IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an Appeal under and in terms of the Article 138(1) of the Constitution read with the Section 11(q) of the High Court of the Provinces (Special Provisions) Act No.19 of 1990 with the Section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

Democratic Socialist Republic of Sri Lanka.

Complainant

Vs

Court of Appeal Case No:
CA/HCC/0119/2019

High Court of Embilipitiya Case No:
HCE-69-2014

Wedakkara Nekethige Premarathne *alias* Korale Raja

Accused

AND NOW BETWEEN

Wedakkara Nekethige Premarathne *alias* Korale Raja

Accused-Appellant

Vs

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

Respondent

Before	:	**P. Kumararatnam, J.** **Pradeep Hettiarachchi, J.**
Counsel	:	Aruna Pathirana Arachchi for the Accused-Appellant Azad Nawavi ASG with Tharaka Kodagoda SC for the Respondent
Argued on	:	21.10.2025 and 07.11.2025
Decided on	:	30.01.2026

Pradeep Hettiarachchi, J

Judgement

1. This appeal arises from the conviction and sentence of the accused-appellant (hereinafter referred to as the appellant) for committing the murder of Morapitiyage Baby Nona, together with another person unknown to the prosecution, an offence punishable under Section 296 read with Section 32 of the Penal Code.

2. The appellant was tried before a Judge of the High Court without a jury. At the conclusion of the trial, the learned High Court Judge found the appellant guilty of the charge of murder and accordingly convicted him, imposing the sentence of death.

3. It is against that conviction and sentence that the instant appeal has been preferred. The prosecution case was founded entirely on circumstantial evidence, as there were no eyewitnesses to the crime.

4. It was submitted on behalf of the appellant that, as the only available evidence against him was a pair of earrings alleged to belong to the deceased and said to have been

pawned by the appellant, it would be unsafe to secure a conviction in the absence of corroborative evidence.

5. At the trial, in proving its case against the appellant, the prosecution relied on the evidence of 14 witnesses. In addition, the interpreter of the High Court testified and marked productions P1 to P9. The appellant made a dock statement.

6. The investigation into the offence commenced upon information received by the Chief Inspector of Police, Saman Kumara. PW1 was the informant who first provided information regarding the offence to the police. Pursuant to this information, the body of the deceased was recovered from a room in her residence.

7. The principal item of evidence relied upon by the prosecution against the appellant is the pair of earrings allegedly worn by the deceased. In this regard, the evidence of PW7, PW6, PW4, and PW12 is of particular relevance.

8. PW7, Ramani Fonseka, is the daughter-in-law of the deceased. In her testimony, she identified a pair of earrings as belonging to her mother-in-law. She further identified a saree worn by the deceased and another saree belonging to herself, which were marked as productions P3 and P4 respectively. According to the witness, both sarees were seen at the appellant's residence.

9. Apart from a mere suggestion made by the defence that the witness was not telling the truth, nothing of significance was elicited to discredit or disbelieve the evidence of PW7.

10. PW6, N. Swarnalatha, was the person before whom the said earrings were pawned by the appellant. According to PW6, the appellant was a person known to her. She testified that the appellant came to her residence on a Saturday morning and borrowed a sum of Rs. 1,200.00 from her, having pawned the earrings marked as P2. Thereafter, the appellant left the premises with his two children, stating that they were going to a Pirivena. A few days later, the police visited her residence, questioned her, and took the said earrings into their custody. PW6 thereafter made a statement to the police. She identified the earrings marked P2 as the earrings pawned by the appellant and

categorically stated that it was the appellant who came to her residence and pawned the said earrings.

11. PW4, Police Sergeant No. 29376, Upul Shantha, participated in the post-mortem examination and made observations on the body of the deceased. He stated that the deceased was not wearing earrings. This fact was also confirmed by the Judicial Medical Officer who conducted the post-mortem examination.

12. PW15, Police Sergeant No. 28997, Ferdinands, was serving at the Intelligence Unit of the Udawalawa Police during the relevant period. PW12 was the officer who questioned PW6 and took the pair of earrings into his custody from her on 27th January 2007. He further testified that he came to know that a person known as Korale Raja, who was residing nearby, had gone missing and that his house remained closed after the incident. PW12 identified in open court the pair of earrings which he had taken into custody from the possession of PW6.

13. It is important to note that the evidence of PW12 relating to the recovery of the earrings from PW6 was never challenged by the defence during cross-examination. PW12 was also a member of the police team led by SI Saheed that arrested the appellant at Weliweriya.

14. As this case is based entirely on circumstantial evidence, it is apposite to consider the legal principles governing the requirements that must be satisfied before a conviction can be founded on circumstantial evidence. In this regard, the following authorities would be of assistance

15. In ***Hanumant Govind Nargundkar v. State of M.P., AIR (1952) SC 343,*** it was observed thus;

> *"It is well to remember that in case where the evidence is of a circumstantial nautre, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far*

complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

16. In ***State of U.P. v. Ashok Kumar Srivastava, (1992) Crl LJ 1104*** it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

17. In ***C. Chenga Reddy v. State of A.P., [1996] 10 SCC 193,*** wherein it has been observed thus:

"In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."

18. Sir Alfred Wills in his book `*Wills' Circumstantial Evidence' (Chapter VI)* lays down the following rules specially to be observed in the case of circumstantial evidence:

(1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum;

(2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability;

(3) in all cases, whether of direct of circumstantial evidence the best evidence must be adduced which the nature of the case admits;

(4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and

(5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

19. In ***Padala Veera Reddy v. State of A.P., AIR (1990) SC 79*** it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

20. 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.

21. 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.

22. 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"

23. 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.

24. When considering a case on circumstantial evidence, Court has to bear in mind that the prosecution must prove beyond reasonable doubt that the circumstantial evidence led at the trial must only be consistent with the guilt of the appellant and not with any other hypothesis. At this point, I wish to set out a set of rules out lined in the case of ***Junaiden Mohamed Haaris v Hon. Attorney General (SC Appeal 118-2017)*** *decided on 9.11.2018 by Justice Aluwihare, which are as follows,*

1) *The inference sought to be drawn must be consistent with all the proved facts, if it is not, then the inference cannot be drawn.*
2) *The proved facts should be such that they exclude every reasonable inference from them, save the one to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct (per Watermeyer J. in R v Blom*

1939 A.D.188) The rule regarding the exclusion of every hypothesis of innocence before drawing the inference of guilt was laid down way back in 1838 in the case of R vs Hodges 1838 2 Lew, cc.227). The circumstances must be such as to produce moral certainty to the exclusion of every reasonable doubt." In the same judgment further reference has been made to the definition of circumstantial evidence in the book by E. R. S. R. Coomarswamy "The Law of Evidence" where it has stated as follows, "The chain or strand of proved facts and circumstances must be so complete that no link in it is missing. If any vital factor which is necessary to make the chain or strand complete is missing or has remained unproved, it must be held that the prosecution has failed to establish its case. A vital link should never be inferred."

25. It is with these legal principles in mind that I shall proceed to consider the present appeal. The evidence of PW8 Dr. Ajith Tennekoon, who conducted the post-mortem examination of the deceased, clearly established that the cause of death was asphyxia resulting from manual strangulation. He lucidly explained the nature of the injuries observed on the body of the deceased and the medical basis upon which he arrived at that conclusion. Furthermore, the presence of dead spermatozoa in the vaginal swabs taken from the deceased provides further medical confirmation that she had been subjected to sexual abuse.

26. In this regard, the testimony of PW13, Ruwan Illeperuma, a Senior Scientist of Genetech, who conducted the DNA profiling, assumes considerable importance. His evidence establishes that the DNA profile obtained from the samples taken from the body of the deceased does not match that of the appellant, but corresponds to that of another person. This evidence strongly indicates the involvement of a third party in the commission of the offence.

27. It is also evident from the testimony of PW19 that an unknown person, said to have recently been released from prison, visited his home around 18 January 2007. While this unknown person was present at PW19's residence, the appellant arrived there and left together with him. Within two days, the appellant returned with the same person and produced two earrings, requesting a sum of Rs. 3,000.00 from PW19. On that

occasion, PW19 directed them to a person known as "Loku Akka." The appellant thereafter proceeded to that place, leaving the unknown person at PW19's residence, and returned shortly thereafter, informing PW19 that he had borrowed Rs. 3,000.00 by pawning the earrings. Subsequently, the appellant left with the said unknown person, stating that he would drop him at the road. Thereafter, neither the appellant nor the said unknown person was seen by PW19.

28. The evidence of PW12 confirms that the person from whom the earrings were recovered was Swarnalatha, also known as "Lokki." Accordingly, the combined evidence of PW8, PW13 Ruwan Illeperuma, and PW19 clearly establishes the presence and involvement of another person, in addition to the appellant, in the commission of the crime.

29. The next pivotal issue in the present appeal is whether the aforesaid circumstantial evidence is sufficient to draw the sole inference of the guilt of the appellant and whether it is inconsistent with any other inference consistent with his innocence.

30. As stated elsewhere in this judgment, the principal piece of evidence relied upon by the prosecution against the appellant is his possession of the earrings belonging to the deceased soon after the murder. Despite having made a dock statement, the appellant offered no explanation whatsoever in this regard. In other words, although the appellant denied his involvement in the crime, he remained silent as to how he came into possession of the deceased's earrings.

31. In view of the circumstantial evidence adduced, it is apposite to consider the applicability of illustration (a) of Section 114 of the Evidence Ordinance.

    Illustration (a) of section 114 of the Evidence Ordinance provides that,

    "It can be presumed that when a man is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen unless he can account for his possession."

32. In the present case, the medical evidence establishes that the death of the deceased occurred between 7.00 p.m. on 19.01.2007 and 8.00 a.m. on 20.01.2007. The evidence of PW19 clearly establishes that on 20.01.2007 the appellant was in possession of the

earrings worn by the deceased. No plausible explanation was forthcoming from the appellant in this regard.

33. The applicability of illustration (a) to Section 114 of the Evidence Ordinance has been considered and discussed in numerous judicial authorities, both local and foreign.

34. In the case of ***The King v William Perera (1944) 45 NLR 433 at 438,*** Chief Justice Howard stated that,

> *"The law is, that if, recently after the commission of the crime, a person is found in possession of the stolen goods, that person is called up to account for the possession, that is, to give an explanation of it, which is not unreasonable or improbable. The strength of the presumption, which arises from such possession, is in proportion to the shortness of the interval which has elapsed. If the interval has been only an hour or two, not half a day, the presumption is so strong, that it almost amounts to proof; because the reasonable inference is, that the person must have stolen the property. In the ordinary affairs of life, it is not probable that the person could have got possession of the property in any other way. And juries can, only judge of matters, with reference to their knowledge and experience of the ordinary affairs of life."*

35. In a similar vein, Wijewardene J (as he then was), in ***Cassim v Udaya Manaar (1943) 44 NLR 519,*** quoted Tayler on Evidence 12th Ed, para 142, where it is noted that the

> *"... presumption is not confined to cases of theft but applies to all crimes even the most penal. Thus, on an indictment for arson proof that property which was in the house at the time it was burnt, was soon afterwards found in the possession of the prisoner has been held to raise a probable presumption that he was present and concerned in the offence. A like inference has been raised in the case of murder accompanied by robbery, in the case of burglary and in the case of the possession of a quantity of counterfeit money". His Lordship then added a caution in drawing such presumptions of fact by laying emphasis on the aspect that* (at p. 520), "

36. Sir James Fitz-James Stephen in his book titled 'An introduction to the Indian Evidence Act, (2nd Impression)', after dealing with the topic of conclusive presumptions, makes the following statement in relation to Section 114, (at p. 181), that:

> *"... the Court may in all cases whatever draw from the facts before it whatever inferences it thinks just" (emphasis added). ... the Court has to consider carefully whether the maxim applies to the facts of the case before it" because a presumption under Section 114 is not a presumption of law but only a presumption of fact."* (Indeed, Sir Stephen was the author of both the Indian and the Sri Lankan Evidence Ordinances).

37. Amaratunge J, having referred to several local and foreign authorities as well as authoritative legal literature, stated as follows in ***Ariyasinghe and Others v. Attorney General (2004) 2 Sri L.R. 357:*** (at p.399) that:

> *"Thus, the categories of offences in respect of which a presumption under section 114 may be drawn are not restricted or closed. The Courts are left with an unfettered discretion in all cases to presume, if so advised, the existence of any fact' which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case'.*

38. In light of the aforementioned authorities, the presumption contemplated under Section 114 (a) of the Evidence Ordinance may be safely applied to the present case, particularly in establishing the charge of murder against the appellant. Since this is not a presumption of law but a presumption of fact, the extent of its application must be assessed in the factual context of the present case, having particular regard to the subsequent conduct of the appellant and his failure to offer any explanation for the incriminating circumstances proved against him.

39. The appellant was found to be in possession of the earrings belonging to the deceased on the very next day after the body of the deceased was recovered. The evidence relating to the identity of the earrings remains unshaken, and it has been established beyond reasonable doubt that the appellant pawned them and obtained money thereon.

40. Since the appellant was found within 24 hours after the body of the deceased was recovered, in possession of earrings belonging to the deceased, and no plausible explanation was offered by him in this regard, a reasonable inference can be drawn that the appellant was responsible for the death of the deceased.

41. An accused is presumed innocent until proven guilty by cogent and credible evidence adduced by the prosecution. However, once the prosecution has discharged its burden, if the defence does not challenge that evidence, either through cross-examination of the prosecution witnesses or by presenting any evidence before the trial Court, the Court is entitled to determine the guilt of the accused.

42. In the instant case, the prosecution witnesses were consistent, truthful, and withstood the test of cross-examination. When the defense was called, the appellant made a dock statement in which he maintained that he had no knowledge of the matter.

43. At this point, I draw my attention to the case of ***Pantis vs The Attorney General 2 SLR 148,*** where Justice Wijeyaratne held that,

> *"the burden of proof is always on the prosecution to prove all ingredients of the charge beyond a reasonable doubt and there is no burden on the accused to give an explanation which satisfies Court or at least is sufficient to create a reasonable doubt as to his guilt."*

44. However, in the instant case, I find that the dock statement did not challenge the incriminating evidence placed by the prosecution against the appellant. The appellant merely denied his involvement in the offence, but remained silent with regard to the recovery of the earrings from PW6 and as to how he came into possession of those earrings, which were subsequently pawned by him before PW6.

45. By opting to make a dock statement, the appellant chose to explain his position without oath or affirmation and was not subjected to cross-examination. Nevertheless, the appellant manifestly failed to explain how he came to possess the earrings or what prompted him to pawn them before PW6. In this regard, following authorities would be of much assistance.

46. In the case of ***State of Tamil Nadu vs. Rajendran*** **1999 Cri L.J. 4552,** Indian Supreme Court observed thus:

> *"In a case of circumstantial evidence when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete."*

47. Similarly, in the case of ***Boby Mathew vs. State of Karanatake 2004 Cri L.J. Vol3P 3003 at 3015*****,** the dead body of the deceased was found tied to a cot inside the room of the first floor of the house which was in exclusive possession and usage of the accused and the dead body bearing as many as 31 injuries out of which the injuries in region of the head being ante mortem and fatal in nature. Dismissing the appeal of the accused, Bannurmath J observed thus*:*

> *"Accused failing to give any explanation as to how the body of the deceased came from his house or shown to be in his house, has to be held against the accused when there is no explanation.. . . . . No doubt it is true that under our Indian jurisprudence, accused has a right of silence and need not open his mouth as held in earlier pronouncements 'he can be a silent spectator watching the prosecution show to prove him guilty beyond reasonable doubt', views of the Courts have now changed to the limited extent that once the prosecution succeeds in prima facie showing number of circumstances pointing unerringly accusing finger towards the accused, it is for the accused to come out and say or at least explain those circumstances which are shown to be against his innocence. If he still keeps his mouth shut and it is not explained or even where he tries to explain certain things which are found to be false, then the Courts are justified in drawing adverse inference against the accused as to his conduct."*

48. Applying the principles enunciated in the above judicial decisions, I hold that where the prosecution establishes strong incriminating evidence, the accused is required to offer an explanation. Failure to do so may warrant the inference that no explanation exists.

49. In the instant case, the prosecution established strong and incriminating evidence against the appellant, yet he offered no explanation beyond a bare denial of knowledge. Significantly, he failed to account for how he came into possession of the earrings worn by the deceased shortly after her death. In accordance with established principles, such failure to provide any explanation for highly incriminating evidence permits the inference that the appellant has no plausible explanation to offer, thereby reinforcing the probative force of the prosecution's case against him.

50. Although learned Counsel for the appellant contended that the learned trial Judge failed to evaluate the items of circumstantial evidence judicially, I am unable to agree with this contention upon a careful examination of the judgment.

51. For the reasons stated above, I am satisfied that the prosecution has proved the case against the appellant beyond reasonable doubt. There is no basis to interfere with the judgment of the learned trial Judge. The conviction and the death sentence are accordingly affirmed, and the appeal is dismissed.

Judge of the Court of Appeal

P. Kumararatnam,J

I agree,

Judge of the Court of Appeal