

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA.**

In the matter of an application for Special
Leave to Appeal in terms of Article 127/128
of the Constitution of the Democratic -
Socialist Republic of Sri Lanka.

Democratic Socialist Republic of
Sri Lanka

SC/APPEAL/34/2021

Complainant

SC/SPL/LA/175/2019

Vs.

CA Appeal no: CA/160/2013

Karunasundera Devayalage Upul Kumara

High Court of Monaragala No:
515/2008

5th Accused

AND NOW

Karunasundera Devayalage Upul Kumara

4th Accused-Appellant

Vs.

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

Respondent

AND NOW BETWEEN

Karunasundera Devayalage Upul Kumara

Accused-Appellant-Appellant

Vs.

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

Complainant-Respondent-Respondent

Before : Janak De Silva, J.
Mahinda Samayawardhena, J.
Menaka Wijesundera, J.

Counsel : Ms. Indika Mallawarachchi for the Accused-Appellant-Appellant.
H. I. Pieris, SDSG for the Complainant-Respondent-Respondent.

Written
Submissions : Written submissions on behalf of the petitioner-appellant
on 1st April, 2021.
Written submissions on behalf of the complainant-Respondent 20th June, 2025

Argued on : 26.06.2025

Decided on : 11.09.2025

MENAKA WIJESUNDERA J.

The instant Appeal has been filed to set aside the judgment dated 03.04.2019 of the Court of Appeal.

The Appellant along with five others had been indicted under Sections 296 and 355 of the Penal Code on the basis of unlawful assembly and under Section 32 of the Penal Code as well.

At the conclusion of the trial, the 1st to 5th, all accused were convicted of all charges and had been sentenced to death on the 4th and the 5th counts but the 4th accused had been acquitted of all charges.

The Court of Appeal also has affirmed the said conviction and sentence and being aggrieved by the said judgment of the Court of Appeal the instant appeal has been lodged.

When the instant matter had been supported this Court has granted leave to proceed and the following questions of law has been raised,

(a) Have their Lordships of the Court of Appeal failed to consider that the evidence relating to the identification of the petitioner is plagued with serious infirmities which renders his conviction holy unsafe.

Hence, the main question with regard to the instant matter is whether the prosecution has established the identity of the Appellants adequately.

The prosecution had been mainly relied on the evidence of PW1 who is R.M. Seelawathi, the wife of the deceased.

According to her testimony on the date of offence, around 2.00 am in the night, herself, her husband the deceased and the three daughters had been sleeping in the house when two people armed with knives had entered the house and had identified themselves to be from the Medagama Police station.

The only source of illumination at that time had been the bottle lamp which had been burning inside the house. She had identified these two persons to be the 2nd and the 3rd Appellants. She has not seen them and known them before. These two persons had taken the deceased to the outside verandah and at that point she has seen the 1st and the 5th Appellant outside the house. The 1st Appellant

had been armed with a Katty, these two persons had been known to her before. The 2nd Appellant had assaulted the deceased. The assault has taken place in the verandah. This particular witness had identified the 2nd and 3rd Appellants who came to her house at the identification parade. Thereafter she had identified them in Court. She has said in evidence in page 108 that the four persons who came to her house had stayed inside her house for about 15 minutes.

Therefore, I note that the interaction she had been with the two unknown Appellants had not been a fleeting glance. The other two Appellants whom she had seen outside her house were known people to her.

Thereafter, the 1st Appellant, 2nd Appellant, 3rd Appellant and 5th Appellant had taken the deceased away from the house through the garden of Sriyalatha. The witness has further said that there had been a dispute between the deceased and the 1st Appellant regarding a tree to which both had claimed ownership. This witness had been led in the cross examination and she had reiterated her position taken up in examination in chief with regard to the participation of the 1st, 2nd, 3rd and the 5th Appellants. Hence, her evidence had been consistent and with clarity.

The body of the deceased has been found in the next morning.

The doctor who had conducted the post mortem has observed 9 external injuries with corresponding internal injuries. The doctor has classified the impact of all injuries together to be necessarily fatal.

The prosecution has led the evidence of M.W. Senevirathna who had been PW3 who said that on the day of the incident he had been woken up for the sound of stones being pelted on to his front door and when he had rushed out, a torch light has been flashed into his face and he had seen two persons taking away the deceased with some others following. He had identified the 1st Appellant by the voice who had told him that the same would happen to him if makes a protest. He had also identified the 4th and the 5th Appellants.

He also had been lengthily cross examined.

The police evidence had diverged the fact that, deceased wife had made the first complaint to the Medagama police at 3.30 am on the following morning and the body of the deceased had been recovered in close proximity to the house of the deceased with cut injuries.

The question of law raised, is whether the Appellants have been identified adequately at the scene of crime.

The main witnesses who have identified the Appellants have been PW1 and PW3. PW1 has identified the 2nd and 3rd at the identification parade, the 1st and the 5th at the scene of crime because she has known them previously. PW3 has identified the first Appellant by voice. It has to be noted that during the cross-examination it has not been suggested by the defence to PW1 and PW3 that they have not identified the Appellants. It has been put to witness PW1 that the Appellants were shown to her prior to the identification parade. But she has vehemently declined the same.

PW1 also has said that the interaction between 1A and 3A and between 1A and 5A in her house had lasted for over 15 minutes and during the entire period there had been a bottle lamp burning inside the house and the 1st Appellant has been flashing a torch light. Therefore, there had been ample light and time for PW1 to have identified the Appellants at the scene. This is even made easier for her because the 1st and the 5th Appellant have been known to her before.

It also has to be noted that the defence at the Trial had not challenged the available illumination at the scene.

Therefore, the recognition by PW1 of the Appellants is by no means by a fleeting glance as per the Turnbull principle.

In the Indian case of **Wijaya Bahu Rai v State of Bihar 1997 CRI.L.J.2531** it had been said that where identification was only by way of an earthen lamp that

“Where the only source of light at place of occurrence which was village where dacoity in question took place was an earthen lamp, the identification of accused even in such light would not be a problem for villagers especially when many of dacoits were direct relations of complaint. The visibility capacity of urban people who are acclimatized to fluorescent lights or incandescent lamps is not the standard to be applied to villagers whose optical potency is attuned to country-made lamps. Their visibility is conditioned to such lights and hence it would be quite possible for them to identify men and matters in such lights.”

Therefore, in the instant case also PW1’s recognition of the Appellants by the aid of the bottle lamp need not be disregarded at all because unlike the urbanized people who are used to fluorescent and neon lights the simple villager like PW1 who had not even gone to school has been used to the bottle lamp burning in the night all the life. A similar decision has also been taken in another Indian case, that is **Machhi singh v State of Punjabi AIR 1983 SE 957**.

Therefore, I am of the opinion that PW1 had ample light and opportunity to identify the assailants at the scene with her low level of literacy.

PW3 had identified the 1st Appellant taking away the deceased by his voice whom according to the witness he had known before, he had also identified the 4th and the 5th Appellants as well.

In the case of **SC (SPL) APPEAL 7/2018** his Lordship the former Chief Justice Jayantha Jayasuriya has held that:

“However, the process of identification of a person who is known to a witness by name or otherwise is described as recognition as supposed to identification. Situations of recognition are considered more satisfactory than the instances of identification. However, even in situations of recognition the Courts should analyze the evidence of the witness who claims the accused is a known person and examine whether the evidence is satisfactory to bring home a conviction.”

In the instant matter, PW3 has known the 1st, 4th and 5th Appellants for some time and he has identified the 1st appellant by voice and thereafter, he had flashed the torch light at PW3. Therefore, it is my opinion that there had been ample reason and opportunity for PW3 to have recognized and thereafter identify the 1st, 4th and the 5th Appellants taking away the deceased.

The next item of evidence to be considered is the identification parade held by the police.

It is PW1 who has identified the 2nd and 3rd Appellants at the identification parade. This identification has taken place after PW1 has had an interaction with the 2nd and the 3rd Appellants for a duration of 15 minutes at the scene which I have decided above is not a fleeting glance.

Therefore, there is no reason for me to disregard her identification of the Appellants at the parade.

The Trial Judge and their Lordships of the Court of Appeal has considered adequately the identification of the Appellants by PW1 and PW3 at the scene of crime.

Therefore, the totality of evidence against the Appellants are considered. It is my view that PW1 and PW3 have placed before the Trial Court credible and cogent evidence which cannot be rejected by mere suggestions made by the defence.

Therefore, on evaluating the weight of the evidence the submissions made by the counsel for the Appellants do not have any merit or worth.

Therefore, I too see no reasons whatsoever to depart from the said decision.

As such, the main question of law raised in the instant matter is the identification of the Appellants at the scene. As stated above, it is my opinion that the Appellants from the 1st to 5th had been adequately identified. Therefore, I see no reason to set aside the judgment of the Court of Appeal.

Hence, the instant Appeal is dismissed and the judgment of the Court of Appeal is hereby affirmed.

JUDGE OF THE SUPREME COURT

Janak De Silva, J.

I agree.

JUDGE OF THE SUPREME COURT

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE SUPREME COURT