

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

**In the matter of an Appeal in terms of
Section 331 of the Code of Criminal
Procedure Act No. 15 of 1979.**

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

Court of Appeal
Case No. CA HCC 259/2016

Complainant

Vs.

High Court of Kuliayapitiya
Case No. 177/2010

Nawarathne Henayalage Ajith
Pushpakumara,
Kande Medagama,
Kosdeniya.

Accused

AND NOW BETWEEN

Nawarathne Henayalage Ajith
Pushpakumara,
Kande Medagama,
Kosdeniya.

(Now in Pallekale Prison)

Accused-Appellant

Vs.

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

Complainant-Respondent

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

Counsel: Ershan Ariaratnam for the Accused-Appellant.

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

Argued on: 10.10.2025

Judgment on: 31.10.2025

JUDGMENT

AMAL RANARAJA, J.

1. The accused appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Kuliyapitiya* in High Court case number HC Kuliyapitiya 177/2010.

The charges in the indictment are as follows.

Charge 01

That on or about March 23, 2008, at *Kosdeniya, Kandemadagama*, within the jurisdiction of this Court, the appellant committed murder by causing the death of one *Jayasundara Mudiyanselage Podimankie* and thereby committed an offence punishable under section 296 of the Penal Code.

Charge 02

That in the same course of transaction as above, the appellant committed murder by causing the death of one *Nawarathna*

Henayalage Imesh Madushan and thereby committed an offence punishable under section 296 of the Penal Code.

Charge 03

That in the same course of transaction as the first two charges, the appellant caused injuries to one *Bamunu Mudiyanselage Mallika* by attacking her with stones, clasping her neck and pushing her down from a rock, with such intention that had he by such acts caused the death of the said *Bamunu Mudiyanselage Mallika*, he would have been guilty of murder, and that he by such an act caused hurt to the said *Bamunu Mudiyanselage Mallika*; and that he has thereby committed an offence punishable under section 300 of the Penal Code.

2. At the conclusion of the trial, learned High Court Judge has convicted the appellant of the second and third charges. The appellant has been sentenced to death in respect of the second charge and sentenced to 15 years rigorous imprisonment and a fine of Rs. 10000.00 with a term of 2 years rigorous imprisonment in default in respect of the third charge.
3. Further, the appellant has also been directed to pay a sum of Rs. 100000.00 as compensation to PW01 with a term of 4 years rigorous imprisonment in default. It has also been directed that in case the appellant default in the payment of the fine and the compensation, the terms of imprisonment in default shall run consecutively.

Case of the prosecution

4. The deceased named in the first charge was the mother in law of the appellant. The second charge involves the appellant's child, while the injured party mentioned in the third charge is the wife of the appellant.

5. On March 23, 2008, the deceased and the injured party have visited the *Hettipola Police Station* to address and inquiry stemming from a complaint that the appellant had failed to provide for his wife and child. At the police station, all parties have reached an agreement regarding the matter.
6. Following this settlement, the appellant has suggested they visit a temple familiar to him to participate in a religious ritual, in hope that the settlement reached would endure indefinitely.
7. The appellant has then taken the deceased and the injured party to the temple. From there, he has led them to a secluded area located further away from the temple. Such secluded area has been situated on a precipice, nestled high above a valley.
8. When the appellant and the others reached such area, consequent to a verbal altercation, the appellant has allegedly pushed his mother in law i.e. the deceased named in the first charge and his wife down the precipice. Thereafter, the appellant has also stoned the women he pushed down the precipice.
9. PW01, the injured person named in the third charge has lost consciousness due to the assault. Upon regaining consciousness the next morning, she has climbed up the precipice, gone to the temple and informed the priest of the incident. Thereafter, the police has been notified and an inspection of the scene done by the officers attached to the *Katupotha Police Station*.
10. During the initial inspection, the officers have discovered the body of the deceased named in the first charge. The officers have also proceeded to

record a statement from the injured person i.e. the wife of the appellant who was hospitalized at that time for treatment. Due to the information provided, the appellant has been arrested on the same afternoon i.e. March 24, 2008, at 13.20 hours at the *Nikaweratiya* bus station and a statement of his recorded immediately.

11. The information provided by the appellant has led to the discovery of the body of the deceased child, who is named in the second charge. The body has been found at the location the officers had visited earlier that morning. The part of the statement that specifically pertains to the recovery of the child's body has been presented as evidence and designated as *எ705*.
12. PW10, *Dr. D. K. Wijewardhana, Consultant Judicial Medical Officer*, has conducted the post-mortem examination on the deceased child. PW10, upon conclusion of such examination has concluded that the death of the child has occurred due to pressure on the neck due to manual strangulation and other fatal injuries caused to the face of the child. The relevant post-mortem report has been presented as evidence and designated as *எ706*.
13. *Dr. D.K Wijewardhana, Consultant Judicial Medical Officer* has also examined the injured person named in the third charge on three occasions.
14. PW10 has examined the injured person named in the third charge on March 24, 25, 2008, and May 6, 2008. The doctor has observed a total of nineteen injuries on the body of the patient including fractures, lacerations and contusions. The majority of those injuries have been caused to the patient's face. The doctor has opined that the injuries

numbers 02 to 12 (mainly on the face) would have endangered the life of the patient due to infection. The relevant medico-legal report has been presented as evidence and designated as e708.

Case of the appellant

15. The appellant has maintained that he together with the deceased named in the first two charges and the injured person named in the third charge went to a temple to participate in a religious ritual in hope that the settlement reached earlier which his wife, i.e. the injured person named in the third charge would endure indefinitely.
16. Thereafter, an argument erupted between him and his wife. Observing the tension, the mother in law, i.e. the deceased named in the first charge has stepped closer to the couple hoping to mediate and restore peace. At that moment, the three of them have grappled and fallen down the precipice. Thereafter, it is alleged that the wife of the appellant pelted stones at the appellant

Grounds of appeal

17. When the matter was taken up for argument, the Counsel for the appellant urged the following grounds of appeal:
 - i. Whether the learned High Court Judge has failed to consider the credibility of PW01.
 - ii. Whether the learned High Court Judge has failed to consider the section 27 recovery in the correct perspective (body of the child).

- iii. The learned High Court Judge has failed to evaluate the defence's case.
 - iv. Was the appellant denied a fair trial due to the excessive questioning by the Judge and irregular correction of the proceedings?
 - v. Whether the elements of attempted murder has been proved by the prosecution.
18. The counsel for the appellant has complained that the evidence of PW01 is not consistent and therefore not reliable. To buttress his claims, he had drawn the attention of the Court to contradictions and omissions that were highlighted in the original Court.
19. Furthermore, the Court's attention has also been drawn to the witness's narrative regarding her explanation of the number of stones pelted at her, the manner in which she described her fall down the precipice, the place where she landed at the end of her fall, and so on.
20. The contradictions and the omissions highlighted in the trial Court refer to the argument that allegedly occurred before the appellant pushed PW01 down the precipice, the place the child was at the particular moment of time, whether PW01 looked for her mother and as mentioned elsewhere, the manner in which PW01 has described her fall down the precipice and where she landed at the end of the fall.
21. PW01 has been hospitalized when her statements were recorded. The first statement has been recorded only a few hours after her admission, a time during which she would have been experiencing significant pain and emotional distress. Given these circumstances, her ability to recall the

incident accurately and provide a coherent statement was likely compromised.

22. At the time of recording the statement, PW01 would have been not only physically uncomfortable due to her medical condition but also would have been grappling with psychological trauma associated with her experience. Such factors can greatly affect an individual's mental processes involved in comprehension and influence her capacity to reflect on the past events clearly and comprehensively.
23. By taking into account these elements – pain, trauma and the timing of the statements, it becomes evident that PW01's recollection and narrative may not fully represent her experience. Therefore, it is important to interpret her statements within the context of her emotional and physical condition at that time.
24. Further, PW01 has testified in Court eight months after the incident involving her. Such significant lapse of time can greatly impair an individual's memory. It is natural for PW01 to forget certain details of the event, specifically considering the trauma she experienced. Her subconscious effort to cope with and possibly forget the traumatic nature of the incident could further hinder her ability to recall events comprehensively.
25. As a result, this may lead to gaps in her testimony and discrepancies in the sequence of events. Memory is often fragile, particularly when it is intertwined with emotional distress. The longer the time span between the incident and the testimony, the more likely it is that critical details may be lost or altered.

26. Additionally, the psychological effects of trauma can manifest in various ways, including dissociation and selective memory repression. These factors are essential to consider when evaluating the completeness and accuracy of PW01's testimony.
27. The contradictions and omissions that were highlighted in the original Court proceedings regarding the testimony of PW01 do not undermine the fundamental aspects of the witness's narrative. These discrepancies while noteworthy, do not materially affect the core narrative of PW01. It is important to note that all inconsistencies in a witness's account are significant, they may arise from complexities of human memory or the natural evolution of a person's recollection over time.
28. The witness's overall credibility, the consistency of key details and the corroborative evidence from other sources should be weighed more heavily than the minor contradictions referred to. Those contradictions and omissions do not reduce the reliability of PW01's overall testimony or its relevance to the case in hand.
29. The essence of section 27 of the Evidence Ordinance No. 15 of 1895 is that certain information or confessions can be admitted as evidence if they meet specific criteria.
 - i. The person providing the information must be in police custody.
 - ii. The person must be formally accused of an offence related to the information given.
 - iii. The information must lead to the discovery of evidence that connects to the crime in question.

30. The appellant complains that he was neither formally charged with a crime nor recognized as a suspect at the time in issue and that he did not give any information that led to the discovery of the dead body of the child named in the second charge, indicating that the provisions in section 27 of the Evidence Ordinance No. 15 of 1895 did not apply.
31. Through the testimony of PW05, *Mr. A.L Abeygoonawardhane, Inspector of Police*, it has been established that the appellant was taken into custody on March 24, 2008, at the *Nikaweratiya* bus station at 13.20 hours, following information regarding his whereabouts. The appellant has been detained as a suspect in relation to the incidents outlined in the charges against him. Subsequently, a statement from the appellant has been recorded at the location of his arrest. After the statement was taken, that same evening, the appellant has been escorted to the scene of the incident, where the information he provided has led to the discovery of the deceased child's body.
32. Considering the narrative provided by PW05 along with the matters discussed above, the assertion that the provision of section 27 of the Evidence Ordinance do not apply to the appellant, must be rejected.
33. The appellant in attempting to persuade the Court that the body of the deceased child was not discovered due to the information he provided, has in this context, directed the Court's attention to specific portions of the evidence given by PW02 and PW03. Upon reviewing these portions of evidence, it becomes evident that the witnesses were referring to the initial instance when the investigators (police officers) inspected the scene, rather than to any subsequent occasions when the investigators (police officers) returned to such scene.

34. However, on page 177 of the brief, PW11, *Ven. Kithulwala Wimalasiri Thero* has testified that the child's dead body was recovered by the investigators following the appellant's arrest by the police and subsequent transport to the scene of the incident.

පු: ඒ අවස්ථාවේදී පමණක් දේහය හමු වුනාද?

උ: ඔවුන් නිකවැටිය ටුම් එකත් අල්ලාගෙන ආවා පොලිසිය සමග ඔය පාසල යට විශාල ගලක් තිබෙනවා ඒ ගල යට දෙශීක්කාවේ දමා තිබූණා මට මතක හැටියට ලි කැලී කොළ දමා වසා තිබූණා.

35. Section 165 of the Evidence Ordinance No. 15 of 1895 grants judges the authority to inquire broadly in order to uncover relevant facts and ensure the proper administration of justice. Specifically, this provision empowers judges to pose any question they deem necessary to witnesses or other parties involved in the case. This level of inquiry is essential for uncovering the truth and enable the court to make well informed decisions.

36. However, the exercise of this power is not without limitations. Questions posed by the Judge must adhere to certain standards to maintain the integrity of the judicial process. Firstly, it is imperative that the questions do not prejudice either party involved in the proceedings. The Judge must be cautious to avoid questions that may unfairly advantage one party over another, as it would compromise the impartiality of the Court.

37. Moreover, the questions must be framed in a manner it is unbiased and fair. It is critical that the questioning remains objective and respectful to ensure that all the participants feel safe and valued in expressing their testimonies. Judges must be aware of their role as neutral arbiters and should strive to maintain this stance throughout the questioning process.

38. In *The Queen v Nimalasena de Zoysa* [1958] 60 NLR 97, Basnayake C.J. stated that:

"The section quoted above gives the Judge a wide power. In order to discover or to obtain proper proof of relevant facts he may ask any question he pleases in any form, at any time, about any fact whether relevant or irrelevant. This power extensive though it be has limits, but those limits cannot be precisely defined. The trial Judge himself is the best arbiter of how and when he may exercise it. In its exercise a Judge should be careful not to usurp the functions of the prosecution or the defence. He should also so regulate his interpositions as not to hamper the conduct of the case by counsel for the prosecution or the defence. The fact that neither the parties nor their agents are entitled to make any objection to any question by the Judge or to cross-examine any witness upon any answer given in reply to his questions is a matter which calls for caution in the exercise of this power."

39. The learned High Court Judge has questioned the majority of the witnesses to gain a clearer understanding of the facts surrounding the case. His approach has been both impartial and thorough, ensuring that any ambiguities are addressed and resolved.
40. The complaint that the learned High Court Judge has posed leading questions to specific witnesses and altered the trajectory of their testimony must therefore be dismissed.
41. Corrections to legal proceedings must be conducted with all parties to the case present. This ensures transparency and fairness throughout the process. Each party shall have the opportunity to voice any objections

regarding the proposed corrections to the proceedings. If one party raises an objection, the judge is required to intervene and assess the situation.

42. In such circumstances, the Judge will issue an appropriate order, taking into account the arguments presented by the parties. The Judge's role is crucial in resolving disputes between parties and ensuring that corrections are made in a manner that respects the rights and interests of everyone involved. By allowing parties to participate actively in the correction process and by having the judge preside over any disputes, the likelihood of misunderstandings or unjust modifications is significantly reduced.
43. The contents of pages 83 and 165 of the brief indicate that corrections have been made to the legal proceedings recorded in those pages. However, when the Court's attention is drawn to the journal entry dated August 8, 2016, it does not reflect that these corrections have occurred in the presence of the parties involved in the case. Hence, the appellant has argued that this oversight has denied him a fair trial.
44. Upon examining the corrections made to the legal proceedings, which were apparently initiated by the learned High Court Judge himself, it is evident that these changes are quite minor. Importantly, the corrections have not altered the trajectory of the evidence presented. The contents remain fundamentally unchanged and have not been modified in any unjust manner.
45. Given these circumstances, the irregularity identified has not resulted in a failure of justice.

46. Section 436 of the Criminal Procedure Code reads as follows,

Subject to the provisions hereinbefore contained any judgment passed by a court of competent jurisdiction shall not be reversed or altered on appeal or revision on account –

- a) of any error, omission, or irregularity in the complaint, summons, warrant, charge, judgment, summing up, or other proceedings before or during trial or in any inquiry or other proceedings under this Code; or*
- b) of the want of any sanction required by section 135,*

unless such error, omission, irregularity, or want has occasioned a failure of justice.

47. In the case of *Batuwanthudawa v Karunaratne* [1922] 4 CLR 64, Bertram C.J. held that:

“Under the provisions of the Criminal Procedure Code a conviction should not be set aside in appeal on a purely technical objection. The point of law may be decided in appellant’s favour but the appeal dismissed unless there has been a failure of justice; that is to say if the point had been considered in the original Court the judge or jury would have come to a different conclusion.”

48. In pages 43 and 44 of the disputed judgment, the learned High Court Judge has articulated several key points regarding the evaluation of the evidence presented by the appellant.

49. It is evident from the analysis provided that the learned High Court Judge has undertaken a comprehensive assessment of the appellant's testimony.
50. Firstly, he has meticulously considered the appellant's demeanor during his testimony. This attention to demeanor reflects the learned High Court Judge's understanding of the vital aspects of witness evaluation which can significantly influence the interpretation of the spoken word. Moreover, the learned High Court Judge has applied the test of probability to the appellant's testimony, assessing its plausibility in the context of the overall case. Importantly, the learned High Court Judge has also approached the testimony holistically rather than in isolation. This comprehensive perspective has allowed for a thorough consideration of how the appellant's testimony interacted with that of the prosecution. Instead of compartmentalizing the testimonies, the learned High Court Judge has proceeded to analyze them within the broader narrative presented during the trial.
51. The learned High Court Judge has also provided cogent reasons for his decision not to accept the appellant's testimony. These reasons are methodically detailed and grounded in the evidence presented illustrating a well-reasoned decision making process. He has also ensured that the judgment is based on established legal principles and factual analysis.
52. Although the learned Counsel for the appellant has urged the fifth ground of appeal, as stated above, he has not pursued it, when the instant appeal was argued.

53. Due to the circumstances referred to above, I am not inclined to interfere with the conviction, disputed judgment together with the sentencing order.

54. Accordingly, I dismiss the appeal and make no order regarding costs.

Appeal dismissed.

55. The Registrar of this Court is directed to send this judgment to the *High Court in Kuliyanpitiya* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree

Judge of the Court of Appeal