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

Mohomad Thasim Mohomad Fairoos
No. 161/B 40,
Ambalanduwa,
Govipola Road,
Panadura.

1st Accused-Appellant

Court of Appeal
Case No. CA HCC 105-106/2022

High Court of Kalutara
Case No. HC 14/2008

Mohomad Anwer Mohomad Sahiran
No. 38/B5,
Polwatte Road,
Mahaheenatiyangala,
Kalutara.

2nd Accused-Appellant

Vs.

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

Complainant-Respondent

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

Counsel: Mohan Senevirathna with Nuwan Rathnayake and Sanwi Dissanayake for the Accused-Appellants.

Dishna Warnakula, D.S.G for the Respondent.

Argued on: 09.12.2025

Judgment on: 21.01.2026

JUDGMENT

AMAL RANARAJA, J.

1. The first and the second accused appellants (hereinafter referred to as the "first accused appellant", the "second accused appellant" or the "appellants") together with four others have been indicted in the *High Court of Kalutara* in High Court case number HC/14/2008.

   The charges in the indictment are as follows:

   Charge 01
   That on or about September 04, 2004, at *Polwatta*, in the district of *Kalutara*, within the jurisdiction of this Court, the appellants were members of an unlawful assembly the common object of which was to cause hurt to *Ginthotage Asara Dilruk Fernando*; and thereby committed an offence punishable under section 140 of the Penal Code.

Charge 02

During the same course of transaction as above, the accused appellants along with the other accused, committed murder by causing the death of one *Ginthotage Asara Dilruk Fernando* whilst being members of an unlawful assembly; and thereby committed an offence punishable in terms of section 146 read with section 296 of the Penal Code.

Charge 03

During the same course of transaction as above, the accused appellants committed the murder of one *Ginthotage Asara Dilruk Fernando*: and thereby committed an offence punishable in terms of section 32 read with section 296 of the Penal Code.

2. At the conclusion of the trial, the learned High Court Judge has convicted the appellants of the third charge and proceeded to impose the death sentence on them.

3. The third to the sixth accused named in the indictment have been acquitted of all charges. The appellants too have been acquitted of the first and second charges.

4. Aggrieved by the conviction, disputed judgment, together with the sentencing order, the appellants have preferred the instant appeal to this Court.

Case of the prosecution

5. On the day of the incident, at approximately 18.00 hours, PW01 has arrived at the deceased's home and have watched a movie together. Around 18.30 hours, they both have left the residence, and started walking towards a junction in the area.

6. At about 19.20 hours, while they were walking, PW01 and the deceased have been reportedly confronted by two individuals, identified as the appellants, near the second accused appellant's home. During the confrontation the first accused appellant has reportedly held on to PW01. The second accused appellant has allegedly dragged the deceased towards the second accused appellant's home.

7. PW01 has managed to break free from the first accused appellant and escape. As he fled, PW01 has observed four other individuals (i.e. third to the sixth accused named in the indictment) giving chase.

8. PW01 has stated that the area was not lit and identified the appellants by their voices. Sometime after escaping, PW01 has returned to the location where the confrontation occurred. There, PW01 has discovered the deceased had fallen near the home of the second accused appellant.

9. PW01 has remained at the scene until the police arrived and provided a statement to the investigators there.

10. *Dr. H.H. De Silva*, a medico-legal, medical officer has performed the post-mortem examination of the deceased. He has concluded that the death was caused by hemorrhagic shock. The post-mortem report detailing these findings has been submitted as evidence marked exhibit පැ04.

Case of the appellants

11. The appellants have maintained that they were not involved in the incident that caused the fatal injuries to the deceased.

Grounds of appeal

12. When the matter was taken up for argument, the learned Counsel for the appellants have urged the following grounds of appeal:

    i. Had the learned High Court Judge evaluated the evidence of PW01, using standard tests, which are used for evaluating evidence? Had such failure on the part of the learned High Court Judge caused prejudice to the accused appellants?

    ii. Had the learned High Court Judge correctly appreciated the legal position regarding the recovery of a fact, in consequent to a statement recorded from an accused person while in police custody in accordance with the provision of section 27(1) of the Evidence Ordinance? Had the failure on the part of the learned High Court Judge to appreciate the said legal position in its proper perspective, caused a prejudice to the second accused appellant?

    iii. Had the learned High Court Judge applied the principals of law relating to burden of proof correctly, when assessing the prosecution case and the defense case? Had the failure on the part of the learned High Court Judge to appreciate the said legal principles in its proper perspective, caused a prejudice to the both accused appellants?

    iv. Had rights of the both accused appellants adversely affected consequent to protracting the trial of the case for fourteen long years, for which no contribution was made by the both accused appellants?

v. Had the successive High Court Judges, before whom the case had come up, adopted proceedings in accordance with the provisions of section 48 (1) of the Judicature Act? Had the failure on the part of the successive High Court Judges before whom the proceedings of the case had taken place to exercise the discretion?

13. The learned counsel for the appellants has contended that the learned High Court Judge has merely provided a summary of the testimony of PW01, purportedly the sole eye witness to the incident.

14. It has been argued that the learned High Court Judge has failed to properly evaluate this testimony using the established tests for evidence assessment and consequently has not determined whether it was safe to rely upon and accept PW01's account.

15. PW01's testimony presents notable discrepancies. Initially, PW01 has stated that the location where he and the deceased were confronted was dark, devoid of light, implying that visual identification of the appellants was not possible. Therefore, voice identification was the sole available method. However, on a subsequent occasion, PW01 has testified to having seen the appellants. In this later account, PW01 has described the first appellant holding on to him and the second appellant dragging the deceased toward the second appellant's home.

ප්‍ර: එළිය තිබුණාද?
උ: එළියක් නෑ.
ප්‍ර: පෙන්නේ නැද්ද?
උ: ඔව්
ප්‍ර: කළුවරයි ද?
උ: කළුවරයි.
ප්‍ර: අඳුරන්න පුලුවන්ද?

උ: නෑ මෙයාගේ හැඩරුව අඳුරගන්න පුලුවන්.

ප්‍ර: තමුන් ඔවුන් අඳුරගන්නේ කොහොම ද?

උ: නම කියලා අපේ ඉස්සරහට ආවා.

ප්‍ර: කවුද කිව්වේ?

උ: 1, 2 විත්තිකරුවන්.

ප්‍ර: තමුන් කටහඬ දන්නව ද?

උ: ඔව්.

ප්‍ර: ලයිට් නෑ කිව්වා?

උ: ඔව්.

ප්‍ර: ගෙවල්වල තිබුණ ද?

උ: ඔව්.

ප්‍ර: පාරේ දෙපැත්තේ ගෙවල් තිබෙනවා?

උ: ගෙවල් අඩුයි ගෙවල් දෙකයි තියෙන්නේ.

ප්‍ර: මරණකරුගෙ ගේ අතරයි තමාගෙ ගේ අතරයි ගෙවල් 3ක් තිබෙනවා අනෙක් ගෙවල් 5 හේ 1 වෙනි විත්තිකරුගෙ ගෙදර තිබෙනවා?

උ: ඔව්.

ප්‍ර: ඔය ගෙවල් අතරෙ ලොකු ඉඩක් තිබෙනවා ද? ළඟ ළඟ ගෙවල් තිබෙනවා ද?

උ: ළඟ ළඟ ගෙවල් තිබෙනවා.

ප්‍ර: ඔය ගෙවල් වල ලයිට් තිබ්බ කිව්වා?

උ: ඔව්.

ප්‍ර: තමුන්ලා දෙන්නා අල්ලගත්තා කිව්වා විත්තිකරුවන් දෙදෙනා?

උ: ඔව්.

ප්‍ර: තමුන්ල මොකද කළේ?

උ: මාවත් ඇදගෙන ගියා අල්ලගත්ත ගමන් මම එයාගෙන් අල්ලාගත්තා.

ප්‍ර: කාටද?

උ: මාව අල්ලගත්තා, 1 විත්තිකරු.

ප්‍ර: තමා මේ සිද්ධිය සම්බන්ධයෙන් මරණ පරීක්ෂණයේදි සාක්ෂි දුන්නා?

උ: ඔව්.

16. Although PW01 has provided testimony, stating that the incident site was sufficiently illuminated by the ambient light from the adjacent

residences, there is no record of PW06 and PW07, the investigators, who responded to the first complaint having testified to this effect. This crucial piece of evidence or rather the lack thereof, from the investigating officers seem to have escaped the attention of the learned High Court Judge. Further, PW01's testimony regarding the actions of the appellants at the scene of the initial confrontation contains a significant contradiction. Initially, PW01 has asserted that the second accused appellant dragged the deceased toward his house. However, when providing further testimony, at the trial, PW01 has revised his statement, claiming instead that it was the fifth accused as named in the indictment who was responsible for the dragging of the deceased from the scene.

ප්‍ර: දැන් තමුන් කිව්වා මරණකරු ඇදගෙන ගියේ සහිරාන් කියා?
උ: ඔව්.
ප්‍ර: දිල්රුක් ඇදගෙන ගියේ (5) විත්තිකරු?
උ: ඔව්.

17. Also, the testimony provided by PW01 asserting that the first accused appellant physically restrained him at the scene of the initial confrontation is demonstrably contradicted by his earlier deposition given during the non-summary inquiry conducted at the *Magistrates Court in Kalutara*. In those proceedings, PW01 has explicitly stated that the fifth accused as named in the indictment was the individual who held him. This material contradiction has been formally marked and identified as exhibit 1වි1.

18. Accordingly, the testimony of PW01 concerning the appellants identification has been irreconcilable yet no explanation has been offered for the resulting discrepancies. Consequently, the disputed judgment does not demonstrate an engagement with these critical inconsistencies.

19. The proper identification of an accused individual is a cornerstone of any just legal process. Without it, the entire foundation of the case is compromised. In the present instance, this crucial step has demonstrably not been undertaken correctly.

20. Furthermore, the involvement of the accused in the alleged offence must be established beyond a reasonable doubt. This legal standard designed to protect the innocent, requires irrefutable evidence.

21. Regrettably, in this particular case, the high bar has not been met, leaving significant doubt regarding the appellant's culpability. The existence of such discrepancies also casts doubt on whether PW01 was indeed present at the scene of the incident and was able to witness the purported incident related in his testimony. This has a direct bearing on the reliability and the credibility of his testimony.

22. Section 27(1) of the Evidence Ordinance in Sri Lanka is an exception to the general rule that confessions of a person accused of crime made to a police officer while in custody is inadmissible. This section does not make the entire confession admissible, but only the information that directly led to the discovery of a material fact, e.g. the location of the hidden weapon, can be proved.

23. The primary legal interpretation confirmed by various judgments of the Court of Appeal and the Supreme Court of this country is that a section 27(1) recovery establishes the accused's knowledge of the items' existence and location, not necessarily accused's exclusive or conscientious possession of the item at the time of the offence. Courts have also held a conviction cannot rest solely on a section 27(1) recovery. The prosecution must adduce other evidence to establish the accused's guilt such as a direct link to the crime.

24. In the case of *Justin Fernando Vs. Inspector of Police, Slave Island* [1945] 46 NLR 158, Wijeyewardene, J, stated as follows:

> *"There remains, however, for consideration the second objection raised by the accused's Counsel. It has been settled by a number of decisions that only so much of the information as led immediately to the discovery of a fact is admissible (vide Queen-Empress v. Nana). The cycle in this case was discovered in consequence of the information given by the accused that he sold it to a carter through Costa. The further information given by the accused that "he had stolen the cycle at the City Dispensary" was not necessarily or directly connected with the discovery and should not therefore have been mentioned to court by the constable".*

25. In the case of *The Queen v D. L. Albert* [1960] 66 NLR 543, L. B. De Silva, J, stated as follows:

> *"The vital question for consideration in this case is whether the evidence of the Inspector of Police that the Accused told him that these articles which were subsequently identified as part of the stolen property, were in his custody, is admissible as evidence under section 27. There is no question that this statement is a confession. A confession to a Police Officer may be admitted in evidence if it falls within the provisions of Section 27 of the Evidence Ordinance.*
>
> *Under this section, when a fact is discovered in consequence of information received from a person accused of any offence, in the custody of a Police Officer, "so much of such information,*

whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved".

The Courts have laid special emphasis on the word "distinctly" in this section. Otherwise, the door will be thrown wide open to admit a number of confessions which did not directly relate to the discovery of such fact".

26. The prosecution has established during the trial that a specific part of the second accused appellant's confession directly led to the discovery of a material fact, i.e. the knife marked පැ02, and subsequently presented such parts of the second accused appellant's confessions, as exhibit පැ03.

"මන්නා පිහිය අපේ ගේ පිටුපස ඇති ලැටි එක ළඟ ඇති පොල් ලෙලි ගොඩ යට සඟවා තැබුවා. මන්නා පිහිය මට පොලිසියට පෙන්වා දෙන්න පුලුවන්."

27. However, the learned High Court Judge in a misdirection of law has concluded that exhibit පැ03 enables the court to infer that the injuries detailed in the post-mortem report (exhibit 4) were inflicted by the second accused appellant. Such misdirection has caused prejudice to the second accused appellant.

"මරණකරුගේ ශරීරයේ නිරීක්ෂණය කරන ලද පැ.4 දරණ පක්ෂාත් මරණ පරීක්ෂණ වාර්තාවේ විස්තර කරන ලද තුවාල පැ.සා. 5 මගින් තහවුරු වීම ද එකී තුවාල තියුණු බරැති දිග කැපුම් ආයුධයකින් සිදු විය හැකි බවට පලකරන ලද මතය පැ. සා. 5 ට පැ. 2 දරණ මන්නය ඉදිරිපත් කිරීමේ දී තහවුරු කිරීම මගින් ද පැ. 2 දරණ මන්නය 2 වන චූදිතගේ පැ.3 දරණ ප්‍රකාශය මත අනාවරණය කර ගැනීම හේතුවෙන් මරණකරුට ඇති වූ තුවාලයන් සිදු කරන ලද්දේ අන්කවරකු වත් නොව

2 වන චූදිත බවට ඉහත පරිදි ඉදිරිපත් වූ සාක්ෂි මගින් තවදුරටත් තහවුරු වී ඇති බව පැහැදිලි වේ.”

28. General principles of judgment writing would consist of the following:
    i. Structure; i.e. clear introduction, followed by statement of facts, legal issues, analysis and conclusion.
    ii. Facts; i.e. the brief account of relevant facts and the evidence presented in the particular case.
    iii. Law; i.e. a clear articulation of the legal principles relevant to the particular case.
    iv. Application; i.e. proper application of the law to the facts of the case.
    v. Simplicity; i.e. use simple words, short sentences for proper clarity.

29. In Sri Lanka a criminal judgment as per the provisions in section 283 of the Code of Criminal Procedure Act No. 15 of 1979 must contain specific mandatory elements. They can be listed as follows;

    i. Points for determination; i.e. the specific legal or factual questions the Court needs to decide.
    ii. Decision; i.e. the Courts finding on those points (e.g. guilty or not guilty).
    iii. Reasons; i.e. the logical basis for the decision, applying the law to the facts.

iv. Conviction or acquittal details; i.e. if convicted; the specific offence, the section of law and the sentence imposed. If acquitted; the offence the accused is acquitted of must be stated.

v. Pronouncement; i.e. the judgment must be dated, signed by the judge and must be pronounced in open Court.

vi. Explanation; i.e. the judgment must be explained to the accused.

30. Section 283 of the Code of Criminal Procedure Act No. 15 of 1979 reads as follows:

"The following provisions shall apply to the judgments of courts other than the Supreme Court or Court of Appeal: -

(1) The judgment shall be written by the Judge who heard the case and shall be dated and signed by him in open court at the time of pronouncing it, and in case where appeal lies shall contain the point or points for determination, the decision thereon, and the reasons for the decision.

(2) It shall specify the offence if any of which and the section of the law under which the accused is convicted and the punishment to which he is sentenced.

(3) If it be a Judgment of acquittal it shall state the offence of which the accused is acquitted.

(4) When a judgment has been so signed it cannot be altered or reviewed by the court which gives such judgment:

Provided that a clerical error may be rectified at any time and that any other error may be rectified at any time before the court rises for the day.

(5) The judgment shall be explained to the accused affected thereby and a copy thereof shall be given to him without delay if he applies for it.

(6) The original shall be filed with the record of proceedings. (Sections 279 and 283 shall apply to every judgment of a Primary Court-See section 33 (2) of the Primary Courts' Procedure Act."

31. In the case of *Chandrasena and Others vs. Munaweera* [1998] 3 SLR 94, Jayasuriya, J, stated as follows:

> *"In Ibrahim Vs. Inspector of Police 59 NLR 235, the Supreme Court emphasized that the mere outline of the prosecution and the defence without reasons being given for the decision but embellished by such phrases as "I accept the evidence of the prosecution and I disbelieve the defence" is by itself an insufficient discharge of duty cast upon the Judge by section 306 (1) of the Criminal Procedure Code. Vide also the decision in Thusaiya Vs. Pathihamy 15 CLW 119 by Nihill, J.- According to the presently applicable section 283(1) of the Code 283(1) of the Code of Criminal Procedure Act No. 15 of 1979, the judgement shall contain the point or points for determination, the decision thereon and the reasons for the decision. In the Supreme Court stressed that the object of the statutory provision is to enable the*

Supreme Court to have before it the specific opinion of the Judge in the lower Court on the question of fact, so that it may enable the Court to ascertain whether the finding is correct or not. The weight of authority is to the effect that the failure to observe the imperative provisions of the section is a fatal irregularity and that even in a simple case that the provisions of this statute must be complied with."

32. The learned High Court Judge has erred by failing to identify the essential elements for *actus reus* and *mens rea* and more specifically the particular limb of the offence for which the appellants have been convicted of in the disputed judgment. Furthermore, the learned High Court Judge has also neglected to adequately compare the testimony of the prosecution witnesses against applicable law, thereby failing to present a logical basis for the disputed judgment.

33. The particular offence has been committed in the year 2004. 21 years have passed since then. Therefore, this Court finds that it does not seem just to call upon the appellants to defend themselves again after such an unconscionable lapse of time, making it not a fit case to order a re-trial.

I am also aware of the unreliable nature of the evidence of PW01 on which the prosecution's case rests.

In *Queen vs. G.K. Jayasinghe* 69 NLR 314 at page 328, Sansoni, J. has stated,

"…we have considered whether we should order a new trial in this case. We do not take that course, because there has been a lapse of three years since the commission of the offences, and

because of our own view of the unreliable nature of the accomplice's evidence on which alone the prosecution case rests.

We accordingly direct that the judgment of acquittal be entered."

34. In light of the matters discussed, I am of the view that the first three grounds of appeal as presented by the learned Counsel for the appellants have merit and ought to succeed. Consequently, it is unnecessary for this Court to consider the remaining grounds of appeal.

35. In these circumstances, I am inclined to interfere with the conviction, disputed judgment together with the sentencing order.

36. Accordingly, I set aside the conviction and the disputed judgment together with the sentencing order and acquit the appellants of the charge convicted of.

Appeal allowed.

I make no order regarding costs.

37. I direct the Registrar of this Court to send this judgment to the *High Court of Kalutara* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree.

Judge of the Court of Appeal