

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

**In the matter of an Appeal in terms
of Section 331 (1) of the Criminal
Procedure Act No. 15 of 1979**

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

Complainant

Court of Appeal
Case No. CA HCC 196-198/2023

Vs.

High Court of Tangalle
Case No. HC 04/2001

1. Samarasekara Widanapathiranage Sirisena
2. Samarasekara Widanapathiranage Amolis
(Deceased)
3. Nanhamy Senanayake
4. Palagasingha Kodithuwakkuge Leelawathie
5. Samarasekara Widanapathiranage Ravindra
6. Samarasekara Widanapathiranage Ajith

Accused

AND NOW BETWEEN

Samarasekara Widanapathiranage Sirisena

1st Accused-Appellant

Samarasekara Widanapathiranage Ravindra

5th Accused-Appellant

Samarasekara Widanapathiranage Ajith

6th Accused-Appellant

Vs.

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

Complainant-Respondent

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

Counsel: U.R. De Silva P.C. with Pradeepa Kaluarachchi, Thilini Atapattu, Chathura Weeramantry, Sanuri Dissanayake and Hansani Pathirana for the 5th and 6th Accused-Appellants.

Anil Silva, P.C. with Aravinda Silva for the 1st Accused-Appellant.

Anoopa de Silva, D.S.G for the Respondent.

Argued on: 02.12.2025

Judgment on: 19.01.2026

JUDGMENT

AMAL RANARAJA, J.

1. The accused appellants together with three others have been indicted in the *High Court of Tangalle* in High Court case number HC/04/2001.

The charges in the indictment are as follows:

Charge 01

That on or about January, 10, 1995, at *Tharapeliya*, within the jurisdiction of this Court, the accused appellants along with other accused, by being members of an unlawful assembly with the common object of causing injuries to one *Dissanayake Kodithuwakku Kankanamge Thilakarathne*, committed an offence punishable under section 140 of the Penal Code.

Charge 02

During the same course of transaction as above, the accused appellants along with the other accused, committed murder by causing the death of one *Dissanayake Kodithuwakku Kankanamge Thilakarathne* whilst being members of an unlawful assembly; and thereby committed an offence punishable in terms of section 146 read with section 296 of the Penal Code.

Charge 03

During the same course of transaction as above, the accused appellants along with the other accused, committed murder by causing the death of one *Kankanamge Dharshana Saman Kumara* whilst being members of an

unlawful assembly; and thereby committed an offence punishable in terms of section 146 read with section 296 of the Penal Code.

Charge 04

During the same course of transaction as above, the accused appellants along with the other accused, committed murder by causing the death of one *Dinneris Rajapakshe* whilst being members of an unlawful assembly; and thereby committed an offence punishable in terms of section 146 read with section 296 of the Penal Code.

Charge 05

During the same course of transaction as above, the accused appellants along with the other accused, committed attempted murder of one *Wannigamage Piyasena* whilst being members of an unlawful assembly; and thereby committed an offence punishable in terms of section 146 read with section 300 of the Penal Code.

Charge 06

During the same course of transaction as above, the accused appellants together with the other accused, voluntarily caused hurt to *Peramuna Arachchige Piyathilaka*, by means of a dangerous weapon, whilst being a member of an unlawful assembly; and thereby committed an offence punishable in terms of section 146 read with section 315 of the Penal Code.

Charge 07

During the same course of transaction as above, the accused appellants together with the other accused, voluntarily caused hurt to *Peramuna Arachchige Premarathne* by means of a dangerous weapon, whilst being a member of an unlawful assembly; and thereby committed an offence

punishable in terms of section 146 read with section 315 of the Penal Code.

Charge 08

During the same course of transaction as above, the accused appellants together with the other accused, committed murder by causing the death of one *Dissanayake Kodithuwakku Kankanamge Thilakarathne*; and thereby committed an offence punishable in terms of section 32 read with section 296 of the Penal Code.

Charge 09

During the same course of transaction as above, the accused appellants together with the other accused, committed murder by causing the death of one *Kankanamge Dharshan Saman Kumara*; and thereby committed an offence punishable in terms of section 32 read with section 296 of the Penal Code.

Charge 10

During the same course of transaction as above, the accused appellants together with the other accused, committed murder by causing the death of one *Dinneris Rajapakshe*; and thereby committed an offence punishable in terms of section 32 read with section 296 of the Penal Code.

Charge 11

During the same course of transaction as above, the accused appellants together with the other accused, committed attempted murder of one *Wannigamage Piyasena*; and thereby committed an offence punishable in terms of section 32 read with section 300 of the Penal Code.

Charge 12

During the same course of transaction as above, the accused appellants together with the other accused, voluntarily caused hurt to *Peramuna Arachchige Piyathilaka* by means of a dangerous weapon; and thereby committed an offence punishable in terms of section 32 read with section 315 of the Penal Code.

Charge 13

During the same course of transaction as above, the accused appellants together with the other accused, voluntarily caused hurt to *Peramuna Arachchige Premarathne* by means of dangerous weapon; and thereby committed an offence punishable in terms of section 32 read with section 315 of the Penal Code.

2. The second accused named in the indictment has passed away prior to the trial. The third and the fourth accused have been acquitted of all charges consequent to the trial. The first, fifth and the sixth accused appellants (hereinafter referred to as “first accused appellant”, “fifth accused appellant”, “sixth accused appellant” or “appellants”) have been convicted of eighth to thirteenth charges and acquitted of the other charges.
3. Upon being convicted, the first, fifth and sixth accused appellants have been sentenced as follows:
 - i. The first accused appellant has been sentenced to death in respect of the eighth, ninth and tenth charges.
 - ii. The fifth and the sixth accused appellants being under eighteen years of age, at the time of the commission of the offences, have

been sentenced to life imprisonment in respect of the eighth, ninth and tenth charges.

- iii. Also, the first, fifth and the sixth accused appellants have been sentenced to ten years rigorous imprisonment and have been imposed a fine of Rs. 10000.00 each for the same with a term of six months simple imprisonment in default, in respect of the eleventh charge.
 - iv. The first, fifth and sixth accused appellants have been sentenced to two years rigorous imprisonment and have been imposed a fine of Rs. 5000.00 each with a term of six months simple imprisonment in default, in respect of the twelfth charge.
 - v. The appellants have been sentenced to two years rigorous imprisonment and a fine of Rs. 5000.00 each with a term of six months simple imprisonment in default, in respect of the thirteenth charge.
 - vi. Further, the substantive terms of imprisonment in respect of the eleventh, twelfth and thirteenth charges have been directed to run concurrently.
4. The first, fifth and the sixth accused appellants being aggrieved by the conviction, disputed judgment together with the sentencing order have preferred the instant appeal to this Court.

Case of the prosecution

- 5. On January 10, 1995, PW04 who had been the titleholder of a paddy land named *Lindhagawa Deniya Kumbura*, has arrived at the site. PW04

has been accompanied by the injured and the deceased, their collective purpose being to harvest the paddy crop.

6. Upon their arrival, various tasks have commenced, some members of the group have begun cutting the stalks of the paddy plants, while others have been gathering these into bundles, preparing them to be taken to the designated threshing area.
7. It is alleged that while this process was ongoing, the appellants and the other accused named in the indictment have arrived at the site. They have approached the site the injured and the deceased were from the direction of the first accused appellant's house.
8. Upon their arrival, the appellants and some of the other accused have assaulted the injured and the deceased. Specifically, the first accused appellant has used an axe while the fifth and the sixth accused appellants have used 'kathis' (machetes) during the assault.
9. While the individual named in the second and eighth charges has died at the scene of attack, the other deceased have succumbed to their injuries in the hospital following admission for treatment.
10. The post-mortem report for the deceased marked \textcircled{e}_02 , \textcircled{e}_03 and \textcircled{e}_08 document the findings of the medical officers who have attributed the deaths to shock and hemorrhage due to cut injuries. The medico-legal reports issued in respect of the injured, i.e. PW01, PW02 and PW03 have been produced as evidence marked \textcircled{e}_04 , \textcircled{e}_05 and \textcircled{e}_06 .

Case of the appellants

11. The first accused appellant has denied any knowledge of the incident that resulted in injuries of the deceased and other victims. He has claimed that at the time, he was located in the backyard of his property. According to his dock statement, he has heard a sound and upon checking, he has found his parents injured. He has then promptly taken them to the hospital for medical attention.
12. The fifth and the sixth accused appellants have maintained that they were away in *Lunugamwehera* at the time of the alleged incident and only became aware of it through their father.

Grounds of appeal

13. When the matter was taken up for argument the learned President's Counsel for the first, fifth and sixth accused appellants urged the following grounds of appeal:
 - i. Prosecution has failed to prove its case beyond a reasonable doubt.
 - ii. Matters favourable to the appellants have not been taken into account by the learned High Court Judge.
14. Sharing similar grounds of appeal, with the fifth and the sixth accused appellants, the learned President's Counsel for the first accused appellant has contended that his client was entitled to the benefit of the exception of sudden fight instead of being convicted of murder, as set out in the eighth, ninth and tenth charges in the indictment.

15. The exception iv for murder as set out in section 296 of the Penal Code is as follows:

“Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner”.

16. To benefit from the legal exception of sudden fight, the following facts must be established.

- i. Absence of premeditation - The act causing the death must not be planned or pre-arranged, it must be a sudden occurrence.
- ii. Sudden quarrel and fight – There must be a sudden quarrel that leads to an impromptu physical fight or “mutual combat” between the parties.
- iii. Heat of passion – The offender must have committed the act in heat of passion, where his sober reasoning was clouded by anger or excitement, with insufficient time for his emotions to cool down.
- iv. No cruel or unusual manner – The degree or the nature of force used must be proportionate to the fight and the offender must not have acted in a cruel or unusual manner. (e.g. inflicting merciless wound on a helpless victim negates this element)

17. A key aspect of this exception is that it is immaterial as to which party offered the provocation or committed the first assault. The focus is on the sudden and unpremeditated nature of the mutual fight and the subsequent conduct of both parties as equals in the confrontation. If these conditions are met, the accused is entitled to the benefit of the exception, even if he intended to cause the bodily injury that resulted in death.

18. In *Kumarasinghe v The State* 77 NLR 218, H. N. G. Fernando C.J. has observed as follows:

“Any of the five Exceptions specified in Section 294 of the Penal Code (including Exceptions dealing with provocation and sudden fight) is applicable in a case, in which an accused has caused death with the murderous intention; if the mitigating circumstances set out in any of these exceptions are established...the effect of such an exception is that the accused is guilty only of culpable homicide not amounting to murder despite the fact that he did entertain a murderous intention”.

19. The prosecution witnesses have testified that while they were collectively harvesting the paddy crop on PW04's land, the appellants along with the other indicted accused have approached from the direction of the first accused appellant's house armed with axes and 'kathis' (machetes).
20. They have thereafter, attacked the deceased and the injured as detailed in the witness testimonies. Although it has been claimed that the third and the fourth accused were also present, no witness has described the specific involvement of the third and the fourth accused in the attack. Consequently, these accused have received the benefit of the doubt.
21. Crucially however, no witnesses have testified to an incident supporting the first accused appellant's claim of a sudden fight legal exception. Indeed the learned President's Counsel has been unable to point out to any witness testimony suggesting such an incident. Moreover, the first accused appellant's own testimony has failed to describe circumstances that would trigger the application of this legal exception of sudden fight.

22. As stated earlier in this judgment, the first accused appellant has claimed to have heard a sound when he was in the backyard of his property and upon checking, has found his parents injured. He has promptly taken them to the hospital for medical attention thereafter.
23. The learned President's Counsel for the fifth and the sixth accused appellants have contended that his client were entitled to succeed in their plea of alibi instead of being convicted of the eighth to thirteenth charges in the indictment.
24. An alibi is a plea where the accused claims to have been elsewhere at the time of the alleged crime, making his presence at the scene of crime impossible. The core principles of a plea of alibi in Sri Lanka are as follows:
- i. An alibi is an "evidentiary fact" under section 11 of the Evidence Ordinance, used to cast doubt on the prosecution's case by demonstrating the physical impossibility of the accused's involvement.
 - ii. The accused does not bear the burden of proving his alibi on a balance of probability.
 - iii. If the evidence for the alibi when weighed against the prosecution's evidence creates a reasonable doubt, the accused must be acquitted.
 - iv. The alibi must cover the exact time of the alleged offence to effectively exclude the accused's presence from the crime scene.
25. In *Banda and Others v Attorney General* [1999] 3 SLR 169, F.N.D. Jayasuriya, J. has held:

“There is no burden whatsoever on an accused person who puts forward a plea of alibi and the burden is always on the prosecution to establish beyond reasonable doubt that the accused was not elsewhere but present at the time of the commission of the criminal offence.”

26. Also in *Punchibanda v The State* [1973] 76 NLR 293 at 308, G.P.A. De Silva, S. P. J. (as he was then) has held:

“Where the defence is that of an alibi, the accused person has no burden as such of establishing any fact to any degree of probability.”

27. Further when an accused sets up a plea of alibi, J. A. N. De Silva C.J. in *Jayatissa v Attorney General* [2010] 1 SLR 279 at 283 has suggested three postulates;

- i) *If the evidence is not believed the alibi fails,*
- ii) *If the evidence is believed, it succeeds,*
- iii) *If the alibi evidence is neither believed nor disbelieved, but would create a reasonable doubt, the accused should get the benefit of the doubt.*

28. A trial Judge must consider all evidence, including the alibi in its totality. The entire evidence must be considered to determine if the alibi evidence is false or if it raises a reasonable doubt.

29. The learned High Court Judge in this regard has undertaken a thorough examination of the evidence presented. Firstly, he has focused on the reliability of the identification of the fifth and the sixth accused appellants by the prosecution witnesses.

30. The learned High Court Judge has considered the nature and the extent of the relationship or the familiarity between the prosecution witnesses and the fifth and sixth appellants, as a prior acquaintance can bolster identification reliably. He has satisfied himself that the witnesses possessed the actual capacity to correctly identify the fifth and sixth appellants. In that regard, he has also drawn his attention to the scrutinizing conditions at the scene of the incident.
31. Thereafter, the learned High Court Judge has carefully reviewed the narratives provided by the prosecution witnesses regarding the fifth and sixth accused appellants' specific involvement in the incident that led to the injuries of the deceased and the injuries to the victims (injured).
32. The learned High Court Judge has also taken into account contextual factors that influence the likelihood of the fifth and sixth accused appellants' presence. Specifically, the relationship between the fifth and the sixth accused appellants with the other accused and the distance between the actual scene of the incident and the area known as *Lunugamwehera*. This has been considered, as a significant distance could impact the feasibility of the fifth and sixth appellants' presence. He has also assessed the overall probability of the fifth and sixth accused appellants being at the scene of the incident, weighing all circumstantial evidence and logical inferences.
33. Moving to the fifth and sixth accused appellants' position, the learned High Court Judge has conducted a holistic evaluation of all testimony, from both the prosecution and the appellants, specifically addressing the fifth and sixth accused appellants' plea of alibi. Having considered all the testimony, (prosecution and appellants') in its entirety, the learned High Court Judge has decided to disregard the fifth and sixth accused appellants' testimony related to their alibi, finding it insufficiently

established or credible. Instead, the learned High Court Judge has chosen to act upon and accept the consistent and compelling testimony provided by the prosecution witnesses concerning the events.

“එමෙන්ම 5, 6 විත්තිකරුවන් විසින් අනාස්ථානිකභාවය පිළිබඳ රක්ෂණයක් ඉදිරිපත් කරමින් විත්තිකුඩීවේ සිට ප්‍රකාශ ලබා දී ඇත. 5 සහ 6 විත්තිකරුවන් යනු දැනට මිය ගොස් සිටින 2 විත්තිකරු සහ 3 විත්තිකරුගේ මූණුබුරන් දෙදෙනෙකි. පලමු විත්තිකරුගේ සහෝදරයෙකුගේ දරුවන් වේ. ඔවුන් ප්‍රකාශ කරනුයේ ඔවුන් ලුණුගම්වෙහෙර පුද්ගලයේ ස්ථීර පදිංචිකරුවන් වන බවත්, අපරාධය සිදු වූ දිනයේදී ඔවුන් ලුණුගම්වෙහෙර පුද්ගලයේ සිටි බවත්ය. මෙම ආරවුල සම්බන්ධයෙන් ඔවුන් දෙදෙනා ද අවශ්‍ය සැකකරුවන් බවට දැන ගැනීමෙන් පසුව ස්වේච්ඡාවෙන් පොලිසියට භාර වූ බව ඔවුන් ප්‍රකාශ කර ඇත.

කෙසේ නමුදු පැමිණිල්ල මහින් කැඳවන ලද සාක්ෂිකරුවන් විසින් 5, 6 විත්තිකරුවන් අපරාධ ස්ථානයේ සිටිමින් ක්‍රියාකාරීව එම අපරාධයට දායක වූ ආකාරය සම්බන්ධයෙන් සාක්ෂි ලබා දී ඇත. එම ස්ථාවරය බිඳ හෙළිමට 5, 6 විත්තිකරුවන් සමත්ව නැත. අපරාධය සිදු වූ ස්ථානය සහ ඔවුන් කියා සිටින ලුණුගම්වෙහෙර පුද්ගලය සළකා බැලීමේදී එම ස්ථාන දෙක එකිනෙකට දුරින් පිහිටි ලගාවීමට අසිරි තුළෝලිය දුෂ්කරතාවලින් යුත් ස්ථාන දෙකක් නොවන බව පැහැදිලිව පෙනී යයි. මේ අනුව 5, 6 විත්තිකරුවන්ගේ ප්‍රකාශ මහින් පැමිණිල්ලේ තඩුව කෙරෙහි කිසිදු සැකයක් ජනිත නොවේ.”

34. Further, a crucial aspect requiring consideration is the belated introduction of the plea of alibi by the fifth and sixth accused appellants. This plea has not been presented until the very late stage of the trial, specifically, when they made their unsworn statements from the dock. Critically, the plea of alibi has never been put to any of the prosecution witnesses during cross examination. This has deprived the prosecution of any opportunity to test its veracity.
35. Furthermore, the appellants have offered no explanation for this significant delay in raising the particular plea, nor have they accounted for the failure to present it earlier or to challenge the prosecution's case

on the specific ground. In light of these cumulative circumstances, the only reasonable inference to be drawn, is that the plea of alibi constitutes an afterthought on the fifth and sixth accused appellants, thereby diminishing its probative value and credibility.

36. In the case of *Gunasiri and two others vs. The Republic of Sri Lanka* [2009] 1 SLR 39, Sisira de Abrew J. held that:

"It is a rule of essential justice that when ever the opponent has declined to avail himself of the opportunity to put his case in cross examination, it must follow that the evidence tendered on that issue ought to be accepted. The failure to suggest the defence of alibi to the prosecution witnesses who implicated the accused, indicates that it was a false one."

37. Finally, the appellants have been convicted of the offences set out in charges eight to thirteen in the indictment read with section 32 of the Penal Code, i.e. common intention.

38. In criminal law, common intention refers to a shared, prearranged plan or meeting of minds among several accused to commit a specific criminal act. It is a principle of joint liability, where each person involved is held responsible for the entire act as if they did alone.

39. Common intention requires a prearranged plan or a prior meeting of minds. This plan need not be long-standing, it can be formed suddenly, even at the spur of the moment, during the incident. The criminal act must be done by an accused "in furtherance of" this shared intention. The act committed must be connected to the common plan.

40. Once the common intention is established, the law imposes vicarious or joint liability. Every participant is deemed to have committed the entire

criminal act “as if it were done by him alone”, regardless of the degree of the physical participation.

41. Courts typically infer common intention from the surrounding facts and circumstances of the case, using circumstantial evidence.
42. The actions of the accused before, during and after the crime are crucial. A court can examine whether the actions of the accused were performed in concert with and to achieve the shared plan. The evidence of a prearranged plan can be strong evidence. This can be inferred from how the accused arrived, their coordinated movements and the weapons they carried.
43. While physical presence is not always a prerequisite for common intention (e.g. a master mind directing remotely might be liable), active participation can be key evidence. The mere presence as a passive bystander is not enough. Statements made by the accused before, during and after the incident that suggest a shared purpose can be used as evidence. The nature of the relationship between the accused can be relevant in supporting inference of a shared plan. If the accused carried out different acts that collectively completed the offence, it could imply a common plan.
44. The learned High Court Judge’s inference that the appellants were acting in furtherance of a common intention are based on several concerning factors. These include the pre-existing dispute over the title of the paddy land, the very location of the incidence between the deceased, the prosecution witnesses and the appellants along with the other accused.
45. Crucially, the court has noted the coordinated arrival and movements of the appellants and the other accused named in the indictment at the

scene coupled with the fact that they were already armed with the axe and ‘*kathis*’ (machetes). Furthermore, their active and sustained participation in attacking both the deceased and the injured, with these weapons, have demonstrated a concerted effort.

46. Finally, the distinct actions of the appellants when viewed in their entirety constituted the offences with which they have been charged indicating a unified execution of a criminal plan. In light of these circumstances, the learned High Court Judge was correct in inferring common intention to cause fatal injuries, to cause bodily injury sufficient in the ordinary course of nature to cause death to the deceased/injured and also to cause hurt to the injured.
47. In those circumstances, I am not inclined to interfere with the conviction, disputed judgment together with the sentencing order and affirm the same. I proceed to dismiss the appeal and make no order regarding costs.

Appeal dismissed.

48. The Registrar of this Court is directed to send this judgment to the *High Court of Tangalle* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree

Judge of the Court of Appeal