

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

In the matter of an Appeal made under
Section 331 of the Code of Criminal
Procedure Act No.15 of 1979.

**Court of Appeal Case No.
CA/HCC/139-142/2020
HC/ Kalutara Case No.
Case No. HC/316/2003.**

The Democratic Socialist Republic of
Lanka

COMPLAINANT

Vs.

1. Diyapaththugama Vidanalage
Kumara Samarasinghe
2. Diyapaththugama Vidanalage
Ravindra
3. Diyapaththugama Vidanalage Sisira
Kusum Samarasinghe
4. Diyapaththugama Vidanalage
Sarah Samarasinghe
5. Pushpawarna Hettiarachchi

ACCUSED

NOW BETWEEN

1. Diyapatthugama Vidanalage
Kumara Samarasinghe
2. Diyapatthugama Vidanalage
Ravindra
3. Diyapatthugama Vidanalage
Sisira Kusum Samarasinghe
4. Diyapatthugama Vidanalage
Sarah Samarasinghe

ACCUSED-APPELLANTS

Vs.

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

COMPLAINANT-RESPONDENT

- BEFORE** : **P. Kumararatnam, J.**
R. P. Hettiarachchi, J.
- COUNSEL** : **Tenney Fernando with Pasindu Gamage for the 1st and 4th Appellants.**
U.R.De Silva, PC with Pradeep Kaluarachchi, Thilini Atapattu, Chatura Weeramantry, Sanuri Dissanayake and Hansani Pathirana for the 2nd Appellant.
Neranjan Jayasinghe with Randunu Heelage for the 3rd Appellant.
Riyaz Barry, DSG for the Respondent.

ARGUED ON : **14/10/2025**

DECIDED ON : **03/12/2025**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellants (hereinafter referred to as the Appellants) with the 5th Accused were indicted in the High Court of Kalutara for committing the murder of Prematilaka Hettiarachchi alias Mahatun on 06.03.1998 in three counts of offences punishable under Sections 140, 146 and 296 read with Section 32 of the Penal Code.

The trial had commenced before the High Court Judge of Kalutara as the Appellants and the 5th Accused had opted for a non-jury trial. After the conclusion of the prosecution's case, the learned High Court Judge had called for the defence and the 2nd Appellant and the 5th Accused had made statements from the dock. The others opted to remain silent. After considering the evidence presented by both parties, the learned High Court Judge acquitted the Appellants from counts number 01 and 02 and convicted the Appellants for count number 3 and sentenced them to death on 11/06/2020.

The 5th Accused was acquitted from all the charges.

Being aggrieved by the aforesaid conviction and sentence, the Appellants preferred this appeal to this court. The Learned Counsel for the Appellant informed this court that the Appellants have given consent to argue this matter in their absence.

The 3rd Appellant had passed away on 24.07.2025 while receiving treatment at the Prison Hospital. Hence, the appeal proceeded only against the 1st, 2nd, and 4th Appellants.

On behalf of the 1st and 4th Appellants, the following Grounds of Appeal are raised:

1. The learned High Court Judge has misdirected himself by believing the sole eye witness while disregarding the contradictions and omissions highlighted and marked in his testimony.
2. The learned High Court Judge has misdirected himself by failing to address material contradictions and omissions.
3. The learned High Court Judge had misdirected himself by convicting the Appellants based on the uncorroborated testimony of a discredited single eye witness.

On behalf of the 2nd Appellant, the following Grounds of Appeal are raised:

1. The learned High Court Judge has not properly evaluated the evidence of key witnesses.
2. The learned High Court Judge has rejected the omissions and the contradictions without giving reasons.

As the appeal grounds raised by the Learned Counsel for the 1st and 4th Appellant and the grounds raised by the Learned President's Counsel for the

2nd Appellant are interconnected, the said grounds will be considered together hereinafter.

Background of the case.

According to PW1, Athulajeewa, the deceased is his uncle and was running a food stall about three kilometres from the Pelawatta town. On the day of the incident, at around 7.00pm he had gone to pick up his uncle from his food stall. When he was riding his motor bike with the deceased, on the new bridge which was on their way, the witness, with the aid of an electric light nearby, had spotted a group of people lurking on the middle of the bridge. After seeing the crowd, the deceased had told him to ride the motorbike through the old bridge to avoid the crowd.

Before entering the old bridge, when the motor bike had slowed down to negotiate a hump on the old bridge, the motorbike had broken down and toppled to the side of the old bridge. While he was near his motor bike, the deceased had started to run from the scene. At that time, PW1 had seen with the help of the nearby lights, the 1st Appellant dealing a blow to the back of the deceased's head with a *manna* knife. Due to the fatal blow, the deceased had collapsed and the witness had seen the 2nd, 3rd and 4th Appellants standing in the vicinity. The 2nd and 4th Appellants, who were armed with iron rods, had pelted stones at him to chase him out from the scene of crime. Due to fear, he took to his heels and when he had turned back, he had seen the 2nd and 4th Appellants dealing blows on the deceased's body with iron rods. PW1 had then hidden himself in the dark for about one hour and had only appeared after the arrival of the police.

There were about 07 cut injuries, one abrasion and one contusion noted on the deceased by the doctor and according to him the death was a result of a haemorrhage shock due to Cranio-Cerebral injuries from the cut injuries to the head.

After the closure of the prosecution's case, the defence was called and the 2nd Appellant and the 5th Accused had opted to make a statement from the dock which had been rejected by the Learned High Court Judge. The others had opted to remain silent.

As the Appeal grounds raised by the Learned Counsels are interconnected, this appeal will be considered under the following common grounds:

1. The Learned High Court Judge had misdirected himself by convicting the Appellants based on the uncorroborated testimony of a discredited single eye witness.
2. The Learned High Court Judge had misdirected himself by believing the sole eye witness and other witnesses and had failed to properly analyse their evidence.
3. The Learned High Court Judge had rejected the omissions and the contradictions without giving reasons.

The Counsel for the Appellant argues that PW1's evidence is not corroborated by any other witnesses. In this case, PW1 is an eye witness. He had clearly seen the incident without any disruptions on that day.

Section 134 of the Evidence Ordinance states as follows;

"No particular number of witnesses shall in any case be required for the proof of any fact."

In this case, PW1 had clearly witnessed the incident and had given evidence 19 years after the incident. He had studied up to grade eight. The High Court Judge had considered these circumstances in his judgement.

In the case of **Sumanasena v. The Attorney General** [1999] 3 Sri.L.R 137 held 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."

In the case of **Madduma Siripala and another v. The Attorney General** CA/125-126/10 decided on 27/10/2017, Justice Thurairaja held that:

"With reference to the above-mentioned section, there is no requisite number of witnesses needed to be called to prove a fact. In fact, the evidence of a single witness is sufficient to prove a fact provided the evidence of the witness is uncontradicted, truthful, independent and reliable to the court".

In the case of **Chacko Alias Aniyan Kunju & others v. State of Kerala-** [2004] INSC 87 (21st January 2004) held that:

"The provision clearly states that no particular number of witnesses is required to establish the case. Conviction can be based on the testimony of single witness if he is wholly reliable. Corroboration may be necessary when he is partially reliable. If the evidence is unblemished and beyond all possible criticism and the Court is satisfied that the witness was speaking the truth then on his evidence alone conviction can be maintained".

With reference to the above cited judicial decisions, it is abundantly clear that the trial court can act on the evidence of a single witness whose evidence is truthful and impressive to come to a correct finding.

In this case PW1 had vividly explained how the Appellants had committed the murder of the deceased.

The doctor had noted about 09 injuries on the deceased. The first injury had been inflicted on the head of the deceased. Further, six cut injuries were seen on the head of the deceased. According to the doctor the death was caused as a result of a haemorrhage due to Cranio-Cerebral injuries from the cut injuries to the head. The medical evidence is therefore quite consistent with the evidence given by the eye witness in respect of the assault on the deceased.

Independent corroboration being provided in a murder case, will generally not be a *sine qua non* for a conviction, as long as such evidence is considered to be compelling and reliable. In situations where such uncorroborated testimony of a single witness is proved to be credible and reasonable by the court, a conviction can be sustained.

Although no necessity arises to corroborate the testimony of PW01, his testimony has been corroborated by the medical evidence. In this case PW01 is an eye witness. His evidence is not tainted with improbabilities or with any visible ambiguity. Therefore, acting on PW01's evidence will not prejudice the Appellants' rights.

It has been claimed in the second ground that the learned High Court Judge has misdirected himself by believing the sole eye witness and other witnesses and had failed to properly analyse their evidence. The counsel for the Appellants referring to the evidence given by the witnesses called by the prosecution further argues that there are some deviations existing in the evidence given by them.

The Learned High Court Judge in his judgment had very correctly analysed all the evidence to arrive at his conclusion. He had meticulously analysed the evidence given by the eye witness along with medical evidence and other

witnesses, and had pronounced his judgement, finding the Appellants guilty of murder of the deceased in this case.

In the final ground of appeal, the learned Counsel for the Appellants contended that the learned High Court Judge has rejected the omissions and the contradictions without giving reasons.

The Appellants contend that the Learned Trial Judge has misdirected himself by placing total reliability on the most important witness PW1, who had displayed a complete lack of creditworthiness when the defense Counsel had highlighted several material contradictions and omissions. Thereby, it was contended that a conviction for murder is not safe based on his testimony.

The importance of an omission in criminal trials has been discussed in several judicial decisions by the Appellate Courts of our country. It is pertinent to discuss whether the above-mentioned omissions have any adverse effect on the evidence given by PW01 in this case.

In the case of **The Attorney General v. Sandanam Pitchi Mary Theresa** (2011) 2 Sri L.R. 292 held that,

“Whilst internal contradictions or discrepancies would ordinarily affect the trustworthiness of the witness statement, it is well established that the Court must exercise its judgement on the nature of the inconsistency or contradiction and whether they are material to the facts in issue. Discrepancies which do not go to the root of the matter and assail the basic version of the witness cannot be given too much importance. Witnesses should not be disbelieved on account of trifling discrepancies and omissions. When contradictions are marked, the Judge should direct his attention to whether they are material or not and the witness should be given an opportunity of explaining the matter.”

The incident happened on 06/03/1998 and PW01 had given evidence before the High Court on 06/02/2017 after about 19 years of the incident. Considering the contradictions, omissions and the passage of time after the incident, a reasonable court cannot expect hundred percent accurate evidence from a witness. The Appellate Courts have repeatedly endorsed this position in several decided cases.

Justice Thakkar in **Bhoginbhai Hirigibhai v State of Gujarat** 1983 AIR SC 753 stated:

“Discrepancies which do not go to the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when the all-important probabilities-factor echoes in favour of the version narrated by the witnesses.”

The learned High Court Judge in his judgment at pages 286-288 had considered the omissions highlighted and contradictions marked, and had arrived at the finding that the said commissions and contradictions do not go to the core of the case.

I too agree with the learned High Court Judge that the omissions and contradictions highlighted by the Appellants do not go to the root of the prosecution's case.

The learned High Court Judge adhering to the Section 283 of the Criminal Procedure Code Act No. 15 of 1979, had correctly evaluated the evidence presented by both sides and delivered the judgment. In the Judgment, the learned High Court Judge had very correctly analysed the evidence presented by the prosecution and the defence.

Considering all appeal grounds advanced by the Appellants in this case, I conclude that none of the grounds have any merits.

Considering the evidence led at the trial, I am of the view that there are no reasons to interfere with the judgment of the learned High Court Judge of Kalutara. For the reasons stated above, I affirm the conviction and the sentence imposed on the Appellants.

The appeal is dismissed.

The Registrar is directed to send this judgment to the High Court of Kalutara along with the original Case record.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J

I agree

JUDGE OF THE COURT OF APPEAL