

**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.

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

COMPLAINANT

Court of Appeal No:

CA/HCC/0059/2013

1. Palihewage Lalithchandra Perera

High Court of Panadura

2. Panadura Acharige Don Jayasiri

Case No: HC/1359/1999

ACCUSED

AND NOW BETWEEN

Panadura Acharige Don Jayasiri

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

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

COUNSEL : **Saliya Peiris, P.C. with Pasindu Thilakarathna and Varuna de Seram for the Appellant.**
Dishna Warnakula, DSG for the Respondent.

ARGUED ON : **23/09/2025 and 30/09/2025**

DECIDED ON : **11/11/2025**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) along with the 1st Accused were indicted jointly in the High Court of Panadura as follows:

1. On or about 17.08.1994 at Rambukkana, committing the murder of Willora Arachchige Pemanis Perera, an offence punishable under Section 296 read with Section 32 of the Penal Code.
2. In the course of the same transaction at Rambukkana, committing the murder of Willora Arachchige Samanthi Perera, an offence punishable under Section 296 read with Section 32 of the Penal Code.
3. In the course of the same transaction at Rambukkana, committing the offence of attempted murder of Ambawalage Siriyawathi, an offence punishable under Section 300 read with Section 32 of the Penal Code.
4. In the course of the same transaction at Rambukkana, committing mischief to the house of Ambawalage Siriyawathi, an offence punishable under Section 419 read with Section 32 of the Penal Code.

This matter was originally taken up for trial in or around the month of June of 2000 and the judgment was pronounced on 11.01.2005. The learned High Court Judge who heard the case found the Appellant and the 1st Accused guilty of all the charges.

Being aggrieved by the judgment dated 11.01.2005, the Appellant and the 1st Accused had lodged an appeal against the judgment in the Court of Appeal under case No. CA 34-35/2000. Having considered the arguments

raised by the parties their Lordships of the Court of Appeal remitted the case back to the High Court for a re-trial on 03.09.2008.

The re-trial commenced before the High Court Judge of Panadura as the Appellant had opted for a non-jury trial. After the conclusion of the prosecution case, the learned High Court Judge had called for the defence and the Appellant had given evidence from the witness box and had been subjected to a lengthy cross examination by the prosecution. Additionally, the Appellant had called witnesses on his behalf.

As the 1st Accused had passed away after giving evidence from the witness box, the indictment was amended accordingly on 03.09.2012. The amended indictment was read over to the Appellant and the Appellant had pleaded not guilty.

After considering the evidence presented by both parties, the learned High Court Judge had convicted the Appellant as charged and sentenced him as follows:

- For the first count he was sentenced to death.
- For the second count he was sentenced to death.
- For the third count he was sentenced to 10 years rigorous imprisonment with a fine of Rs.10,000/- and with a default sentence of 06 months rigorous imprisonment.
- For the fourth count he was sentenced to 10 years rigorous imprisonment with a fine of Rs.10,000/- with a default sentence of 06 months rigorous imprisonment.
- Rupees one million (Rs. 1,000,000.00) was ordered as compensation payable to PW1 with a default sentence of 03 years simple imprisonment.

Being aggrieved by the aforesaid conviction and sentence, the Appellant preferred this appeal to this court.

The Learned President's Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence. Also, at the time of argument the Appellant was connected via the Zoom platform from prison.

Background of the Case.

The prosecution case rests mainly on the testimony of an eye witness and circumstantial evidence.

PW1 Siriyawathie, is the wife and mother of the two deceased respectively in this case. The incident had taken place in the early hours on 17.08.1994. Being an election day, she, with her deceased husband and deceased daughter were very much awake when the incident had happened. Her son and younger daughter were not at home as they had gone to watch TV. In the early hours when all of them were listening to the election results, having heard a strange noise followed by a petrol smell, when all had gone out to check, they had seen the Appellant and the 1st Accused going to the house of the 1st Accused, which was situated about 50 feet away from her house.

She had identified the Appellant and the 1st Accused with the light emanating from Lalith Chandra's house. His house was illuminated with an oil lamp. A few minutes later, the Appellant had come with a sword and dealt a blow on the neck of her husband. She had seen the assault with the aid of a street light which was on at that time. After that, the Appellant had dealt a blow on her, which had struck her right hand and her deceased daughter. At that time, the 1st Accused had splashed petrol and set fire to her house. As the petrol soaked her dress and her daughter's dress they too were engulfed with fire. She had then removed her dress in order to extinguish the fire. At that time, she was clad in her underskirt only. When she looked for her daughter, she had seen her daughter rolling on the floor in order to extinguish the fire which had engulfed her. At that time her deceased daughter was fully naked.

Afterwards, they ran up to the road, and had borrowed a blouse and a skirt for her daughter. Her daughter was severely burnt at that time.

When they were running on the road, a police jeep had arrived and had taken them to the Bandaragama Hospital. She had then told the entire incident to the police officers who had taken them to the hospital. She had been transferred to the Panadura Hospital thereafter and had received treatment for nine days. She had arrived at her husband's funeral from the hospital. Her daughter had been transferred to the Colombo General Hospital.

A land dispute was in existence between the 1st Accused and the deceased's family. At the time of the incident, six cases were pending in the Magistrate Court of Horana. Due to this, her house was smashed by the 1st Accused on a previous occasion. As such, her house was in a dilapidated condition at the time of the incident. Her daughter had also passed away, while receiving treatment at the hospital.

According to PW9, IP Sirisena, on the day of the incident, being an election day, he was on night patrol duty along with other police officers. Close to the Rambukkana junction, two women with bleeding injuries had stopped their vehicle and pleaded for help from them. PW1 had told him that the 1st Accused and the Appellant had cut her husband and set fire to her house. She and her daughter too had sustained severe injuries. As such, he had taken both victims to the Bandaragama Hospital. As PW1 told him that her husband too had sustained injuries, he and his team had gone to the place of the incident and had found the deceased with bleeding injuries. He too had been taken to the Bandaragama Hospital, but was pronounced dead on admission.

Dr. Peiris, who had conducted the postmortem examination of the deceased Pemanis, had noted serious injuries to the neck region. According to the doctor, the death had been caused due to the damage caused to major blood vessels in the neck region of the deceased.

As PW7, who had held the post mortem of Samanthi Perera had gone abroad when the re-trial commenced, Dr. Paranidaran was called to give evidence on behalf of PW7. The doctor had noted burn injuries all over the body and a cut on the deceased's index finger. The deceased had sustained 90% burning on her body. According to the doctor, the death was caused due to extensive burning which led to septicemia.

PW 13, Dr. Hema Indrani, who had examined PW1, noted that Lalith Chandra had caused injury to her. As the injury sustained on PW1 was a serious one, she had taken steps to transfer PW1 to the Panadura Base Hospital. Although she gave evidence with regard to the injury, she had not submitted any report to support her evidence. The witness further said that she had also treated the deceased Samanthi before she too was transferred to the Panadura Base Hospital.

PW10, IP/Gajasinghe was the Officer-in-Charge of the Bandaragama Police Station at the time of the incident. At about 2.45 am on the date of the incident, he had received a message about the incident. He had gone to the place of the incident and had inspected the place. When he went to the place, he had seen the house of PW1 completely destroyed by fire. The street light was on and the light condition was good to inspect the place. In front of the house, he had noticed a pool of blood. Further, some dresses, including a brassiere, were lying fallen near the pool of blood. He had come to know about the involvement of the Appellant and the 1st Accused from PW9, IP Sirisena. Upon an information received, the 1st Accused was arrested at 3.45 am at the house of a politician. The Appellant was arrested when he surrendered to the police after a few days.

After the closure of the prosecution case, the defence had called both the 1st Accused and the Appellant, who had given evidence from the witness box. After giving evidence and before he could call his witnesses, the 1st Accused had passed way. Hence, the indictment was amended accordingly.

According to the Appellant, he knew that the 1st Accused had filed a case to evict the deceased Pemanis from the land said to have been owned by the 1st Accused. As the day in question was an election day, he had helped a local politician and had gone to one Jagath Chandra's house and stayed there until the following day. He denied any involvement in this case. He admitted that he was a good friend of the 1st Appellant.

The Appellant had filed the following grounds of appeal.

1. Whether the evidence of PW1 Siriyawathie can be relied upon to convict the Appellant.
2. The learned High Court Judge had erred in applying the Ellenborough and Lucas Principles.
3. Whether the alibi taken by the Appellant has not been correctly considered by the Learned Trial Judge.

The Learned President's Counsel for the Appellant had contended under the 1st ground of appeal, that the infirmities in the evidence of the main eye witness PW1 have not been given due consideration.

The Learned President's Counsel strenuously argued that the Learned Trial Judge had failed to consider all the circumstances regarding whether PW1, Siriyawathie had witnessed the incident as claimed by her in her testimony.

Identification is not an issue in this case as PW1 had known both the 1st Accused and the Appellant very well before the incident. The issue is whether there was sufficient light to identify the Appellant at the time of the incident. PW1 had said in her evidence that they used a bottle lamp to get light at that time. Further the street light was on at the time of the incident. With aid of both, she could clearly identify the Appellant and the 1st Accused as the perpetrators. When she ran for help in the dark half naked with her daughter who was burnt severely, she had met PW9 IP/Sirisena and informed him

about the incident with the names of the perpetrators. (Page 549 of the proceedings).

PW10, who was the Officer-in-Charge of the Bandaragama Police Station, had visited the place of the incident immediately after he received the information from PW9 and observed that the street light was on at that time.

As stated above, PW1 Siriyawathie who is an eye witness had vividly explained how this gruesome incident had happened. She had clearly seen the attack on both the deceased before she could call for help.

In **Wijepala v AG** [2001] 1 SLR 46 the Court held that:

“...Evidence of a single witness, if cogent and impressive, can be acted upon by a Court, but, whenever there are circumstances of suspicion in the testimony of such a witness.... then corroboration may be necessary”.

The Learned High Court Judge in her judgment had considered the evidence given by PW1 extensively and properly analyzed her evidence in its correct perspective. She has reasonably considered all direct and circumstantial evidence to arrive at her decision.

Further, the eye witness PW1 had given evidence in the High Court nearly 15 years after the incident. I consider her evidence to be clear and cogent and it had not shaken her credibility or testimonial trustworthiness.

The defence had called a police officer who had recorded the statement of the deceased Samanthi Perera as the dying declaration. In her statement, the deceased had said that she could not identify the assailants at that time. The police officer in his evidence said that the deceased was in a serious condition and he is unable to say whether the deceased had properly comprehended the questions posed to her at that time. The learned High Court Judge, in her judgment had correctly analyzed the purported dying declaration of the

deceased Samanthi and given plausible reasons as to why she disregarded the same. (Pages 898-902 of the brief)

Next, the Learned President's Counsel contended that the Learned High Court Judge did not give due consideration regarding the omission highlighted by the Appellant.

Owing to many different reasons, contradictions and omissions between the testimonies presented by different witnesses of the same case are more or less common in criminal trials. It is the duty of the Court as well as the professional legal representatives to accurately distinguish between minor and major discrepancies, the latter of which would only stand to affect the case.

Further, in a criminal trial it is not always possible for a trial judge to observe all the witnesses who had testified before the Court. This is due to various factors including the transfers and retirement of judicial officers.

In **State of Uttar Pradesh v. M. K. Anthony [AIR 1985 SC 48]** the court held 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 scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the 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. Cross examination is an unequal duel between a rustic and refined lawyer.”

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”.

In this case, the highlighted omissions and contradictions were brought to the attention of the learned High Court Judge who wrote the judgment, and she had given due consideration to them in her judgment and given plausible reasons as to why she disregarded the same.

Considering the circumstances under which the eye witness had witnessed the incident and the time period in which she had given evidence after the incident before the High Court, I consider that the omission highlighted has no significance to this case as it is not forceful enough to affect the root of the case.

As the Learned High Court Judge had considered all this evidence in her judgment, it is incorrect to say that the Learned High Court Judge had failed to give due consideration to the evidence of PW1 and the prosecution had failed their duty to prove their case beyond a reasonable doubt. Hence, I conclude that this ground has no merit.

In the second ground of appeal, the learned President's Counsel contends that the learned High Court Judge erred in applying the Ellenborough and Lucas Principles.

In this case, although the learned High Court Judge had considered the Ellenborough and Lucas Principles, it had not caused any prejudice to the Appellant, as the evidence given by PW1 was cogent and had not affected the core of the case at any time during the trial. Therefore, I consider that this ground has no merit.

In the final ground of appeal put forth by the Appellant, the Learned President's Counsel contended that the *alibi* taken by the accused has not been adequately considered by the Learned Trial Judge.

It is trite law that no burden is cast upon the accused to prove his alibi, as an alibi is not a defense. It is the duty of the Learned High Court Judge to consider the *alibi* and if doubt arises in the mind of the Learned Trial Judge, the benefit of the doubt must be awarded to the accused.

The Learned High Court Judge in his judgment at pages 935 to 946 of the brief had considered the evidence given by the Appellant and his witnesses and given reasons as to why she rejects the defense evidence. Hence, this ground also has no merit.

Further, the Appellants had given evidence under oath and had been subjected to cross-examination by the State Counsel. He had called his witnesses to substantiate his claim.

The single most important criterion in evaluating the fairness of a trial is the observance of the principle of equality of arms between the defence and the prosecution. Equality of arms, which must be observed throughout the trial, means that both parties are treated in a manner which ensures their procedurally equal position during the course of the trial.

In this case the learned High Court Judge had considered the evidence presented by both parties to arrive at her decision. She has properly analyzed the evidence given by both sides in her judgment. As the evidence adduced by the Appellant failed to create a doubt over the prosecution case, the

conclusion reached by the learned High Court Judge in this case cannot be faulted.

As discussed under the grounds of appeal advanced by the Appellants, the prosecution had adduced strong and incriminating evidence against the Appellant. The Learned High Court Judge had very correctly analyzed all the evidence presented by all the parties and arrived at a correct finding that the Appellant was guilty of charges depicted in the indictment.

Therefore, I affirm the conviction and dismiss the Appeal of the Appellant.

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL