

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

In the matter of an appeal against an order of the High Court under Section 331 of the code of Criminal Procedure Act No 15 of 1979

**Court of Appeal Case No: CA /HCC/0292/12
High Court Colombo Case No: HC/4337/2008 (1)**

Hon. Attorney General,

Complainant

Vs.

Jonson Collin Valentino Alias Wasanthan

Accused

And Now Between

Jonson Collin Valentino Alias Wasanthan

Accused-Appellant

Vs.

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

Complainant-Respondent

Before: **N. Bandula Karunaratna J.**

&

R. Gurusinghe J.

Counsel: Dr Ranjith Fernando with Champika Monarawila AAL for the accused-appellant

Dileepa Pieris DSG for the complainant-respondent

Written Submissions: By the accused-appellant on 07.02.2022, 06.06.2019 & 25.05.2015

By the complainant-respondent 03.02.2022 & 23.08.2018

Argued on : 13.01.2022

Decided on : **10.03.2022**

N. Bandula Karunarathna J.

This appeal is from the judgment, delivered by the learned Judge of the High Court of Colombo, dated 27.08.2012, by which, the accused-appellant, who is before this Court on Zoom platform, was convicted and sentenced to death for having murdered Thangaraja Maheshwaran and Chandrakumar Mahindan (the deceased), committing the offence of murder punishable under section 296 of the Penal Code.

There were 2 charges in the indictment. They are as follows;

(a) Count 1;

that on or about 01.01.2008, he committed the offence of murder by causing the death of Thangaraja Maheshwaran which is an offence punishable under Section 296 of the Penal Code.

(b) Count 2;

that at the same date, time and place set out in count 1 and during the same transaction he committed the offence of murder by causing the death of Chandrakumar Mahindan which is an offence punishable under Section 296 of the Penal Code.

At the trial, 18 witnesses gave evidence on behalf of the prosecution namely;

Guruge Dharmasiri Perera (PW1)

Selvadorei Paramasodinadan (PW2)

Ganeshpillei Sodilingam (PW24)

Thiyagaraja Parameshwaram (PW38)

Widanage Chandana Priyantha Kumara (PW30)

Bandula Weerasekara (PW29)

Gananadan Nithyanadan (PW3)

Edirisuriya Arachchige Sunil Chinthaka Edirisuriya (PW44)

Dhammika Jayalal Keerthi Iddamalgoda (PW21)

Dinesh Subharaja (PW12)

Chaminda Anil Weerathna (PW39)

Ananda Samarasekara (PW28)

Nuwan Jayashantha Illeperuma (PW42)

Kiribathgalage Sunil Kumara (PW27)

Raveendu Piyalal Samaranayaka (PW37)

Ranamuni Arachchige Samantha Priyalal Wijerathna (PW41)

Pathirannehelage Gamini Madawala (PW34)

Suresh Indika Idirisuriya (PW35)

Upon the conclusion of the prosecution case after the learned High Court Judge having explained the rights of the accused-appellant, he has given evidence and closed the defence case.

After the trial, the learned trial Judge found the accused-appellant guilty on the 1st count and imposed the death sentence. The accused-appellant was acquitted on the 2nd count. The accused-appellant preferred this appeal against the said conviction and sentence.

The grounds of appeal are as follows;

- (i) The finding of guilt is contrary to the weight of evidence led in this case.
- (ii) The prosecution failed to prove the case beyond a reasonable doubt.
- (iii) The learned High Court Judge appears to have overlooked several items of evidence favourable to the accused-appellant.
- (iv) The learned High Court Judge in relying on the evidence of P.C. 52152 Dharmasiri Perera to find the accused-appellant guilty of murder, appears to have overlooked his evidence when he stated that he was unable to mention how the deceased Maheshwaran was murdered on 01.01.2008.
- (v) The learned High Court Judge failed to take into account the evidence of Dr N.A.S.P Wijayerathna, A.J.M.O Colombo, who confirmed the omission of P.C.52152 Dharmasiri Perera to identify the person who shot at him and the deceased, T. Maheshwaran around 9.35 am on 01.01.2008 when he gave a short history of the incident to the doctor on 07.01.2008.
- (vi) The learned High Court Judge, if he has correctly assessed the evidence of Dr N.A.S.P Wijerathna, A.J.M.O Colombo, ought to have rejected the evidence of P.C. 52152 Dharmasiri Perera.
- (vii) The learned High Court Judge failed to take into account the evidence of P.C 52152 Dharmasiri Perera, who stated that he did not see any weapon in the hands of the accused-appellant.
- (viii) The learned High Court Judge failed to take into account the evidence of P.C 52152 Dharmasiri Perera, who stated that he cannot state whether the accused-appellant was injured by the use of his pistol.
- (ix) The learned High Court Judge failed to take into account the following contradictions in the evidence of Gananathan Nithyanandan, the eye witness in the case.

- a. This witness in evidence in chief after stating that he saw the person who shot at Maheshwaran, stated that out of fear never told the police that he saw the man who shot at Maheshwaran.
 - b. During cross-examination, he admitted that he never told the police that he saw the man who shot Maheshwaran having a gun in his hand.
 - c. Since he identified the accused-appellant in Court, a portion of his statement made to the police on 01.01.2008 was marked as a contradiction (V 1), where he told the police that he could not identify the person who shot at the deceased, Maheshwaran.
- (x) The learned High Court Judge failed to take into account the evidence of Gananathan Nithyanandan when he stated that he cannot mention how injuries were inflicted on the deceased Maheshwaran.
 - (xi) The learned High Court Judge failed to observe that neither a gun nor a pistol was shown to P.C Dharmasiri Perera nor Gananathan Nithiyandanan to prove the identity of the gun or pistol alleged to have been used on 01.01.2008 in the assassination of Maheshwaran.
 - (xii) The learned High Court Judge failed to observe that the prosecution had not produced P1 (pistol) and P7 (revolver) through P.C Dharmasiri Perera or Gananathan Nithiyandanan to establish the identity of the weapon alleged to have been used in the killing of Maheshwaran, even though they were marked when Government Analyst Madawela gave evidence in court on 19.04.2012
 - (xiii) The learned High Court Judge failed to observe that the factual evidence given by Gananatham Nithiyandanan is directly in conflict with evidence given by Dr Ananda Samarasekara, JMO Colombo who stated that Maheshwaran was shot from a distance of well over three feet; hence the evidence of Gananathan Nithiyandanan indicated that Maheshwaran was shot by the assailant when he was near Maheshwaran cannot be accepted as true.
 - (xiv) The learned High Court Judge failed to observe that it is impossible to treat Gananatham Nithiyandanan as an eyewitness on a comparison of his evidence with the evidence given by Dr Ananda Samarasekara J.M.O Colombo.
 - (xv) The learned High Court Judge failed to take into account the evidence of Gamini Madawala, a Government Analyst who had given evidence on 23.04.2012; Due to his inability to mention when P1 (pistol) and P 7 (revolver) was used and hence in the absence of any evidence to prove that P 1 and P 7 were used by the accused-appellant on 01.01.2008, an adverse inference cannot be drawn against the accused-appellant.
 - (xvi) The learned High Court Judge failed to follow an important principle in a case of circumstantial evidence, if two decisions are possible from proved facts, the evidence of the Government Analyst was favourable to the accused-appellant

because none of the witnesses identified a weapon in the hand of the accused-appellant on 01.01.2008.

- (xvii) The learned High Court Judge failed to observe that an adverse inference of guilt cannot be drawn on the basis that bloodstains found on the firearm number 0305323 originated from the accused-appellant, as it is only a suspicious circumstance not sufficient to establish guilt or to release the prosecution of its burden of proving the case against the accused-appellant beyond a reasonable doubt.
- (xviii) The learned High Court Judge failed to observe that bloodstains found on the firearms and clothes worn by the accused-appellant were not linked to the bloodstains of the deceased, an item of evidence favourable to be accused-appellant.
- (xix) The learned High Court Judge, by giving undue importance to the prosecution case, misdirected him by stating that evidence given by the accused-appellant did not create any doubt in the prosecution case. It is indeed a clear misdirection on the burden of proof in criminal cases.

The most important eyewitness, in this case, was Guruge Dharmasiri Perera (PW 1), who had been present at the scene of the incident was the personal security officer of the deceased Member of Parliament, T. Maheswaran. On 01.01.2008 he had gone to Ponnambalam Vaneshwara Kovil at Kotahena with the deceased. According to his evidence, the deceased had used to worship the God in a position of laying down on the floor and at the time of the incident, the deceased had worshipped the God in the same manner.

At that time PW 1 had heard a sound of “ඛර ඛරාඪ” (shooting) and he had opened fire in the direction where he heard the sound. He had noticed a person running towards the right side of the Kovil and chased him. Both he and the person had shot each other at that time they were running. PW 1 further said that when the person tried to climb a short wall inside the temple, to escape he had noticed that the person's gun had fallen with a sound of "ඔලාඪ".

Police Officer PW 1 had testified that the person had worn a pink colour shirt with short sleeves. The deceased had been taken to the hospital by several persons and the vehicle had been driven at that time by a known person of MP T. Maheswaran, who lived in Jaffna. PW 1 also had been shot by the person and had fainted at the hospital. Witness PW 1 further said when he had been kept on a trolley at the hospital, he had identified the person who shot at him with the pink colour shirt was there among the other patients. Police Officer PW 1 had shown that person to Police Officer Bandula Weerasekara (PW29) who was near him at the hospital during that time. At the trial, PW 1 had identified the shirt which had been worn by the accused-appellant and the revolver which had been used to shoot at the appellant respectively marked as "ඔ෭ 01." and "ඔ෭ 02"

According to the evidence of Selvadoorai Paramasodhinathan (PW 3), the deceased had fallen after he had heard a sound similar to firecrackers. Then the witness PW 3, along with

several persons had taken the deceased to the hospital. He had testified that the deceased had been worshipping when he heard the sound similar to firecrackers.

According to Ganeshapillai Sodhilingam (PW 4), the deceased was in the Kovil at the time of the incident and the deceased had been shot by an unknown person.

The trial Court had found Dinesh Subaraja (PW 12) as an important witness. According to his evidence, on the day of the incident he had seen a person fallen on the street near the three-wheelers' park near the Kovil at Kotahena. He had testified that the person had worn an ordinary trouser and a shirt with short sleeves. PW 12 had noticed blood near the person's mouth and mucus on the cheek. Witness PW 12 had identified the appellant at the police station and the courts during the trial, as the person he had seen at Kotahena.

PW 30's evidence had been led regarding the investigation done after the incident. He had inspected the place of the incident and submitted all productions which had been recovered at the scene to the court, during the trial. The evidence given by witness PW 30 had corroborated with the evidence given by PW 01. This had not been challenged by the learned counsel for the accused-appellant.

Gananathan Nithyanathan PW 3 could be considered as an important witness for the prosecution as his evidence is corroborated with the evidence given by PW 1. He testified that he had seen the person who shot at the deceased and he had identified that person as the accused-appellant during the trial.

According to the evidence given by Dhammika Jayalal Keerthi Iddamalgoda (PW 21) who had recorded the statement of the accused-appellant, found a magazine of a pistol concerning the statement given by the accused-appellant. He had testified that the magazine had tallied with the pistol which had been found inside the Kovil premises.

It is confirmed from the evidence given by Judicial Medical Officer Ananda Samarasekara (PW 28) that the death of the deceased had been caused by gunshot injuries. During the trial, he had given a clear description of the post mortem report of the deceased. According to the evidence given by Judicial Medical Officer Priyalal Wijerathna (PW 41) who had given evidence on the Medico-Legal Report of the accused-appellant corroborates with the evidence given by PW 1.

According to the Government analyst that the bullets which had been found on the dead body of the deceased match with the gun which had been found inside the temple. 18 witnesses had given evidence and productions P 1 to P 39 had been marked on behalf of the prosecution. After the prosecution case, the court found a *prima facie* case had been established against the accused-appellant.

At the closure of the prosecution case, the learned trial Judge had called for the defence. The accused-appellant had given evidence from the witness box. The accused-appellant denied the charges levelled against him. The accused-appellant being a Catholic had gone to a Hindu religious temple on 01.01.2008. According to his evidence on the day of the incident he had gone to the Ponnambalam Waneshwara Kovil around 8.30 am. The accused-

appellant had testified that he had heard the sound of gunshots and had started to run with the other people. At that time, he had been injured. He had come out of the Kovil and had fainted near Jampetta Street, Kotahena. He had been taken to Colombo General Hospital and was arrested by the police at the hospital in connection with the death of Member of Parliament T. Maheshwaran.

The learned High Court Judge, relying on the evidence of P.C. 52152 Dharmasiri Perera to find the accused-appellant guilty of murder, appears to have overlooked his evidence when he stated that he was unable to mention how the deceased Maheshwaran was murdered on 01.01.2008.

Page 22 of the appeal brief is as follows;

ප්‍ර : ඊට පස්සේ මොකද උනේ?

උ : වැද නමස්කාර කරමින් සිටිනවාත් සමග බර බරාස් ගාල සද්දයක් ඇසුනා.

ප්‍ර : ඊට පස්සේ?

උ : මම මගේ පිස්තෝලය අරං ඒ පැත්තට වෙඩි තිබ්බා.

Page 23 of the appeal brief is as follows;

ප්‍ර : එතකොට මහත්මයා සද්දේ ඇහෙනකොට මන්ත්‍රීවරයා ලගට ගියාද?

උ : මන්ත්‍රීතුමා ඔළුව කෝවිලේ එළිය පැත්තට දාලා ඇලේට වගේ හිටියේ.

ප්‍ර : ඒ ඇයි?

උ : වෙඩි සද්දෙන් එක්කම වෙඩි වැදෙන්න ඇති කියල හිතුනා.

ප්‍ර : ඒ නිසා ඔබ පුද්ගලයා දුවන පැත්තට දිව්වාද?

උ : ඔව්.

Witness PW 1 had stated that he had heard a sound of "බර බරාස්" and he had come to realize that the deceased was shot. PW 1 is a police officer. Therefore, he must have had realized what was that sound could be and had responded to the situation quickly. According to the post-mortem report, the death of the deceased had been caused by gunshot injuries. PW 1 had witnessed the incident and had testified that he too had been shot by the appellant. This court, after careful assessment, believes the evidence given by witness PW 1. The appellant had tried to challenge witness PW 1 by ignoring all the other fifteen witnesses called on behalf of the prosecution.

It was argued by the learned counsel for the accused-appellant that learned High Court Judge failed to take into account the evidence of Dr N.A.S.P Wijayerathna, A.J.M.O Colombo, who confirmed the omission of P.C.52152 Dharmasiri Perera to identify the person who shot at him and the deceased Member of Parliament, T. Maheshwaran, around 9.35 am on 01.01.2008 when he gave a short history of the incident to the doctor on 07.01.2008.

Page 29 of the appeal brief is as follows;

ප්‍ර : ඒ තැනැත්තා කලින් ඔබ දැක තිබෙනවාද?

උ : දැක නැහැ

ප්‍ර : ප්‍රථම අවස්ථාවේ දැක්කේ කවදාද?

උ : 2008.01.01 වන දින කෝවිලේ සිද්දියෙන් පසු.

Page 34 of the appeal brief is as follows;

ප්‍ර : ඒ අවස්ථාවේදී රෝහල් පොලීසියට ප්‍රකාශයක් කිරීමට පෙර තමාට එම පුද්ගලයා හඳුනා ගන්න හැකියාවක් තිබුණාද?

උ : ඊට පෙර මම ඒ පුද්ගලයාව හඳුනන්නේ නැ.

ප්‍ර : 2008.01.01 වන දිනට පෙර හඳුනන්නේ නැ?

උ : ඊට පෙර හඳුනන්නේ නැ,

In my view, it is obvious to name a person as "unknown" when providing a short history for a medical report. During the trial witness, PW 1 had clearly stated that he had been able to identify the appellant only after the incident.

It was further argued by the learned counsel for the accused-appellant that the learned trial Judge, failed to take into account the evidence of P.C 52152 Dharmasiri Perera, who stated that he did not see any weapon in the hands of the accused-appellant. According to the evidence given by Dhammika Jayalal Keerthi Iddamalgoda (PW 21) who had recorded the police statement of the appellant, he had found a magazine of a pistol concerning the statement given by the appellant. He had testified that the magazine and the pistol which had been found inside the Kovil during the investigation tallies with each other.

Witness PW 1 had testified that a weapon had been dropped by the accused-appellant near the statue of Durga. It was true that the investigation officers had found a weapon inside the Kovil near the statue of Durga. According to the DNA report, the blood found on the trigger of the gun which had been recovered near the statue of Durga is matches with the blood of the appellant.

It was the contention of the learned counsel for the accused-appellant that the learned High Court Judge failed to take into account the evidence of P.C 52152 Dharmasiri Perera, who mentioned that he could not state whether the accused-appellant was injured by his pistol.

Page 46 of the appeal brief is as follows;

ප්‍ර : තමා කලින් කිව්වා නේද, තමාගේ මන්ත්‍රීතුමාට වෙඩි තිබ්බ පුද්ගලයාට තමාගේ පිස්තෝලයෙන් තමා විසින් වෙඩි තිබ්බා කියලා?

උ : එහෙමයි.

ප්‍ර : එම වෙඩි එයාට වැදුණා කිව්වා නේද?

උ : එහෙමයි.

ප්‍ර : ඒ ගැන සැකයක් නැහැ නේද?

උ : එහෙමයි.

The witness PW 1 had clearly stated at the trial that the accused-appellant had been shot by his service pistol. In the medico-legal report of the appellant, it was mentioned that the injuries had been caused by gunshot.

The learned counsel for the accused-appellant says that the learned High Court Judge failed to take into account the contradictions in the evidence of Gananathan Nithiyandanan (PW 3), the other eye witness in the case.

Page 209 of the appeal brief is as follows;

ප්‍ර : තමුත් මේ අවස්ථාවේ මහේශ්වරන් මන්ත්‍රිතුමාට වෙඩි තබනු පුද්ගලයා දැක්කා කියලා කිව්වා?

උ : ඔව්.

ප්‍ර : පොලීසියට ඒ සම්බන්දයෙන් ප්‍රකාශයක් ලබා දුන්නාද?

උ : ඔව්. පොලීස් නිලධාරීන් විසින් එතන හිටපු උසස් පොලීස් නිලධාරීන් ගාවට මාව රැගෙන ගිහිල්ලා “මෙයා වෙඩි තියනු කෙනාව දැකලා තියෙනවා” කියලා කිව්වා. ඊට පස්සේ මං ඔව් කිව්වා. හැබැයි අර පොලීස් නිලධාරීන්ට දැක්කා කියලා කිව්වේ නැහැ.

ප්‍ර : ඇයි කිව්වේ නැත්තේ?

උ : ඒ වෙලාවේ මං බයෙන් හිටියේ.

Page 214 and 215 of the appeal brief is as follows;

උ : බස් එකට හිටගෙන ඉන්නකොට ත්‍රීවීලර් එකෙන් කට්ටියක් ඇවිල්ලා තර්ජනය කලා මට උසාවියට එන්න එපා කියලා.

ප්‍ර : මොන විදියටද කිව්වේ?

උ : උසාවියට ගිහින් ආවොත් වෙන විදියකට ප්‍රතිඵල තියෙයි කිව්වා.

Witness PW 3 was threatened by several persons to prevent him from giving evidence in court. PW 3 had clearly explained why he had not told the police about the appellant.

It was submitted by the learned counsel for the accused-appellant that the learned High Court Judge, failed to observe that factual evidence was given by Gananatham Nithiyandanan (PW 3) contradicted with the evidence given by Dr Ananda Samarasekara, JMO Colombo, who stated that MP Maheshwaran was shot from a distance of well over three feet. Hence the evidence of Gananathan Nithiyandanan (PW 3) that Maheshwaran was shot by an assailant when he was near Maheshwaran, cannot be accepted as true.

It is important to note that the above-ground had been raised by the appellant due to a lack of attentiveness regarding the evidence of the prosecution. Gananathan Nithiyandanan had not stated in his evidence about the distance between the appellant and the deceased.

The other ground raised by the accused-appellant was that the learned High Court Judge, by giving undue importance to the prosecution case, misdirected him by stating that evidence given by the accused-appellant did not create any doubt in the prosecution case and it is a clear misdirection on the burden of proof in a criminal case. I do not agree with the above argument. The learned trial Judge of the High Court had given due consideration to the defence case. When considering pages 88 to 94 of the judgment (pages 769 to 774 of the appeal brief) it is very clear that the learned Judge of the High Court in his judgment had considered and evaluated the evidence adduced by the defence.

Learned counsel for the accused-appellant argued that the learned High Court Judge failed to observe that an adverse inference of guilt cannot be drawn on the basis that bloodstains found on the firearm, number 0305323 originated from the accused-appellant, as it is only a suspicious circumstance and that is not sufficient to establish guilt or to release the prosecution of its burden of proving the case against the accused-appellant beyond a reasonable doubt. It is my view that the prosecution had proved the case beyond reasonable doubt by submitting both direct and circumstantial evidence. Therefore, bringing up a single untested fact as a ground of appeal could be considered an unsuccessful attempt.

It was further argued by the learned counsel for the accused-appellant that the learned High Court Judge, failed to observe that bloodstains found on the firearm and clothes worn by the accused-appellant, was not linked to the bloodstains of the deceased. This was an item of evidence favourable to the accused-appellant.

There is no doubt considering both direct and circumstantial evidence which had demonstrated that the appellant was the person who shot at the deceased. While he was running the appellant had been injured. The bloodstains found from the clothes and the weapon used by the appellant are similar to the appellant. Thus, there could not have a chance to smear the deceased's blood in the appellant's clothes and on his weapon.

It is important to note that the learned Judge of the High Court had considered both the prosecution case and the defence case. He had considered both the direct and circumstantial evidence when delivering the judgment. The learned counsel for the accused-appellant further argued that he had been deprived of a fair trial.

The right of an accused person to a fair trial is recognized in all the criminal justice systems in the civilized world. Its denial is generally proof enough that justice is denied. The right to a fair trial was formally recognised in international law in 1948 in the United Nations Declaration of Human Rights. Since 1948 the right to a fair trial has been incorporated into many national, regional and international instruments. Like the concept of fairness, a fair trial is also not capable of a clear definition, but there are certain aspects or qualities of a fair trial that could be easily identified.

In the case of The Attorney-General vs Segulebbe Latheef and Another 2008 (1) SLR 225, some of the important aspects of a fair trial was discussed and it was held that the right to a fair trial amongst other things includes the following;

- (i) The equality of all persons before the court.
- (ii) A fair and public hearing by a competent, independent and impartial court/tribunal established by law.
- (iii) Presumption of innocence until guilt is proven according to law.
- (iv) The right of an accused person to be informed or promptly and in detail in a language he understands of the nature and cause of the charge against him.
- (v) The right of an accused to have time and facilities for preparation for the trial.
- (vi) The right to have counsel and to communicate with him.
- (vii) The right of an accused to be tried without much delay.
- (viii) The right of an accused to be tried in his presence and to defend himself or through counsel.
- (ix) The accused has a right to be informed of his rights.
- (x) If the accused is in indigent circumstances to provide legal assistance without any charge from the accused.
- (xi) The right of an accused to examine or have examined the witnesses against him and to obtain the evidence and examination of witnesses on his behalf under the same conditions as witnesses against him.
- (xii) If the accused cannot understand or speak the language in which proceedings are conducted to have the assistance of an interpreter
- (xiii) The right of an accused not to be compelled to testify against himself or to confess guilt.

I am of the view that none of the above-mentioned provisions has been violated by the learned trial Judge when this case was prosecuted in the High Court. The accused-appellant was represented by a learned counsel right throughout. There was no complaint by the learned defence counsel that the accused-appellant was denied a fair trial. When I perused the original case record, I was unable to trace any particular step in the proceedings which is against the above-mentioned fair trial concept.

Guruge Dharmasiri Perera (PW1) had stated in his evidence that the appellant had worn a pink colour shirt and he had identified the shirt during the trial which had been produced to the court marked as “අ෭ 01”. The main compatibility which had been found by the court was the identification of the shirt which had been worn by the accused-appellant at the time of the incident.

Page 36 of the appeal brief is as follows;

ප්‍ර : වෙඩි තිබීම පුද්ගලයා ඇඳගෙන සිටියේ මොනවාද?

උ : රෝස පාට අත් කොට ෂර්ට් එකක් සහ සුදු පාට කලිසමක්. වෙඩි තිය තියා දුවනකොට මාත් පස්සෙන් දිව්වා.

Page 67 of the appeal brief is as follows;

ප්‍ර : එම ඇඳුම නැවත දැක්ක විට තමාට හඳුනාගන්න පුලුවන්ද?

උ : ඔව්.

(ඇඳුමක් පෙන්වා සිටී)

ප්‍ර : මෙය තමාට හඳුනාගත හැකිද?

උ : මෙය කමිසයක් කියන්නට පුලුවන්. එය ඉරි ඇත.

ප්‍ර : මෙයද විත්තිකරු එම අවස්ථාවේදී ඇඳගෙන හිටියේ?

උ : ඔව්.

Page 183 of the appeal brief is as follows;

ප්‍ර : ඒ අවස්ථාවේදී තමන් දකින කොට ඒ තැනැත්තා මොකක්ද ඇඳගෙන හිටියේ?

උ : ලා රෝස පාට අත් කොට කමිසයක් හා අළු පාට කලිසමක්.

Page 186 of the appeal brief is as follows;

ප්‍ර : සාක්ෂිකරු මෙය හඳුනා ගන්නවාද?

උ : ඔව්.

ප්‍ර : මොකක්ද?

උ : සැකකරු ඇඳසිටි කමිසය. රෝහලේදී මෙයා තමා කැපුවේ.

ප්‍ර : එම අවස්ථාවේ විත්තිකරු ඇඳගෙන සිටියේ මෙය?

උ : ඔව්

ප්‍ර : හඳුනාගැනීමට පුලුවන්?

උ : පුලුවන්

The accused-appellant had been arrested by the police officer Bandula Weerasekara (PW 29). He had given evidence during the trial and he had identified "පැ 01" as the shirt worn by the appellant at the time of his arrest.

Pages 602 & 603 of the appeal brief is as follows;

ප්‍ර : මේ නඩුවේදී ඔබ දැක්කා එදා ඔබ ඇඳන් හිටියා කියන ඇඳුම් වගයක් ඉදිරිපත් කලා සාක්ෂි වලදී?

උ : එහෙමයි

ප්‍ර : දැන් මෙම අධිකරණයේ තමන් ඇඳ සිටි කමිසය හා කලිසම විදියට ඉදිරිපත් කරපු ඒවා තමන් ඇඳ සිටිය ඒවාද?

ප්‍ර : කමිසය මගේ කලිසම මගේ නොවේ.

උ : කමිසය ඔබේ?

උ : ඔව්.

The court had considered the evidence presented by the **accused-appellant** and had found that the "ෂූ 1 had been identified by the appellant as the shirt which he had worn by him on the day of the incident. Therefore, the appellant had accepted the prosecution witness through his evidence. According to the evidence of PW 1 the appellant had received gunshots while he was chasing the appellant. This evidence was compatible with the evidence given by Jayashantha Eleperuma (PW 42) and the evidence given by Dr Ravinda Piyalal Samaranayake (PW 37).

Page 46 of the appeal brief is as follows;

ප්‍ර : තමා කලින් කිව්වා නේද තමාගේ පිස්කෝලය මාර්ගයෙන් තමාගේ මන්ත්‍රීතුමාට වෙඩි තිබ්බ පුද්ගලයාට තමන් වෙඩි තිබ්බා කියලා?

උ : එහෙමයි.

ප්‍ර : එම වෙඩි එයාට වැදුණා කිව්වා නේද?

උ : එහෙමයි.

ප්‍ර : ඒ ගැන සැකයක් නැහැ?

උ : එහෙමයි.

Page 502 of the appeal brief is as follows;

ප්‍ර : කුමක්ද ඔහුගේ රෝගී ඉතිහාසය සම්බන්ධයෙන් සටහන් කලේ?

උ : ඔහුට අනුව 2008 ජනවාරි 01 වෙනිදා උදේ 9.00 ට පමණ කොටහේන කෝවිලේදී වෙඩි වැදුණා යනුවෙන් පැවසුවා.

Page 505 of the appeal brief is as follows;

ප්‍ර : මහත්මයා විස්තර කරන්න මෙම තුවාල 3 ම උණ්ඩයක් වැදීමෙන් ඇතිවිය හැකි තුවාලද කියලා?

උ : එසේය.

Pages 437 & 438 of the appeal brief is as follows;

ප්‍ර : ගරු අධිකරණයට කියන්න ඔබ විසින් ලබාගන්නා ලද නඩු භාණ්ඩ මත වූ ඔබ විසින් ලබාගන්න ලද පැල්ලම් සාම්පල් සමග, සැකකරුගෙන් ලැබුණ ලේ සාම්පල් සමග සැසදීමක් කලාද?

උ : කලා.

ප්‍ර : ඒ සැසදීමේදී යම්කිසි අවසන් නිගමනයකට ඔබට එළැඹීමට හැකියාවක් ලැබුනද?

උ : ලැබුණා.

ප්‍ර : මොකක්ද ඒ නිගමනය ?

උ : පළවෙනි නිගමනය අංක 0305323 දරණ ගිනි අවිය මත තිබී ලබාගන්නා ලද දුඹුරු පැහැති පැල්ලමෙන් ජනිත වුණු ඩී.එන්.ඒ රටාව ජොන්සන් කොලින්ස් වැලැන්ටිනෝට අයිති බව නිගමය කර තිබෙනවා. දෙවන නිගමනය පැ12 ලෙස නම් කල දිග කලීසමෙන් ලබාගත් රුධිර පැල්ලම් මෙම නඩුවේ සැකකරු වන ජොන්සන් කොලින්ස් වැලැන්ටිනෝගෙන් ජනිත වූ බවත් නිගමනය කොට තිබෙනවා.

Page 588 of the appeal brief is as follows;

ප්‍ර : ඒ අවස්ථාවේදී කෝවිලේදී තමාට සිදුවුනේ කුමක්ද කියලා කියන්න පුලුවන්ද?

උ : මට තුවාල සිදුවුනා.

ප්‍ර : එම තුවාල තමාට කුමන ස්ථානයේදී සිදු වුනාද කියලා කියන්න පුලුවන්ද?

උ : කෝවිල ඇතුළේදී තුවාල සිදු වුනේ.

The accused-appellant had testified in his evidence that he had been injured while he was running inside the Kovil. Therefore, the appellant had corroborated the position of the prosecution at the trial through his evidence. According to the evidence given by Dinesh Subaraj (PW 12), on the date of the incident, he had seen a person lying on the street near the three-wheeler park at Kotahena. He had testified that the person had been injured and had worn a shirt with short sleeves. He had identified that person as the appellant during the trial.

Page 589 of the appeal brief is as follows;

උ : මම තුවාල වලට බෙහෙත් දැමීම සඳහා රෝහලට යන්න එලියට යනකොට මාව කලන්තේ දාලා වැටුනා.

ප්‍ර : තමා එසේ සිහිය නැතිවී වැටුණු තැන කොහෙද කියලා මතක තියෙනවාද?

උ : එහෙමයි. ජම්පටා වීදියට ඇවිල්ලා සෙල්ලමහල් සිනමා ශාලාව අසලදී.”

According to the evidence given by the accused-appellant, it is evident that the appellant had come out from the Kovil after he had been injured and had fainted. Therefore, the appellant had accepted the evidence of PW 12.

Page 815 of the appeal brief is as follows;

“එම මහේශ්වරන් මන්ත්‍රීවරයාගේ ශරීරයේ තිබූ වෙඩි උණ්ඩ විත්තිකරු විසින් භාවිත කරන ලදැයි කියනු ලබන රිවොල්වරයෙන් පිටවූ වෙඩි උණ්ඩ බව රජයේ රස පරීක්ෂක වාර්තාවෙන්ද සනාථ වී ඇත. තවද කෝවිල තුළදී සොයා ගත් සමහර වෙඩි උණ්ඩ ධර්මසිරි පෙරේරා විසින් තබන ලද ගිනි අවියෙන් නිකුත් වූ වෙඩි උණ්ඩ බව රජයේ රස පරීක්ෂක වාර්තාවෙන් සඳහන් වේ.”

The evidence given by the Government Analyst had proven that the bullets which had been found from the deceased's body were similar to the bullets of the weapon which had been produced as the weapon used by the appellant to shoot the deceased.

After the case, the court had evaluated the evidence led by both parties. There is no doubt that the court had correctly found that the prosecution had built up a strong case against the accused-appellant.

The psychology of the witness, the environment, the situation at the time of the incident, should be taken into consideration in evaluating the evidence. Due to the situation prevailing at the time of the incident and the threats made to the witness due to the incident and the fear he had created regarding this incident, the police can record a statement at any time.

The testimony of a witness in prosecution should not be dismissed by the court on the ground of any deficiency or contradiction. The court must distinguish the truth from false; in that test and evaluate evidence. Accordingly, those matters should be brought to the attention of the court when the court evaluates the evidence.

Thus, the court has the power to distinguish the truth from false in any evidence and to reach **the** correct conclusion. The Court, after considering the contradictions held in this case, concludes that there is no damage to the core of the case. Based on the witness's mental state and fear, and other facts surrounding the incident, the court concluded that the witness's testimony was not harmed by the contradictions marked by the accused-appellant regarding the non - disclosure of the shooter in the statement made by the witness to the police when he gave the 1st statement immediately after the crime.

When I consider the evidence lead before the learned High Court Judge, it is crystal clear that the accused-appellant brutally murdered Thangaraja Maheshwaran and Chandrakumar Mahindan with the intention of killing.

In light of the reasons aforesaid, having regard to the facts and the legal principles involved in the present matter in question, this appeal has failed to hold any merit. Thus, the conviction and the sentence should stand and therefore is affirmed.

The judgement of the learned High Court Judge of Colombo dated 27.08.2012 is affirmed. There is no reason to interfere with the findings of the learned trial Judge. We affirm the conviction and the sentence dated 27.08.2012.

Appeal dismissed.

Registrar is directed to send a copy of this Judgment along with the main case record to the High Court of Colombo and as to the prison authorities forthwith.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree.

Judge of the Court of Appeal