

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

In the matter of an Appeal against the Order of
the High Court under Section 331 of the Code
of Criminal Procedure Act no. 15 of 1979.

CA Case No: CA -HCC- 046-049-24

HC of Kalutara-565/ 05

The Democratic Socialist Republic of Sri Lanka

Complainant

Vs.

1. Hembathanthrige Ajith Sirimewan
Fernando Alias J.V.P. Ajith
2. Balapitiya Liyanaralalage Jude Prisil
Pinu
3. Galuge Ajith Fernando alias Payagala
Ajith
4. Mihidukulasuriya Warnapelilage Lal
Silva alias Lal (deceased)
5. Karunamuni Samankumara Silva Alias
Sagara
6. Thushara Samrawickrama Alias Bindu
7. Kurukulasuriya Sikku Patabadiralalage
Roshan Wasantha Silva

Accused

AND NOW BETWEEN

1. Hembathanthrige Ajith Sirimewan
Fernando Alias J.V.P. Ajith
2. Balapitiya Liyanaralalage Jude Prisil Pinu

3. Galuge Ajith Fernando alias Payagala
Ajith

4. Karunamuni Samankumara Silva Alias
Sagara

(Presently at Welikada Prison)

Accused-Appellants

Vs.

1. Officer-in-Charge
Police Station
Payagala

2. The Attorney General
Attorney General's Department
Colombo 12

Complainant-Respondent

Before: B. Sasi Mahendran, J.

Amal Ranaraja, J

Counsel : Sarath Jayamanne, PC, with Vineshka Mendis, Prashan Wickramarathne,
Sajeewa Meegahawatta and Dinindu Ratnayake for the 1st and 2nd Accused-
Appellants

Neranjana Jayasinghe with Randunu Heellage for the 3rd Accused-
Appellant

Palitha Fernando, PC with Vishwa Gunarathna for the 5th Accused-
Appellant

Sudharshana de Silva, ASG for the Respondent

Written 06.06.2024 (by the 3rd Accused Appellant)

Submissions: 01.07.2024 (by the 1st Accused-Appellant)

On 01.07.2024 (by the 2nd Accused Appellant)

01.07.2024 (by the Accused-Appellant)

28.02.2025 (by the Respondent)

Argued On : 15.10.2025 and 21.10.2025

Judgment On: 11.12.2025

JUDGEMENT

B. Sasi Mahendran, J.

The Accused Appellants (herein after referred to as the 1st,2nd,3rd,5th Accused), along with 4th (who died during the trial), 6th and 7th Accused, were indicted before the High Court of Kaluthara on the following counts,

1. Being a member of an Unlawful Assembly along with the 4th Accused, which is punishable under Section 140 of the Penal Code.
2. Committing the murder of Godage Hilarin Joseph Appuhamy while being a member of an Unlawful Assembly along with the 4th Accused, which is punishable under Section 296 of the Penal Code, read with Section 140 of the Penal Code.
3. Committing Grievous Hurt on Nihal Shelton Appuhamy (PW 01) while being members of an Unlawful Assembly along with the 4th Accused, which is punishable under Section 317 of the Penal Code, read with Section 140 of the Penal Code.
4. Committing the murder of Godage Hilarin Joseph Appuhamy, along with the 4th Accused, is punishable under Section 296 of the Penal Code.
5. Committing Grievous Hurt on Nihal Shelton Appuhamy (PW 01) along with the 4th Accused, which is punishable under Section 317 of the Penal Code.

At the trial, the prosecution presented evidence through ten witnesses and marked productions P1-P3 and thereafter closed its case. The 1st,2nd,3rd, 5th,6th and 7th Accused, in their defence, made dock statements. Additionally, the 1st and 3rd Accused called 4 witnesses in their defence.

Upon conclusion of the trial, the Learned Judge of the High Court delivered judgment on 11 September 2023. The 1st, 2nd, 3rd, and 5th accused were found guilty on all five counts of the indictment, and the 6th and 7th accused were acquitted of all counts. For the 1st and the 3rd counts, each was sentenced to 2 years of rigorous imprisonment without a fine. For the 2nd count, the sentence of death was imposed. Acting under section 306 of

the Criminal Code of Procedure Act, no sentence or fine has been imposed for the 4th and the 5th counts. The 2nd accused was ordered to pay compensation of Rs. 200,000 to PW 1 in default of 2 years rigorous imprisonment, and for the 1st, 3rd and 5th accused, Rs. 50,000 of compensation was ordered in default of 12 months of rigorous imprisonment.

Being dissatisfied with both the conviction and the sentence imposed by the Learned High Court Judge, the Appellants filed an appeal before this Court. The principal ground advanced by the defence was that the prosecution had failed to prove that the death was caused by the act of the Accused. A material contradiction was highlighted between the testimony of the eye witnesses and the evidence of the Judicial Medical Officer (JMO). According to PW 16, the JMO, the fatal injury was inflicted with a heavy blunt weapon. In contrast, PW 1 and PW 2 testified that the first Accused assaulted the deceased with a Manna Knife.

The facts and circumstances of this case are as follows,

On 02.01.1996, PW 1, Nihal Shelton Appuhamy, the brother of the deceased, went to Payagala beach around 9.00 a.m. with PW 2 to collect shrimp. At that time, the 2nd accused, along with others, came to attack the witness. The witness disclosed that, at the alleged time, he and the Second Accused were not on speaking terms due to a transaction over shrimps. The witness identified Prisil, 2nd Accused, Ajith, 1st Accused, Walle Ajith, 3rd Accused, Lal, 4th Accused, and Sagara, 5th Accused, among the group. He further stated that although Bindu (6th Accused) and Roshan (7th Accused) were also present, he did not know their names personally at the time.

After gathering the shrimp, PW 1 and PW 2 proceeded to PW 3's house to weigh them. At that time, they were confronted by the 2nd Accused and several other accused, armed with poles and knives. The 1st Accused has threatened them by saying, “ආදි දෙකෙන් එකක් ඉවර කරනවා” and had tried to attack the witness. The PW 3, together with his neighbours and sons, intervened and rescued PW 1 by taking him inside his house. Subsequently, the accused left the scene and proceeded towards Madina Kanda.

Following the incident, the deceased, one of PW 1's elder brothers, arrived at PW 3's residence in a van accompanied by a driver. At that time, PW 1 and PW 2 were inside PW 3's house, and PW 1 narrated the confrontation to the deceased. With the intention of resolving the matter, stating “මේක බේරගනිමු”, the deceased took PW 1 and PW 2 in the van towards Madina Kanda. They encountered the accused, namely Prisil, JVP Ajith,

Sagara, Lal Roshan and Bindu, seated on a bridge along Madina Kanda road. The witness pointed out the accused, stating that they were the individuals who had attacked them. At that moment, the deceased alighted from the van and approached the accused. At that moment, the 1st accused struck the deceased on the head with a Manna knife, and the witness stated it as “ගැහුවා”.

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ප්‍ර : අයියා ගිහිල්ලා මොකද කලේ?

උ : අයියා ගිහිල්ලා එතනට යනකොට ජේ.වී.පී. අප්පි මාළුමන්නයකින් අයියාගේ ඔලුවට ගැහුවා.

ප්‍ර : ඒ පහර අයියාගේ ඔලුවට වැදුනාද?

උ : වැදුනා.

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ප්‍ර : අයියාට මාළු මන්නයකින් ගැහුවා කිව්වනේ?

උ : ඔව්.

ප්‍ර : කොහෙටද ගැහුවේ කියල දැක්කද?

උ : ඔලුවට.

ප්‍ර : ඊට පසුව?

උ : මම වෑන් එකෙන් බැහැලා ගියා අයියාට ගහන්න එපා කියලා.

PW 1 then approached the accused and pleaded with them not to attack the deceased, and after which the other accused attacked the deceased as he lay fallen. According to his testimony, the Second Accused struck his right hand with a sword, while the Third Accused attacked his left leg with a Manna knife. The Fourth Accused, armed with a pole, assaulted him on the shoulder.

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ප්‍ර : එහෙම නම නොදන්නා දෙන්නෙක් තමුන්ට, අයියාට ගැහුවා. ?

උ : අයියාට ගැහුවාට පසුව මම ගිහින් කිවුවා අයියාට ගහන්න එපා කියලා. මට පිසිලුයි, වැල්ලේ අප්පිතුයි කඩු පහරක් ගැහුවා මගේ දකුණු අතට. වම් කකුළට ගැහුවා වැල්ලේ අප්පිත්. පිසිල් දකුණු අතට ගැහුවා. ලාල් උරහිසට පොල්ලෙන් ගැහුවා.

Furthermore, the witness stated that the 5th, 6th, and 7th Accused also assaulted the deceased with poles. Thereafter, PW 1 fled to a nearby house and concealed himself. The 1st Accused followed him there and demanded that he be sent out by attacking the windows of the house. With the support of the residents of that house, PW 1 escaped through the rear door and proceeded to the Payagala Police Station by three-wheeler, where he was directed to the hospital. At the hospital, he learned that the deceased had succumbed to his injuries on the fourth day in the hospital. The police had initially recorded a short history from him while he was in the hospital, and following the death of the deceased, PW 1 returned to the police and provided a statement.

During cross-examination conducted by counsel for the First, Third, Fourth, Fifth, and Sixth Accused, the witness stated that when the deceased arrived at PW 3's house, he disclosed the incident to the deceased. The witness further stated that although the Fourth Accused's house was located near PW 3's residence, they did not go there. He added that the deceased had instructed them to proceed and discuss the matter to settle the dispute. The witness admitted the fact that they took 5 minutes to reach the Madina Kanda bridge.

According to the witness, the deceased instructed him to remain in the van, stating that he would go and settle the matter himself. Upon arriving at the place where the accused were present, the witness pointed out the accused. It shows the fact that the witness knew the accused who came to attack in the first incident. The witness further admitted that, at the bridge, all of the accused were known to him. He stated that, following this, the First Accused hit the deceased with a manna knife. The witness stated that Prisil and Walle Ajith attacked with a sword, causing injuries to his right hand. Walle Ajith further struck his left leg, while Lal assaulted him on the shoulder. Further confirmed that 10.00 a.m. at the time of the incident.

Additionally, the defence highlighted a contradiction in the witness testimony: while at one point he had stated that two persons were involved, elsewhere he had asserted that five unidentified individuals had attacked them at that time. The witness further stated that the Fourth Accused struck him with a pole, while two other unknown individuals attacked him later; he identified them as the 6th and the 7th accused. When the defence suggested that the deceased had taken a weapon from the van and gone to attack the accused, and that the witness was fabricating his account to conceal this fact, the witness categorically denied the suggestion.

The defence also suggested that a person named Charles had attacked the deceased and that the witness had threatened the family of the Fifth Accused. The witness categorically denied both suggestions. The witness testified that he did not proceed to the accused's residence, as the villagers had informed him that they had gone to Madina Kanda. The defence then suggested that the Second Accused had lodged a complaint at the Payagala Police Station around 10.45 a.m. The PW 2 has told the witness that the 2nd accused was in the police station. The witness responded that he was unaware of such a complaint, but later, PW 2 informed him of it while he was at the hospital.

PW 3, Benjamin Silva, testified that on 02.01.1996, he made a statement to the police. He stated that he heard a quarrel taking place in front of his house between Shelton, who lives in front of the house and Lokkaiya (PW 1) at around 12.00 p.m. It is noted that, in this case, the individual in question is not an accused. Furthermore, the prosecution does not regard this witness as an adverse witness.

PW 9, Dr Charles Chanaka Gunawardena, testified that he was serving at the Kalutara Hospital at the relevant time. On 02.01.1996, PW 1 was admitted to the hospital, and he examined the witness. According to the history provided, PW 1 stated that he had been attacked on Payagala beach by Ajith, Lal, and Prisil. The doctor recorded six injuries in total, identifying the first injury as grievous in nature.

PW 16, Judicial Medical Officer Dr Hadun Pathiranaahalage Wijeratne, testified that the post-mortem examination had been conducted by Dr B.P.P. Perera. When Dr Perera went abroad, the reports were handed over to PW 16. He stated that the first injury was a fatal injury, with a high probability of causing death, as it was inflicted on the head and resulted in damage to the brain. He further explained that such an injury could have been caused by a blunt weapon, such as a wooden pole.

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ප්‍ර : මෙවැනි තුවාලයක් කුමන ආකාරයේ ආයුධයකින් විය හැකිද ?

උ : මෙය පැහැදිලිව මොට ආයුධයකින් ඇති වූ සට්ටනයකින් ඇති වූ තුවාලයක් බව පැහැදිලියි.

ප්‍ර : එය පොල්ලකින් ආයුධයකින් විය හැකි ද ?

උ : එය පොල්ලක් වැනි ආයුධයකින් විය හැකිය. එහි යම් කිසි බරක් සහ සවි ශක්තියක් ඇති එකක් විය යුතුය.

The remaining injuries were classified as non-grievous.

During cross-examination, the witness admitted that, apart from the first injury, there was another wound on the neck, recorded as No. 14 in the post-mortem report, which was also classified as fatal. Furthermore, during examination-in-chief, the witness acknowledged that there were no cutting injuries; however, he stated that such injuries could have been caused by the blunt side of the sword.

PW 12, CI Amarakoon, was on duty on 02.01.1996 when Inoka, the sister was the second accused informed him about a quarrel at the beach. Acting on this information, he proceeded towards Mandina Kanda, where he found the deceased lying on the ground near the Alabada Temple, where he was alive at that time. The deceased was thereafter admitted to the Nagoda Hospital. Additionally, two bloodstains were observed in the house of the first accused, which is situated in the vicinity.

PW 2, Rasika Nalaka Silva, testified that Prisil, the Second Accused, together with JVP Ajith, Roshan, Bindu, Walle Ajith, Sagara, and Lal (now deceased), arrived and attempted to attack PW 1. However, the sons of PW 3 intervened, settled the dispute, and escorted PW 1 and PW 2 into the house. The witness stated that Prisil, the Second Accused, was armed with a rod, while Roshan, the Seventh Accused, carried a knife. Initially, the others did not possess any weapons. Subsequently, all the accused left the scene. Afterwards, the deceased arrived and inquired about the incident. In an effort to resolve the matter, the deceased took PW 1, PW 2, and the van driver to the Second Accused's residence. Villagers informed them that the accused had gone to Madina Kanda. Near the bridge at Madina Kanda, all the accused were present. The van stopped near the bridge, and the deceased instructed PW 1 to remain inside. The deceased then alighted and proceeded towards the accused.

At that time, the witness, still inside the van, had seen that the First Accused was armed with a Manna knife, while the Second Accused carried a sword. He confirmed with certainty that the First Accused held a Manna knife and the Second Accused a sword, while the remaining accused were armed with rods measuring approximately 2.5 to 3 feet in length.

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ප්‍ර : එතකොට ඒ ය අතේ ආයුධ තිබුනාද?

උ : මන්න පිහි තිබුනා. පොලු තිබුනා.

ප්‍ර : තව මොනවද තිබුනේ?

උ : මම දැක්කේ නැහැ.

ප්‍ර : කාගේ අතේද මන්න පිහියක් තිබෙනවා දැක්කේ?

උ : ජේ.වී.පී. අපීත්ගේ අතේ , පිසිල්ගේ අතේ, වැල්ලේ අපීත්ගේ අතේ . පිසිල් ගේ අතේ තිබුනේ කඩුවක්.

ප්‍ර : තමුත් ඊට ඉස්සෙල්ල කිව්වා නේද පිසිල්ගේ අතේ මන්න පිහියක් කියලා?

උ : කඩුවක් තිබුනේ.

අධිකරණයෙන්

ප්‍ර : කාගේ අතේද මන්න පිහිය තිබුනේ?

උ : ජේ.වී.පී. අපීත්ගේ අතේ, වැල්ලේ අපීත්ගේ අතේ.

ප්‍ර : පිසිල්ගේ අතේ කඩුවක් තිබුනා දැක්කද?

උ : ඔව්.

The deceased then approached the accused. At that moment, the First Accused struck the deceased on the head with a Manna knife.

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ප්‍ර : දැන් මෙම ජෝසප් කියන මරණකරු වාහනයෙන් බැස්සාට පසුව මොකද වුනේ?

උ : ජෝසප් අයියාට ගැහුවා. ජේ.වී.පී අපීත් මන්නයෙන් ඔලුවට.

ප්‍ර : තමුත් වැන් එක ඇතුලේ සිටද මේ සිද්ධිය දැක්කේ?

උ : නිහාල් අයියාත් ඒ එක්කම බැස්සා මමත් බහින්න හදනකොට නිහාල් අයියාට ගැහුවා.

ප්‍ර : දැන් මෙම ජෝසප් කියන මරණකරු වාහනයෙන් බැස්සාට පසුව මොකද වුනේ?

උ : ජෝසප් අයියාට ගැහුවා. ජේ.වී.පී අපීත් මන්නයෙන් ඔලුවට.

ප්‍ර : තමුත් වැන් එක ඇතුලේ සිටද මේ සිද්ධිය දැක්කේ?

උ : නිහාල් අයියාත් ඒ එක්කම බැස්සා මමත් බහින්න හදනකොට නිහාල් අයියාට ගැහුවා.

Following this, the other accused also assaulted the deceased. When PW 1 alighted from the van, the Second, Third, and Fourth Accused attacked him. The Second Accused struck PW 1's right elbow; the Fourth Accused assaulted his shoulder with a rod, and the Third Accused attacked his left knee.

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අධිකරණයෙන්

ප්‍ර : ජේ. ඩී. පී. අපීන් මොකකින්ද ගැහුවේ ?

උ : මාළු මන්තයකින් ගැහුවේ.

ප්‍ර : දැන් තමුන් කිව්වා දැක්කා කියලා මියගිය ජොසප්ට පහර දෙනවා ?

උ : ඔව්

ප්‍ර : කොහේටද පහර දුන්නේ ?

උ : ඔළුවට.

ප්‍ර : මන්තෙන් තමා ගැහුවේ?

උ : ඔව්.

.....

ප්‍ර : නිහාල්ගේ කොහේටද ගැහුවේ ?

උ : දකුණු වැලමිටට පහරක් වැදුණා, උරහිසට පොල්ලෙන් ගැහුවා ලාල්, වම් කකුලට දණ හිසට ගැහුවා වැල්ලේ අපීන්.

ප්‍ර : තමුන් එතකොට ඒ පහර දෙන අවස්ථාවේ දී එතනින් දුවලා ගියා කියලා කිව්වොත්?

උ : මට කට්ටිය ගහන්න එතකොට තමා දුවලා පාරට ආවේ.

ප්‍ර : තමුන් කොහේට ද දිව්වේ ?

උ : ගාලු පාරට.

ප්‍ර : ඇයි ගාලු පාරට දිව්වේ ?

උ : අපි එතනින් යන්න පාරක් දන්නේ නැහැ. කවදාවත් ගිහිල්ලා නැහැ.

The witness stated that, at the time of the incident, he fled towards Galle Road, as he was unfamiliar with any other escape route. He did not return to observe what transpired with

the deceased or PW 1. Instead, he proceeded to the Payagala Police Station at approximately 9:30 a.m. By that time, the police had informed the witness that they had already arrived at the scene and subsequently went to the hospital at around 10:30 a.m. Near the police station, the witness encountered PW 1, who was then taken to the hospital for treatment.

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ප්‍ර : තමුන්ට කොහේදිද නැවත නිහාල් අයිශාව හම්බ උනේ ?

උ : පයාගල පොලිසිය ලඟදී නිහාල් අයිශාව හම්බ වුනේ?

Following this, the witness returned at approximately 1:00 p.m. to provide his statement. When questioned, the witness stated that Lal and Prisil had attacked him and further confirmed that Walle Ajith was also present.

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ප්‍ර : දැන් තමුන් ප්‍රකාශ කළා ලාල්, පිසිල් තමා නිහාල් යන යට පහර දුන්නේ කියලා?

උ : වැල්ලේ අප්පිතුයි.

He further clarified that the deceased was his mother's sister's son, making him the witness's cousin. The defence suggested that the deceased was armed with a weapon when he approached the accused after alighting from the van. The witness firmly denied this suggestion. The witness stated that a police jeep arrived when they were near Meril's house, and the officers advised them to go home during the 1st incident. When the deceased questioned the accused as to why they had assaulted his brother, the accused immediately began to attack both the deceased and PW 1.

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ප්‍ර : තමා කිව්වා පොලිසියෙන් ආපු මහත්තුරු කිව්වා ගෙදර යන්න කියලා ඒක අහන්නෙන් නැතිව තමා සහ මිය ගිය සහෝදරයා සහ නිහාල් මදින කන්දට ගියේ, තමා මීට පෙර මුලික සාක්ෂි දෙමින් කියපු ආකාරයට කිසිදුම හෝ පහර දීමක් මෙම වූදිනයිත් සිදු නොකළ බවට මම තමුන්ට යෝජනා කරනවා ?

උ : වැන් එකෙන් බැස්සා ස්වාමිණි, වැන් එකෙන් බැස්සහම ජොශප් අයිශා ඇහුවා මල්ලිට ගහන්න ආවේ මොකද කියලා ඇහුවාහම මේ ගොල්ලෝ ඊට පස්සේ ජොශප් අයිශාට ගැහුවා,

ඊට පස්සේ නිහාල් අයිියාටත් ගැහුවා, මටත් ගහන්න එනකොට මම පාරට පැනලා දුවගෙන ඇවිල්ලා පොලිසියට ඇවිත් සිටියේ.

The witness asserted that Prisil, the Second Accused, Lal, the Fourth Accused, Walle Ajith, and the Third Accused attacked PW 1. This line of cross-examination was conducted by counsel representing the First, Third, and Fifth Accused.

The following questions were asked by counsel for the 2nd Accused. The witness further testified that when he was giving his police statement at around 1.30 p.m., the Second Accused was present at the police station. The witness admitted that, together with Officer Wagapitiya, he went to point out the houses of the accused. However, he stated that he was familiar only with the residence of the Second Accused. It is noted that the witness stated that the Second Accused was present at the police station.

It is observed that the sister of the Second Accused lodged a complaint with the police concerning these witnesses. At that time, the Second Accused was not present in his house. This indicates that the witness had gone in search of the Second Accused, who was also identified as having participated in the first attack. The defence counsel suggested that the Second Accused was not present at the time of the attack. The witness denied this proposition and affirmed that the Second Accused had, in fact, assaulted both the deceased and PW 1.

The witness consistently maintained that the deceased wished to meet with the accused in order to settle the dispute, so that he could continue collecting shrimp along the beach.

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ප්‍ර : දැන් තමන් කිව්වේ ප්‍රිසිල් යන අය ගහන්න ආවා කියලානේ. එතකොට ජෝ අයිියා මොකද කිව්වේ?

උ : ජෝ අයිියා කිව්වා, ඒ ගොල්ලෝ හමු වෙලා මේක බේරුමක් කර ගමු කියලා. නැත්නම් මේ විදියට ඔය රස්සාව කර ගන්න බැහැ කියලා.

For the 6th and 7th accused, the defence marked an omission in the police statement on 02.01.1996, pointing out that the names of the 6th and the 7th accused were not mentioned by the witness. Counsel established that the witness did not mention the Sixth and Seventh Accused in connection with the attack. Further, another omission was marked that the 6th and 7th accused were carrying rods.

It should be noted that this witness failed to mention the names of the 6th and the 7th accused in their police statements, and failed to describe their involvement in both attacks. On that basis, they were acquitted by the Learned High Court Judge of all counts.

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“පැමිණිල්ල විසින් ඉදිරිපත් කළ සාක්ෂි මගින් ඉහත කී චෝදනාවන් වලට 6 සහ 7 චුදිතයින් සම්බන්ධ වූ බවට හඳුනා ගැනීමට ප්‍රමාණවත් සාක්ෂි ඉදිරිපත් නොවන හෙයින් එකී 6 සහ 7 චුදිතයින් නිදොස් කොට නිසහස් කරමි.”

However, upon analysing the evidence of PW 2, it is observed that he remained consistent in describing how the attack took place and in identifying the participation of the First, Second, Third, Fourth, and Fifth Accused. It is acknowledged that the Second Accused was present when the witness went to the police station. Nevertheless, the fact remains that the incident occurred at approximately 10:00 a.m., and thereafter, efforts were made to search the houses of the accused in order to locate him.

Upon conclusion of the prosecution, the defence was called, the First Accused stated that he had not engaged in any quarrel on the day in question and didn't attack the deceased or PW 1. He claimed that he had observed PW 1 and PW 2 fighting and had attempted to intervene to resolve the dispute. After returning home, two groups of individuals allegedly came to his residence and attacked the house. In response, he fled by jumping into the lake situated behind his house. Thereafter, following a period of eighteen days, and with the assistance of a lawyer, he went to the Payagala Police Station and made a statement. But he has not stated any reason for the delay.

The Second Accused stated that on 29.12.1995, PW 1 and PW 2 had attacked the accused with a boat paddle and thereafter, PW 3 intervened and resolved the matter. The accused then returned to his house. Subsequently, the sister, Inoka, informed him that armed individuals with swords had come to his residence. As a result, the accused left his house and went to the Payagala Police Station at around 8:10 a.m. At that time, another group of armed people arrived at the police station. The police confined him in a room for his protection, where he remained in custody at the police station for two days. On 02 January 1996, a statement was recorded from him, after which he was produced before the courts.

According to the Third Accused, upon hearing that the police were searching for him, he went to the police station 17 days later, where he received a notice from the police. He further asserted that on the day in question, he was not in the area and was not involved in the attack. During cross-examination, he stated that on 01.01.1996, he was at home

when he got to know about the incident. He further testified that from 03.01.1996 onwards, he was in Marawila. He also admitted that he had failed to mention in his police statement that he had gone to Marawila.

The Fifth Accused gave evidence in the witness box and stated that, upon the request of the police, he had provided a statement. He further stated that he became aware of the fight on the beach when he went there with the Third Accused to play cricket. After returning home, a gang arrived and attacked the father of the deceased. Out of fear, he left the house.

The principal objection advanced by the defence was that the deceased met his death as a result of a blow from a blunt weapon to the head. According to the defence, PW 1 and PW 2 alleged that the First Accused attacked the deceased with a Manna knife. The defence contended that, had a manna knife been used, the deceased would have sustained a cut injury. Significantly, both witnesses employed the word ගැහැට. The medical evidence clarified by the PW 16 is that such an injury could indeed have been inflicted by the blunt side of a Manna knife. Both PW 1 and PW 2 consistently described how the First Accused struck the deceased, causing him to fall to the ground, after which all of the other accused joined in the assault. The testimony of PW 1 and PW 2 is consistent and mutually corroborative.

We are mindful that soon after the incident, PW 2 ran to the police station, where he saw the Second Accused. The police informed the witness that officers had already been dispatched to the scene. This fact was confirmed by PW 12, C.A. Amarakoon. Thereafter, PW 2 accompanied PW 1 and later returned to lodge a formal complaint with the police. Upon analysing the evidence of PW 2, it is clear that his actions were spontaneous in making the complaint. PW 2 correctly identified the incident, and his testimony was corroborated by PW 1. Both witnesses stated that the deceased had gone to settle the matter, as all parties were engaged in business at the beach. They further confirmed that when the deceased alighted from the van, the First Accused attacked him with a manna knife, and the other accused joined in the assault. PW 1, upon witnessing the attack, was also assaulted. At that time, PW 2 remained inside the van, giving him a greater opportunity to observe the attack than PW 1, who was himself under assault.

We note that there is no evidence to suggest that the deceased was armed with any weapon. We are mindful that PW 12 observed two blood patches in front of the First Accused's house. According to PW 11, the only person arrested on that day was the Second

Accused. The First, Third, Fourth, and Fifth Accused surrendered to the court on 19.01.1996, eighteen days after the incident. The Sixth and Seventh Accused surrendered on 18.03.1996. We note that the Learned High Court Judge correctly considered the evidence presented by the accused.

There were three omissions in the witness's statement regarding the Sixth and Seventh Accused, as PW 2 did not mention their names. The Learned High Court Judge correctly acquitted both of them on this basis. When we consider the evidence of PW 2, it is clear that he was consistent and that there were no major discrepancies in his testimony. We are mindful that PW 2 was an eyewitness to the incident that had seen the incident inside the van, and that PW 1 was attacked by the accused and also observed the incident.

At the time of the incident, both witnesses observed what transpired, though their positions were divergent. One witness directly saw the assault on the deceased, while PW 2 witnessed the incident from a different vantage point, as he was inside the van. These differing perspectives were taken into account in the subsequent judgment.

In **Bhoginbhai Hirjibhai V. State of Gujarat**, AIR 1983 SC 753, wherein Indian Supreme Court held as follows:

“By and large a witness cannot be expected to possess a photo graphic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

Ordinarily it so happens that a witness is overtaken by events. The Witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to attuned to absorb the details.

The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.”

It is true that certain discrepancies exist; however, they do not go to the root of the case. We hold that both witnesses are credible, and the defence has not succeeded in shaking their testimony during cross-examination. Furthermore, we note the conduct of the First,

Third, Fourth, and Fifth Accused in delaying their surrender to the police, which is a matter to be considered. They have not provided any explanation as to why they were hiding. The Learned High Court Judge considered this aspect correctly.

Upon careful consideration, we find that the prosecution established the case, beyond a reasonable doubt, that the 1st, 2nd, 3rd and 5th Appellants are guilty of all 5 counts in the indictment.

In those circumstances, I am not inclined to interfere with the judgment together with the sentencing order delivered by the Learned High Court Judge on 11.09.2023 and dismiss the appeal.

The Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL