why she could not recognize the 2nd Accused at that stage. Furthermore, during the trial, she did not disclose who was riding the motorcycle and who was seated behind. She also stated that both accused were frequent visitors to the shop and were known to her by name. If that is the case, her inability to identify the 2nd accused at the parade raises serious doubt as to whether she was truly present at the time of the incident. The failure to identify a person already known to her creates a reasonable doubt regarding the credibility of her testimony. We emphasize that identification is a matter that must remain firm and unshaken. It has created a doubt whether she has properly identified the 1st accused who stabbed the deceased. We are also mindful that her statement was recorded later.

I am mindful of the dictum expressed by the burden of proof

Upon careful consideration, we find that the prosecution has failed to establish, beyond a reasonable doubt, that the Appellant committed the murder of Rajamuni Dewayalage Pini.

In light of the foregoing, the conviction and the sentence imposed by the Learned High Court Judge dated 26 April 2018 are hereby set aside. The accused is acquitted of the charge on which he was convicted.

Appeal Allowed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL