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

In the matter of an Appeal made under Section 331(1) of the Code of Criminal Procedure Act No.15 of 1979, read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal No:
CA/HCC/ 0057/2021

High Court of Negombo
Case No. HC/343/2006

1. Heethakage Asiri Prasanga Silva alias Ranga

2. Warnakulasuriya Jude Napoleon Fernando

ACCUSED

Vs.

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

COMPLAINANT

NOW BETWEEN

Heethakage Asiri Prasanga Silva alias Ranga

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

BEFORE : **P. Kumararatnam, J.**
R. P. Hettiarachchi, J.

COUNSEL : **Delan De Silva for the Appellant.**
Sudharshana De Silva, ASG, PC with Shehan Mahaboob for the Respondent.

ARGUED ON : **05/12/2025**

DECIDED ON : **16/01/2026**

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JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) with the 2nd Accused were indicted by the Attorney General for committing the offences as mentioned below.

1. On or about the 1st of January 2005 at Thaladuwa, the Accused kidnapped Warnakulasooriya Nishan Sanjeewa Thamel from his

lawful guardians and thereby committed an offence punishable under Section 354 of the Penal Code.

2. In the course of the same transaction, the Accused committed the murder of Warnakulasooriya Nishan Sanjeewa Thamel which is an offence punishable under Section 296 of the Penal Code.
3. In the course of the same transaction, the Accused robbed a bracelet worn by Warnakulasooriya Nishan Sanjeewa Thamel which is an offence punishable under Section 380 of the Penal Code.

The trial commenced before the High Court Judge of Negombo as the Appellant and the 2nd Accused opted for a non-jury trial. The prosecution had led 06 witnesses and marked productions P1 to 8 and closed the case. The Learned High Court Judge, being satisfied that the evidence presented by the prosecution warranted a case to answer, called for the defence and explained the rights of the accused. The Appellant had given evidence from the witness box and the 2nd Accused had made a dock statement and called a witness on his behalf. Thereafter, both had closed their case.

After considering the evidence presented by both parties, the learned High Court Judge had convicted the Appellant and the 2nd Accused as charged and sentenced them on 21/09/2011 as follows:

- For 1st count each had been sentenced to 7 years rigorous imprisonment with a fine of Rs.10,000/-. This is subject to a default sentence of 12 months simple imprisonment.
- For the 2nd count both had been sentenced to death.
- For the 3rd count each had been sentenced to 10 years rigorous imprisonment with a fine of Rs.10, 000/-.This is subject to a default sentence of 12 months simple imprisonment.

Being aggrieved by the aforesaid conviction and the sentence, the Appellant and the 2nd Accused had preferred an appeal to the Court of Appeal under case No. 134/2011. After considering the said appeal, His Lordships of the

Court of Appeal by their judgment dated 09.12.2016 had acquitted the 2nd Accused and reverted the case back to the High Court for a re-trial against the Appellant.

This appeal therefore, arises from the judgement of the re-trial held against the Appellant. The re-trial had commenced on 17.07.2018. After reading the indictment, the Appellant preferred a non-jury trial. The prosecution had led 7 witnesses and marked P1 to P7 and closed their case.

On 08.09.2020 the indictment was amended by removing the name of the 2nd Accused. The learned High Court Judge, after considering the evidence led by the prosecution had decided to call for the defence. The Appellant opted to give a statement from the dock and closed his case. The learned High Court Judge, having considered the evidence presented by both parties, convicted the Appellant as charged and sentenced him as follows:

- First Count – Five years rigorous imprisonment with a fine of Rs. 10, 000/-.This carries a default sentence of 6 months simple imprisonment.
- Second count – Imposed death sentence.
- Third Count – eight years rigorous imprisonment with a fine of Rs. 10,000/-. This carries a default sentence of 6 months simple imprisonment.

Further, the learned High Court Judge had ordered the sentence imposed to run consecutively. The Learned Counsel for the Appellant informed this court that the Appellant had given his consent to argue this matter in his absence. At the hearing, the Appellant was connected via the Zoom platform from prison.

The Appellant had raised the following grounds of appeal:

1. The learned Trial Judge has erred in law on the principle relating to Section 27(1) of the Evidence Ordinance with regard to the recovery of the body of the deceased and his jewellery.
2. The learned Trial Judge has failed to consider the discrepancies in the evidence of the prosecution.
3. The learned Trial Judge has erred in law in concluding that the prosecution has proved its case beyond reasonable doubt.

The background of the case *albeit* **briefly is as follows:**

PW2, Joshila Fernando is the mother of the deceased. According to her on the day of the incident, the deceased had gone to play wearing a gold bracelet around 10.30am but had not returned home. As such, the entire village had launched a search for the child. The Appellant had also joined them but the deceased could not be found. Around 12.00 noon on the following day, the dead body of the deceased was recovered by the police. Additionally, the bracelet worn by the deceased had also been recovered. This witness had identified the bracelet of the deceased. According to her the Appellant was handed over to the police by the village people.

PW1, Anton Thamel, the father of the deceased also narrated the same.

According to PW4, Chaminda, the Appellant and the 2nd Accused had asked him on the date of the incident around 2.00pm whether he knows a place to pawn a bracelet. A bracelet was recovered upon the statement made by the Appellant. Both PW1 and PW2 had identified the same.

PW7, IP Dharmadasa had been the investigating officer in this case. According to him, the first complaint was received from PW1 on 01.01.2005 at 3.00pm. The Appellant was arrested at about 8.45pm on the same day upon an information provided by an informant. His statement was recorded

at about 8.00am on 02.01.2005. Upon his statement, the dead body of the deceased and a bracelet were recovered by the police.

PW12, the JMO gave evidence upon the post mortem report prepared by the Consultant JMO Priyanjith Perera who had gone abroad at the time of the trial. The JMO had noted 14 injuries on the body of the deceased. The JMO had opined that compression of the neck due to manual strangulation had caused the death of the deceased. Injuries No. 5,6,7,8,9,10 and 11 on the neck area are consistent with strangulation by hand.

In this case, the injuries sustained by the deceased play a decisive role in the determination of this case as to whether the Appellant had actuated a murderous intention or not. Hence, the circumstantial evidence pertaining to the injuries found on the deceased's body need to be discussed in detail.

According to the JMO, there were 7 oval and round faint bluish marks seen on the front of the neck. 5 marks were seen over the left side of the body of jaw bone between the point of the chin and left angle. They were 1 cm x 0.8 cm., 1.2 cm x 1.5 cm., and 0.6 cm x 0.6 cm, in size respectively from right to left. There was a round contusion of the soft tissues under the skin and above-mentioned marks over the left side body of the mandible, 2.5 cm x 2.2 cm in size. There were two marks on the right side of the neck immediately below the angle of the jaw, 2.5 cm x 3.5. and 2 cm x 1.3 cm. in size respectively from right to left. There was a contusion of the soft tissues beneath the skin over the right ala of the thyroid 1 cm in diameter. The left thyro-hyoid muscle was contused, 2.5 cm x 0.8 cm in size. The left superior cornu of the thyroid was congenitally missing. There were no fractures of the hyoid, cricoid or tracheal rings.

These injuries clearly indicated how the deceased had been strangled to death.

It is trite law that the burden of proof is on the prosecution in all criminal cases.

In **The Queen v. K.A. Santin Singho 65 NLR 447** the court held that:

> *"It is fundamental that the burden is on the prosecution. Whether the evidence the prosecution relies on is direct or circumstantial, the burden is the same. This burden is not altered by the failure of the appellant to give evidence and explain the circumstances.*

In this case no direct evidence is available but the case rests on circumstantial evidence.

Circumstantial evidence is proof of a fact or even a set of facts from which someone could infer the facts in question. It is a fact that somebody could be convicted of a crime based on circumstantial evidence. Further, with the relatively common occurrence of false testimony and mistaken identification, circumstantial proof can be more reliable than direct evidence.

In **Premawansha v. Attorney General 2009 [2] SLR 205** the court held that:

> *"In a case of circumstantial evidence if an inference of guilt is to be drawn, such an inference must be the one and only irresistible and inescapable conclusion that the accused committed the offence".*

In **AG v. Potta Naufer & others 2007 2 SLR 144** the court held that:

> *"When relying on circumstantial evidence to establish the charge of conspiracy to commit murder and the charge of murder, the proved items of circumstantial evidence when taken together must irresistibly point towards the only inference that the accused committed the offence".*

In the case of **King Vs. Gunaratne** 47 NLR 145, it was held:

> "*In a case of circumstantial evidence, the facts given in evidence may, taken cumulatively, be sufficient to rebut the presumption of innocence, although each fact, when taken separately, may be a circumstance only of suspicion. The jury are entitled to draw inferences unfavourable to an accused where he is not called to establish an innocent explanation of*

evidence given by the prosecution, which, without such explanation, tells for his guilt."

In the first ground of appeal the Appellant contended that the learned Trial Judge has erred in law on the principle relating to Section 27(1) of the Evidence Ordinance with regard to the recovery of the body of the deceased and his jewellery.

Generally, a statement made by an accused person is inadmissible against him. An exception to this rule is the admissibility of statements under Section 27 of the Evidence Ordinance where a portion of a statement made to a police officer**,** which leads to the discovery of a fact can be led in evidence.

Section 27(1) of the Evidence Ordinance states;

"Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved".

In **Queen v Tennakoon** 60 NLR 313 the Court held that:

"(i) that the discovery of a -witness is not the discovery of a fact within the meaning of the section. A person is not a "fact" within the meaning of that word in section 3 of the Evidence Ordinance. It is only when a " fact " has been discovered in consequence of information given by an accused person and when a witness has given evidence to that effect that so much of such information as relates distinctly to the fact thereby discovered may be proved".

In **De Saram v The Republic of Sri Lanka** [2002] 1 SLR 288 the Court held that:

> *(2) The fact that the police learnt from the two witnesses Sanjeewa and Piyalal where the body was buried did not take the same information given by the accused out of the purview of section 27 (1) of the Evidence Ordinance; for the basis of admissibility of the accused statement was not that the accused confessed to the crime but the fact that he knew where the deceased's body was buried. Evidence of the accused's information was therefore admissible under section 27 (1) of the Evidence Ordinance.*

In the case of **R v Jinadasa** (1950) NLR 529 it was held:

> "*The 'information' referred to in section'27 of the Evidence Ordinance is the oral statement of the accused himself, whereas the document contemplated in section 122 (3) of the Criminal Procedure Code is not a statement by the accused but another person's record of an oral statement which is alleged to have been made by the accused. Therefore, the conclusion which the majority of us reach is that there is nothing in section 122 (3) which acts as a bar to the full operation of the provisions of section 27 of the Evidence Ordinance or the admission of an oral statement made by an accused person to a police officer for the ' purposes of section 27. There is nothing in section 122 (3) which prohi bits oral evidence being given of so much of the statement made by an accused which is relevant under section 27 of the Evidence Ordinance as relates distinctly to a relevant fad thereby discovered."*

The learned Counsel for the Appellant strenuously argued that the learned High Court Judge should not have convicted the Appellant solely on the basis of Section 27(1) recovery as the learned High Court Judge had held that the pawning request of the bracelet does not implicate the Appellant with the case. I think this is a clear misdirection as PW4 had clearly stated that the Appellant had requested him to show a place to pawn a bracelet. A bracelet

was recovered upon his statement by the police. PW1 and PW2 had identified the bracelet worn by the deceased.

Hence, it is clearly manifest of the evidence led by the prosecution that this is not a case that solely rests on Section 27(1) recovery, but also fortified with incriminating evidence led against the Appellant. Therefore, it is incorrect to say that this case was decided only with the evidence led under Section 27(1) of the Evidence Ordinance against the Appellant.

In the second ground of appeal the learned Counsel for the Appellant contend that the learned Trial Judge has failed to consider the discrepancies in the evidence of the prosecution.

The legal provisions and various judicial precedents have made it clear that that contradiction is one of the ways to shake the credit of a witness. Not all contradictions could shake the prosecution case. Only those contradictions which are significant and relevant in the context of the case are capable to raise doubt regarding the prosecution case. It is a question of fact decided upon by the courts.

In **The Attorney General v. Sandanam Pitchai Mary Theresa** [2011] 2 SLR 292 the court held that:

> *"Whilst internal contradictions or discrepancies would ordinarily affect the trustworthiness of the witness statement, it is well established that the Court must exercise its judgment on the nature of the inconsistency or contradiction and whether they are true material to the facts in issue".*

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

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

Although, PW1 had stated that the Appellant was handed over to the police by the village people, PW7 the investigating officer had said that he was arrested upon receiving an information from an informant. Acting on that information the police had arrested the Appellant at 8.35pm on the date of the incident. Hence, the learned Counsel for the Appellant argues that this discrepancy certainly would affect the core of the case.

Next, the learned Counsel contends that as per the evidence given by PW1, the Appellant had assisted the search of the victim until the evening. But PW4 said that the Appellant had met him to discuss about pawning the bracelet at about 2.00pm on the date of the incident.

Although, PW1 had stated that the Appellant had assisted the search of the deceased, he was not sure as to what time the Appellant had left them.

Although, PW1 had stated that the 2nd Accused had indicated the location of the deceased's body and the bracelet**,** it was subsequently stated that both the Appellant and the 2nd Accused had stated the location of the dead body of the child and the bracelet.

In this case the inter se contradictions highlighted are not material and are minor discrepancies which certainly are not going to affect the credibility and the root of the case. The High Court Judge had correctly disregarded such minor discrepancies when considering the evidence as a whole to arrive at his decision. Further, it is to be noted that the prosecution witnesses had given evidence after 13 years of the incident.

In the third ground of appeal, the learned Counsel for the Appellant contended that the learned Trial Judge has erred in law in concluding that the prosecution has proved case beyond reasonable doubt.

In this case the prosecution had led plausible evidence against the Appellant. The learned Additional Solicitor General very correctly argued that although the prosecution had led incriminating evidence against the Appellant, he had failed to offer an explanation regarding the recovery of the dead body and the

gold bracelet worn by the deceased at the time of disappearance from the room where the Appellant lived on rent. Hence, I hold that there is no merit in all grounds raised on behalf of the Appellant.

As discussed under the appeal grounds advanced by the Appellant, the prosecution had adduced strong and incriminating circumstantial evidence against the Appellant. The Learned High Court Judge had very correctly analyzed all the evidence presented by both parties and had concluded that all the circumstances are consistent only with the hypothesis of the guilt of the Appellant and totally inconsistent with his innocence.

As the Learned High Court Judge had rightly convicted the Appellant for the charges levelled against him in the indictment, I affirm the conviction and dismiss the Appeal of the Appellant.

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL