

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

In the matter of a Petition of Appeal in terms section 331 (1) of the code of Criminal Procedure Act No 15 of 1979.

Democratic Socialist Republic of Sri Lanka.

**Complainant**

**Vs**

Pelenda Dewage Abesinghe

**Accused**

**AND BETWEEN**

Pelenda Dewage Abesinghe

**Accused – Appellant**

**Vs**

The Hon.Attorney General,  
Attorney General's Department,  
Colombo 02

**Respondent.**

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

**Counsel** : Saliya Peris P.C. with Thanuka Nandasiri and Andrea Wijewardhana  
for the Accused-Appellant  
Disna Warnakula DSG for the State

**Argued on** : 08.07.2025

**Decided on** : 30.09.2025

**Pradeep Hettiarachchi, J**

**Judgment**

1. The accused-appellant (hereinafter referred to as the “appellant”) has preferred this appeal against the judgment dated 08.04.2022 of the learned High Court Judge of Gampaha. The appellant was indicted by the Attorney General on three counts, namely:
  1. On or about the 9<sup>th</sup> of January 2006, in Hissalikada, the appellant caused the death of one H.K.S.Dileep Kumara thereby committing an offence punishable under section 296 of the Penal Code.
  2. On or about the 09.01.2006, the appellant attempted to murder one V.P.A.R.S.Pathirana thereby committing an offence under section 300 of the Penal Code.
  3. On or about the 09.01.2006, the appellant attempted to murder one H.D.P.Kumara, thereby committing an offence under section 300 of the Penal Code.
2. The trial was conducted before the Judge of the High Court without a jury. At the conclusion of the trial, the appellant was found guilty of the first and second counts. Consequently, the learned High Court Judge convicted him and imposed a death sentence for the first count, as well as 15 years of rigorous imprisonment and a fine of Rs. 10,000.00, with a default sentence of 8 months for the second count. Additionally, the appellant was ordered to pay Rs. 100,000.00 in compensation to PW1, with a default sentence of one year of rigorous imprisonment.
3. Being aggrieved by the said conviction and sentence, the appellant has preferred the present appeal. In the petition of appeal, the appellant initially raised thirteen grounds; however, during the argument, only two grounds of appeal were pursued with. These are:

1. The learned High Court Judge has failed to consider the material discrepancies among the prosecution witnesses; and,
  2. The evidence of the sole eye witness PW1 created a doubt.
4. First, I will consider whether the discrepancies highlighted among the prosecution witnesses are so significant that they go to the root of the prosecution's case.
5. It was submitted on behalf of the appellant that the learned trial judge failed to consider the inter se contradictions among the witnesses, which, according to the appellant, create serious doubt regarding the credibility and testimonial trustworthiness of their evidence when assessed in its entirety. At this stage, it is necessary to briefly summarise the evidence given by the main witnesses separately in order to consider the inter se contradictions in their proper context.
6. The issue for determination is whether this inconsistency has arisen from a deliberate untruth or from a faulty memory attributable to the lapse of time. It is a settled principle of law that minor discrepancies should not be given undue emphasis; rather, the evidence must be assessed from the standpoint of overall trustworthiness. The relevant consideration is whether the testimony inspires confidence in the mind of the trier of fact. If the evidence lacks credibility and would not be accepted by a prudent person, it undoubtedly undermines the prosecution's version as a whole. An omission or discrepancy must therefore go to the root of the matter or to the fact in issue under consideration.
7. In ***Veerasamy Sivathanan vs. Attorney General [SC Appeal 208/2012 (15 December 2021)]*** cited the following dicta of the Indian case of ***State of Uttar Pradesh vs. M. K. Anthony [1985 AIR 48 (SC)]*** that;

*While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view of the deficiencies, draw-backs and infirmities pointed out in evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as*

*to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. ... Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals...”*

8. In **Jagathsena vs. Bandaranayake [(1984) 2 Sri LR 39]** Colin-Thome J., held that when considering contradictions inter se between the testimony of two witnesses the trial judge should consider if the discrepancy was due to dishonesty or to defective memory or whether the witness' powers of observations were limited.
9. Then F.N.D. Jayasuriya, J., in **Wickremasuriya vs. Dedoleena and Others [(1996) 2 Sri L.R 95]** held that.

*“After a considerable lapse of time, as has resulted on this application, it is customary to come across contradictions in the testimony of witnesses. This is a characteristic feature of human testimony which is full of infirmities and weaknesses especially when proceedings are held long after the events spoken to by witnesses; a judge must expect such contradictions to exist in the testimony. The issue is whether the contradiction or inconsistency goes to the root of the case or relates to the core of a party's case. If the contradiction is not of that character, the court ought to accept the evidence of witnesses whose evidence is otherwise cogent, having regard to the Test of Probability and Improbability and having regard to the demeanour and deportment manifested by witnesses.”*

10. Thus, the inter se inconsistencies highlighted by the appellant in the present appeal must be assessed in light of the foregoing legal principles.
11. The prosecution led the evidence of six witnesses, out of whom PW1 and PW2 were present at the time of the incident. In fact, PW1 H.K. Danushka Prabhath Kumara was the only eyewitness to the shooting of the deceased. PW2 did not witness the

deceased being shot; however, he too was shot by the appellant and sustained gunshot injuries.

12. PW1 is the brother of the deceased. According to his testimony, the shooting occurred while he, the deceased, and another friend named Upali were near a boutique belonging to one Thilakarathne. While PW1 was conversing with the deceased, the appellant shot the deceased and thereafter aimed the gun at PW1. At that moment, PW1 jumped off a nearby cliff. He further stated that he saw the deceased fall after being shot.
13. According to PW1, a person named Roshan also arrived at the scene, and shortly after the first gunshot he heard another report of gunfire. When PW1 returned to the scene, he observed the deceased lying on the ground.
14. In his evidence, PW1 stated that the shooting occurred while they were returning from a funeral, to which they had travelled in a three-wheeler. According to PW1, four persons travelled in the three-wheeler, namely Priyantha, Roshan (PW2), the deceased, and PW1 himself.
15. The appellant placed great emphasis on the contradictions marked D1 to D5 and submitted that the learned trial judge failed to consider these contradictions in their proper perspective.
16. According to the evidence of PW3, Priyantha Kumara Jayakodi, he saw only the deceased lying on the road and observed the appellant holding a gun. It was PW2 who informed PW3 that the deceased had been shot by the appellant.
17. PW2, Roshan, was the other person who sustained gunshot injuries. According to his evidence, he saw and heard the appellant fire a shot and also observed the deceased fall. The appellant then shot PW2, who was subsequently taken to the hospital in a three-wheeler. It is established that the deceased died as a result of injuries caused by a firearm, and the evidence of the JMO in this regard remains uncontradicted. It is also established that PW2 sustained gunshot injuries. Accordingly, in my opinion, the failure to recover the firearm does not affect the strength of the prosecution's case.

18. The appellant primarily argued that the inter se and per se contradictions in the evidence of PW1, PW2, and PW3 were not adequately analyzed and evaluated by the learned trial judge, and, therefore, the conviction cannot be sustained. It is, accordingly, of paramount importance to examine whether the said contradictions go to the root of the case and thereby give rise to a reasonable doubt in the prosecution's case.
19. The appellant submitted that, due to the inconsistencies present among the testimonies of the witnesses, it is unsafe to rely on their evidence.
20. The Appellant placed much reliance in *K. Pathmathilaka alias Sajan Alpitiya vs The Director General of CIABOC [2010 BLR 67]* and *Gurcharan Singh vs state of Haryana (1994) 2 CLJ 1710*.
21. It must be emphasized that contradictions relating to insignificant or immaterial facts do not, by themselves, render the evidence of witnesses untrustworthy or unreliable; only contradictions concerning material points can have such an effect.
22. The contradiction marked D1 does not constitute a material contradiction, as it pertains merely to the identities of the persons with whom PW1 was engaged in conversation immediately prior to the shooting.
23. The contradiction marked D2 relates to the direction from which the appellant is said to have approached. In his evidence-in-chief, PW1 stated that the appellant, when he fired the gun, was near Thilakarathna's boutique, whereas in his statement to the police, he had stated that the appellant came from Thilakarathna's boutique armed with a gun. In cross-examination, the witness clarified that he only saw the appellant near the boutique when he fired, but did not observe from where he had come.

PW 1 testified as follows:

ප්‍ර : තමුන් පොලීසියට මෙහෙම කීවාද, "එහෙම ඉඳලා මම අසල පිහිටි තිලකේ මාමලාගේ කඩයට යන්න හදනකොට මම දැක්කා, හිසැල්ලේ පදිංචි මහතුවක් යන අය තුවක්කකුවක් අරගෙන, තිලකගේ කඩේ ඉඳලා අපි ඉන්න දිහාවට ආවා." කියා ?

උ : එහෙම කිව්වා.

ප්‍ර : තමුන් දැක්කේ මොනවද ?

උ : අයියා ඉස්සරහට කඩේට යද්දි, එයා කඩේ ලග ඉදන් වෙඩි තියනවා විතරයි

මම දැක්කේ. කොහේ ඉදලා ආවද කියලා මම දැක්කේ නැහැ, ස්වාමිනි.

(Page 105 – 1<sup>st</sup> question and answer, Last question and answer)

24. Be that as it may, PW1's evidence regarding the identity of the person who shot the deceased remains unimpeached, with no contradictions per se. The only inconsistency concerns whether PW1 observed the direction from which the appellant approached. What is of material significance is not the direction from which the appellant came, but whether the witness saw the appellant discharge the firearm at the deceased. On this point, PW1's evidence is clear and cogent, and no doubt prevails as to who shot the deceased.

25. In his statement to the police PW 1 had first stated that the Appellant fired at him but as he jumped down a nearby cliff it did not hit him. However, during cross examination PW 1 stated that although the Appellant aimed the gun at him, the appellant could not fire at him as he jumped down the cliff.

26. It is noteworthy that the alleged incident taken place in January 2006 whereas this witness testified before court in October 2017, nearly 12 years after the incident. Hence, a witness cannot reasonably be expected to narrate everything that took place on the day of the incident to a mathematical precision devoid of minor discrepancies and inconsistencies.

27. The question, therefore, is whether such discrepancies in evidence are so material as to go to the root of the case and compel the court to wholly disbelieve and reject the particular testimony.

28. It is also significant to emphasize that minor contradictions or omissions are not necessarily indicative of falsehood; accordingly, it is not prudent to reject the prosecution's case in its entirety merely because some minor discrepancies are

present. The evidence of a witness may become unreliable or untrustworthy only if the witness testifies inconsistently on material points that go to the root of the case, thereby undermining the credibility of the witness.

29. If not, the mere presence of insignificant contradictions or inconsistencies arising from the passage of time or from faulty memory should, in my view, not be given undue weight so as to render the prosecution's version untrustworthy. More importantly, in the present case, the court cannot lose sight of the delay between the date of the incident and the date on which the evidence was given when evaluating the credibility of the witnesses.
30. The contradiction marked D5 was also given considerable emphasis by the defence. In his evidence, PW1 stated that he only heard a gunshot and saw Roshan (PW2) running back; however, in his statement to the police, PW1 had stated that Roshan fell after being shot by the appellant.
31. It is noteworthy that, during cross-examination, the witness explained the reasons for the statements made to the police. From the evidence of PW1, it is apparent that, having heard the report of gunfire, he saw Roshan running and therefore assumed that Roshan might also have been shot. Accordingly, the contradiction marked D5 cannot be regarded as a falsehood but rather as a mere exaggeration of the facts. Likewise, the question of whether Roshan was running while screaming or merely groaning in pain does not constitute a material contradiction. For these reasons, the evidence of PW1 cannot be wholly rejected and his credibility remains intact. .
32. In ***Kumara de Silva and 2 others vs. Attorney General [2010] 2 SRI LR.169***, it was held inter alia:
- Where untainted evidence could be safely separated from inaccurate evidence due to faulty observation, exaggerations and embellishments, Court is entitled to act on such untainted evidence and discard and sever inaccurate and false evidence.*
33. In their written submissions, the defence placed considerable emphasis on a portion of PW1's evidence, where he stated that he, along with PW2, PW3, and the deceased, went to the funeral in a three-wheeler. PW2, in contrast, testified that he went to the funeral on his brother's bicycle. I am not inclined to regard this as a material



inconsistency between PW1 and PW2, particularly given the considerable time gap between the incident and the trial. Furthermore, it is significant to note that whether PW2 attended the funeral with PW1 and the deceased or on his brother's bicycle is not a contradiction that goes to the root of the matter.

34. What the Court is required to determine is whether the evidence adduced by the prosecution witnesses, particularly regarding the identification of the appellant and the specific act committed by him, is free from material contradictions and can therefore be relied upon safely to secure a conviction. If there exist contradictions or inconsistencies among the testimonies concerning the manner in which the appellant allegedly shot the deceased and PW2, or regarding the identification of the appellant, such discrepancies would inevitably weaken the prosecution's case.
35. However, minor inconsistencies are not necessarily fatal to a witness's credibility. It is common for witnesses to make such minor errors or forget certain details, especially if the events occurred a long time ago.
36. As noted earlier, the incident giving rise to this appeal occurred in January 2006. PW1 and PW3 testified in October 2017, while PW2 testified in April 2018, more than twelve years after the incident. It cannot reasonably be expected that they would recall events with photographic accuracy. While lapses due to faulty memory may occur, so long as there is no indication of deliberate falsehood or fabrication, the Court may safely rely on their evidence to secure a conviction. In doing so, the Court must distinguish between genuine lapses in memory and contradictions that suggest fabrication or distortion of the truth.
37. In the present case, the contradictions highlighted by the defence are insignificant in nature and do not indicate any deliberate falsehood or fabrication.
38. Upon a perusal of the impugned judgment, this Court observes that the learned High Court Judge has carefully examined the contradictions, assessed them in their proper perspective, and clearly explained why they were not of material significance to the credibility of the prosecution evidence.
39. The learned High Court Judge has also explained why the defence evidence could not be relied upon. Therefore, the grounds advanced by the appellant are devoid of merit

and cannot be accepted. Consequently, this Court finds no reason to interfere with the findings of the learned High Court Judge.

40. Accordingly, the appeal stands dismissed.

**Judge of the Court of Appeal**

**P. Kumararatnam,J**

I agree,

**Judge of the Court of Appeal**