

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

An Appeal filed in terms of Section 331 of the Code of Criminal Procedure Act No. 15 of 1979 read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Democratic Socialist Republic of Sri Lanka

Complainant

Vs

Court of Appeal Case No:

CA/HCC/0065/2025

High Court of Gampaha Case No:

HC 118/2009

1. Welivita Arachchige Mahinda Lal Kumara
2. Kukka Waduwage Vipula Pradeep Kumara
3. Welivita Arachchige Ranjith Jayatunga
4. Welivita Arachchige Sampath Jayathunga

Accused

AND NOW BETWEEN

Welivita Arachchige Mahinda Lal Kumara

Accused – Appellant

Vs

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

Complainant - Respondent

Before : **P. Kumararatnam, J.**

Pradeep Hettiarachchi, J.

Counsel : Kapila Waidyaratne, PC with Akkila Jayasundara and Akhila Mathishi for the Accused – Appellant.

Yuhan Abeywickrama, DSG for the Respondent.

Argued on : 12.11.2025

Decided on : 30.01.2026

Pradeep Hettiarachchi, J

Judgment

1. This appeal arises from the judgment and sentence dated 18.12.2024 delivered by the learned High Court Judge of Gampaha. The accused-appellant (hereinafter referred to as the appellant), along with three other accused, was indicted before the High Court of Gampaha on three counts, namely:
 - a. That on or before 07th of August 1996 at Meegahawatta, the accused, in furtherance of their common intention, did cause the death of Amarasinghe Mohotti Appuhamilage Victor Senanayake (hereinafter referred to as the deceased) and thereby committed an offence of Murder, punishable under Section 296 read with the Section 32 of the Penal Code.
 - b. That at the same time and place and in the course pf the same transaction, the Accused did commit robbery of the lorry bearing registration No 27 8 6826 from Amarasinghe Mohotti Appuhamilage Victor Senanayake and thereby

committed an offence of Robbery punishable under Section 383 read with the Section 32 of the Penal Code.

- c. That at the same time and place and in the course of the same transaction. The Accused have dishonestly retained stolen property belonging to Amarasinghe Mohotti Appuhamilage Victor Senanayake and thereby committed an offence punishable under Section 394 read with the Section 32 of the Penal Code.
2. The trial commenced before the Judge of the High Court without a jury. As the 4th accused was absent, steps were taken under Section 241 of the Code of Criminal Procedure Code, and the trial proceeded in his absence.
3. However, during the course of the trial, it was reported that the 4th accused had passed away. Consequently, the indictment was amended, and the trial proceeded against the 1st to 3rd accused. At the conclusion of the trial, the learned High Court Judge found the 1st accused, who is the appellant in the present appeal, guilty of Counts 1 and 2 of the indictment and accordingly convicted him. The 2nd and 3rd accused were acquitted of all counts.
4. It is against the said conviction and sentence that the appellant has preferred the present appeal. The appellant has urged eight grounds of appeal, which are as follows:
 - i. The Learned Trial Judge erred in law and failed to apply his judicial mind to arrive at a finding whether the Prosecution had proved its case beyond reasonable doubt against the Accused-Appellant.
 - ii. The Learned Trial Judge failed to properly analyse and legally consider the dubious, uncorroborated, and improbable evidence of the Prosecution Witness and erred in law by accepting their evidence without subjecting it to the necessary degree of Judicial caution, particularly where allegations of duress, influence, and contradiction were apparent on the face of the record.

- iii. The learned Trial Judge misdirected himself by failing to consider the defects and improbabilities in the investigation, which clearly and collectively cast serious doubt on the integrity and reliability of the Prosecution's Case.
 - iv. The Learned Trial Judge erred in law by admitting and /or acting upon a purported confession/statement allegedly made by the Appellant under Section 27 (1) of the Evidence Ordinance, notwithstanding the Prosecution's failure to establish the essential legal requirements for the admissibility thereof and thereby unreasonably shifting the burden of proof on to the Appellant, in violation of the Appellant's fundamental rights to a fair trial and the presumption of innocence.
 - v. The Learned Trial Judge failed to properly apply the principles governing circumstantial evidence when evaluating the evidence against the Appellant.
 - vi. The Learned Trial Judge failed to properly consider the defense and thereby improperly rejected the same, which amounts to a serious misdirection in law, rendering the resulting conviction unsafe and unsustainable, vitiating the entire judgment.
 - vii. The conviction is contrary to the law and against the weight of the evidence.
 - viii. The Learned Trail Judge failed to provide any reasoning or judicial determination in relation to the 3rd Count of the Indictment, thereby raising a serious question as to whether findings in respect of the other charges were properly and independently assessed.
5. The prosecution case against the appellant is founded entirely on circumstantial evidence, and it is therefore apposite to consider the relevant legal principles governing cases based on circumstantial evidence.
6. It is trite law that, in order to convict an accused person on the basis of circumstantial evidence, the only inference that can be drawn from such evidence must be the guilt of the accused, and all other possible inferences must be inconsistent with his innocence.

The following authorities would be of considerable assistance in determining the present appeal.

7. In **King Vs Gunarathne 47 NLR 145** it was held that:

In a case of circumstantial evidence the facts given in evidence may, taken cumulatively, be sufficient to rebut the presumption of innocence, although each fact, when taken separately, may be a circumstance only of suspicion.

The Jury are entitled to draw inferences unfavorable to an accused where he is not called to establish an innocent explanation of evidence given by the prosecution, which, without such explanation, tells for his guilt.

8. In **Don Sunny Vs Attorney General [1998] (2) Sri.L.R. 1** it was held that:

1. *When a charge is sought to be proved by circumstantial evidence the proved items of circumstantial evidence when taken together must irresistibly point towards the only inference that the accused committed the offence.*

On a consideration of all the evidence the only inference that can be arrived at should be consistent with the guilt of the accused only.

2. *If on a consideration of the items of circumstantial evidence if an inference can be drawn which is consistent with the innocence of the accused, then one cannot say that the charges have been proved beyond reasonable doubt.*
3. *If upon a consideration of the proved items of circumstantial evidence if the only inference that can be drawn is that the accused committed the offence then they can be found guilty.*

The prosecution must prove that no one else other than the accused had the opportunity of committing the offence, the accused can be found guilty only and only if the proved items of circumstantial evidence is consistent with their guilt and inconsistent with their innocence.

9. In **Krishantha De Silva vs The Attorney General [2003] (1) Sri.L.R, 162** it was held inter alia that:

Circumstantial evidence can be acted upon only if from the circumstances relied upon the only reasonable inference to draw is the inference of guilt. If the circumstances are consistent both with guilt and with innocence then the case is not proved on circumstantial evidence.

Per Edirisuriya, J.

The hypothesis of innocence must be excluded by the circumstance relied upon and the circumstances must point to one conclusion alone, i.e. the guilt of the accused"

10. In **Premawansha V. Attorney General [2009] 2 Sri.L.R. 205** it was held that:

In a case of circumstantial evidence if an inference of guilt is to be drawn, such an inference must be the one and only irresistible and inescapable conclusion that the accused committed the offence.

11. It is with the above legal principles in mind that I now proceed to determine the present appeal. PW1 is the Grama Niladhari of the area where the body of the deceased was recovered. Her evidence does not disclose any fact implicating the appellant. PW3, the widow of the deceased, merely identified the Registration Book, Revenue Licence, and Insurance Policy of the vehicle used by the deceased. PW2, the brother-in-law of the deceased, also did not disclose any fact against the appellant.

12. PW5 is a resident living close to the house of the 1st and 3rd accused and was acquainted with them due to proximity. According to PW5, he only observed two lorries parked in the compound of the appellant.

13. PW9, I.P. Nalaka, was the officer who arrested the appellant and recorded his statement. Consequent to that statement, the witness allegedly recovered the Registration Book, Insurance Policy, and Revenue Licence of the vehicle bearing

number **27-6826**. According to PW9, the recovery was made on 18.01.2003, whereas the alleged murder had occurred in August 1996.

14. The witness further stated that he recovered certain vehicle parts from the backyard of the appellant's compound. However, there was no evidence to establish that those vehicle parts belonged to vehicle No. 27-6826. Moreover, the evidence reveals that the said vehicle parts were merely scattered in the backyard and had not been buried or concealed by the appellant at the time of recovery. PW12 is Police Sergeant No. 21771, Tilak Ranjith Dassanayake, who assisted in the arrest of the appellant. This witness also arrested the appellant's mother on 19.01.2003 and recorded her statement.
15. PW10 is Police Inspector Lalith Pradeep Kumara. He arrested Asanka Shanaka (PW5) and recorded his statement. He also accompanied IP Nalaka to Embilipitiya for the purpose of arresting the appellant. PW15 is a person who was acquainted with the deceased; however, his evidence does not disclose any material facts relevant to the prosecution case. PW6 was the registered owner of vehicle No. 27 Sri 6826.
16. Dr. Ananda Samarasekara conducted the post-mortem examination of the deceased, and according to his evidence, the death was caused by multiple stab injuries (as reflected in the Post-Mortem Report).
17. PW17 recorded the statement of the Grama Niladhari of the area where the body was recovered and also visited the scene where the body was found. PW18 was the driver of the vehicle in which the other police officers travelled to the scene where the body was lying.
18. Although eight grounds of appeal were set out in the written submissions, I do not propose to consider them individually, as most of them are interrelated. It is also significant to note that when counsel for the appellant advanced his submissions, the learned Deputy Solicitor General, in keeping with the highest traditions of the Attorney-General's Department, fairly conceded those submissions.
19. As stated earlier, the prosecution case was founded entirely on circumstantial evidence. The principal piece of evidence relied upon by the prosecution against the appellant was the recovery of certain documents, namely the Registration Book,

Insurance Policy, and Revenue Licence of the vehicle bearing number **27 Sri 6826**, which was alleged to have been used by the deceased when he was last seen.

20. It is also important to note that the learned trial Judge, in his judgment, stated that the recovery of the vehicle's registration book by the police from under the appellant's bed necessarily required an explanation from the appellant. However, as the appellant failed to provide such an explanation in his dock statement, the Judge concluded that the dock statement was not truthful.
21. Another important fact that merits consideration is that, according to PW9, the alleged recovery was made pursuant to a statement made by the appellant. PW9 categorically stated in his testimony that the said documents were recovered consequent to the statement and upon being pointed out by the appellant. PW9 testified as follows:

ඕ : තමාට ලැබුන තොරතුරු අනුව තමා ගත්තු පියවර මොකක්ද?

උ : සැකකරුගේ ප්‍රකාශය පරිදි, පෙන්වා දීම අනුව සැකකරු නිදා සිටි ඇද යට නිල්පාට සූචිකේස් එකක තිබේ ලියකියවිලි සොයා ගත්තා.

ඕ : ඒවා සොයා ගත්තේ තමා සහ පොලිස් කන්ඩායම කාගේ මහ පෙන්වීම මතද?

උ : සැකකරුගේ මහ පෙන්වීම යටතේ.

ඕ : සොයාගත්තේ මොනවාද කියන්නේ, ලියවිලි විස්තර කරන්න?

උ : ලිය පදිංචි අංක 27 ශ්‍රී 6826 දරණ ලොරි රථයේ වැසි අංකය කේඛ්‍ය 41/7315108, එන්ජින් අංක 551009 දරණ ඉඩඩු එල් වර්ගයේ ලොරිය, එම්.ටී.එ්.4, ලියා පදිංචි කිරීමේ සහතිකය.

ඕ : ඒ දේපල ඩම්බ වුනේ සැකකරුගේ නිදන කාමරයේ ඇද යට තිබූ සූචිකේස් එකක තිබේ?

උ : එහෙමයි.

ඕ : ඒවා තමා සහ නිලධාරීන් කන්ඩායම ලබා ගත්තේ සැකකරුගේ මහ පෙන්වීම මත?

උ : එහෙමයි.

Vide Page 298 and 299

22. It is noteworthy that the evidence of PW9 pertaining to the recording of the appellant's statement is inconsistent and was contradicted during cross-examination. In his evidence-in-chief, PW9 stated that the appellant's statement, which allegedly led to the

recovery of the documents marked P1, P2, and P3 was recorded at the appellant's residence on 18.01.2003 at about 4.00 a.m. However, during cross-examination, PW9 contradicted his own evidence and stated that, on his instructions, the said statement was recorded at the Uda Walawe Police Station by PC 21711 Dassanayake.

23. This contradiction is of a material nature, particularly as the learned trial Judge placed considerable reliance on the recovery of the documents relating to the vehicle bearing No. 27 Sri 6826 in determining the guilt of the appellant. The appellant, in his dock statement, categorically stated that he was not arrested at his residence, as alleged by the police, but while returning home after dropping his child at school. He further stated that at no point did the police visit his residence, nor did they recover any parts of the lorry.
24. Unfortunately, the aforesaid contradictions appear to have escaped the attention of the learned trial Judge. Regrettably, the learned trial Judge has failed to address these contradictions discernible in the prosecution evidence and has also failed to undertake a proper analysis thereof.
25. The aforesaid contradictions, when considered together with the dock statement, clearly cast doubt on the prosecution case, and the appellant is accordingly entitled to the benefit of that doubt.
26. Moreover, none of the police witnesses, in their evidence, provided any description of the appellant's house at Embilipitiya, nor did they describe the room or its location from which the documents relating to the vehicle driven by the deceased were allegedly recovered. The witness merely stated that the said documents were recovered pursuant to a statement made by the appellant after his arrest. These infirmities further undermine the credibility and reliability of the testimony of PW9.
27. It must be emphasised that where a conviction is founded on circumstantial evidence, the only inference that may be drawn must be the guilt of the accused, and all other inferences must be inconsistent with his innocence. Further, the evidence relied upon must be cogent, credible, and free from doubt. Where such evidence gives rise to

doubt or is riddled with material inconsistencies, it would be wholly unsafe to rely upon it to convict the accused.

28. Furthermore, the learned trial Judge has arrived at certain erroneous conclusions in the absence of substantial evidence and has treated such conclusions as evidence against the appellant. In the impugned judgment, the learned trial Judge stated that the appellant, together with his brother, had left their home soon after the death of the deceased, despite there being no credible evidence led in support of that finding.
29. Additionally, the learned trial Judge placed considerable reliance on the presence of two lorries in the compound of the appellant's house close to the date of the alleged murder, as observed by PW5. In my view, the mere presence of two lorries, in the absence of any evidence identifying the particular lorry allegedly connected to the offence, cannot be safely treated as circumstantial evidence against the appellant, as such a circumstance does not lead to the sole and irresistible inference of the appellant's guilt.
30. More importantly, no evidence was forthcoming to establish any nexus between the allegedly recovered vehicle parts and the lorry driven by the deceased. Consequently, the evidence of PW5 that he had observed two lorries parked in the compound of the appellant during the period relevant to the alleged offence cannot be treated as circumstantial evidence against the appellant, in the absence of any material establishing the identity of the said lorries.
31. It is also noteworthy that, although the learned trial Judge discussed the applicability of the presumptions under Section 114 of the Evidence Ordinance, he failed to identify the factual basis upon which any such presumption was invoked or applied.
32. In the present case, the alleged recovery of the documents relating to the robbed vehicle was made nearly seven years after the incident. Such a prolonged lapse of time renders it wholly untenable to invoke the presumption contemplated in illustration (a) of Section 114 of the Evidence Ordinance, which is predicated upon a recovery made soon after the commission of the offence. In these circumstances, no adverse inference can reasonably be drawn against the appellant on the basis of the said recovery,

particularly when the evidence relating to the recording of the appellant's statement is unreliable, in view of the material inconsistencies discernible in the testimony of PW9.

33. As stated earlier, the evidence relating to the recording of the appellant's statement is riddled with inconsistencies. Consequently, the alleged recovery of the documents relating to the robbed vehicle from the possession of the appellant, purportedly made pursuant to that statement, does not inspire the confidence of this Court to accept the prosecution version. Accordingly, the dock statement of the appellant cannot be rejected in its entirety, particularly where he consistently maintained that the police never came to his residence at Embilipitiya and that he was arrested while returning home after dropping his child at school.
34. In *Queen v. Kularatne* 71 NLR 529 the court held that: "We are in respectful agreement and are of the view that such a statement must be looked upon as evidence subject to the infirmity that the accused had deliberately refrained from giving sworn testimony, and the jury must be so informed. But the jury must also be directed that; a) If they believe the unsworn statement, it must be acted upon. b) If it raised a reasonable doubt in their minds about the case for the prosecution, the defense must succeed, c) That it should not be used against another accused"
35. In the present case, the learned trial Judge rejected the dock statement solely on the basis of the appellant's failure to explain the alleged recovery of the documents relating to the stolen vehicle pursuant to his statement, his failure to explain the presence of two lorries in his compound during or about the period of the death of the deceased, and his failure to explain the alleged act of fleeing the area after the commission of the offence.
36. The learned trial Judge made no effort to undertake a genuine judicial analysis of the contents of the dock statement or to furnish cogent reasons for rejecting the same in determining whether it gave rise to a reasonable doubt in the prosecution case. In view of the unconvincing nature of the prosecution evidence relating to the alleged recovery of the documents pursuant to the appellant's statement, the rejection of the dock statement on that basis by the learned trial Judge is wholly unsustainable.

37. In the light of the foregoing analysis, this Court is of the view that it would be unsafe to allow the conviction of the appellant to stand.
38. Therefore, I set aside the conviction and sentence entered by the learned Judge of the High Court of Negombo against the appellant. Accordingly, the appeal is allowed and the appellant is acquitted from all charges.

Judge of the Court of Appeal

P. Kumararatnam,J

I agree,

Judge of the Court of Appeal