

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

In the matter of an appeal under and in terms of Article 138 (1) of the constitution of the Democratic Socialist Republic of Sri Lanka and section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

**CA No: CA/HCC/ 269-270/2014**  
**HC: Jaffna: HC 1503/2011**

The Democratic Socialist Republic of Sri Lanka

**Complainant**

**Vs.**

1. Kamalanathan Gangatharan
2. Sivarasa Sumathy

**Accused**

**And now between**

1. Kamalanathan Gangatharan
2. Sivarasa Sumathy (deceased)

**Accused- Appellants**

**Vs.**

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

**Complainant-Respondent**

**Before:** **N. Bandula Karunarathna J.**

**&**

**R. Gurusinghe J.**

**Counsel:** N. Sri Kantha AAL with S. Panchadsaram AAL for the accused-appellants  
Suharshie Herath DSG for the complainant-respondent

**Written Submissions:** By the accused-appellant on 02.07.2018  
By the complainant-respondent 03.09.2018

**Argued on :** 10.03.2021 and 02.03.2022

**Decided on :** **09.05.2022.**

## **N. Bandula Karunarathna J.**

This appeal is from the judgment, delivered by the learned Judge of the High Court of Jaffna, dated 12.11.2014, by which, the accused-appellant, who is before this Court, was convicted and sentenced to death for having murdered of Markkandu Sivarasa (the deceased).

The indictment was as follows;

that on or about 03.02.2010 at Columbuturai, he committed the offence of murder by causing the death of Markkandu Sivarasa which is an offence punishable under Section 296 of the penal code read along with section 32 of the penal code.

The accused-appellants (hereinafter referred to as the appellants) were indicted before the High Court of Jaffna.

The trial against the appellants was commenced before the High Court Judge of Jaffna without a jury and at the conclusion of the said trial, the learned High Court Judge had convicted the appellants and sentenced them to death on 13.11.2014. Being dissatisfied with the said conviction and sentence, the 01<sup>st</sup> and 02<sup>nd</sup> accused-appellants had preferred this appeal to the Court of Appeal seeking to set aside the conviction and sentence imposed upon them.

The grounds of appeal are as follows;

1. There are very material contradictions in the evidence of Woman Police Constable Priyadarshini and Sub-Inspector Thissa Senanayake, in regard to the place from where the 1<sup>st</sup> accused-appellant was arrested and his statement was recorded.
2. The evidence led by the prosecution in regard to the recovery of the productions P4 (knife) P5 (mamoty) and P6 (frock) claimed to have been recovered in consequence of the relevant portions of the statements of the 1<sup>st</sup> accused-appellant and the 2<sup>nd</sup> accused-appellant and marked P 1 and P 2 respectively, lacks credibility in view of the very grave contradictions between the evidence of Woman Police Constable Priyadarshini, and Sub-Inspector Thissa Senanayake, both of whom stated that it was the other who recovered the same.
3. The evidence led in regard to the said recovery of P 4, P 5 and P 6, is self-contradictory and falls far short of the proof required under the evidence ordinance.
4. Except the unreliable evidence in regard to the alleged recovery of productions marked P 4, P 5 and P 6 respectively, there is hardly any substantial evidence incriminating the accused-appellants with the commission of the offence which they had been indicted.

While this appeal is pending the 2<sup>nd</sup> accused-appellant passed away on 22.06.2010 at Bogambara prison due to COVID. The appeal of the 2<sup>nd</sup> accused-appellant is abated.

The Prosecution had led evidence of ten witnesses during the trial, including the evidence of the Judicial Medical Officer (PW 14). There is no any eye witness to this case and the case had been proceeded throughout the trial based on the circumstantial evidence.

The prosecution relied on the evidence of the following witnesses, who testified on its behalf during the High Court trial.

- (i) Sivarasa Anushya, (elder daughter of the deceased Markkandu Sivarasa and the 2<sup>nd</sup> accused-appellant)
- (ii) Woman Police Constable Nallan Priyadarshini
- (iii) Dhammika Arachchige Don Thissa Senanayake, Chief Inspector of Police.

Sivarasa Anushya, prosecution witness number 2 (PW 2), who was 11 years old at the time of the death of her father Markkandu Sivarasa, had already turned 13 years when she got into the witness box in this case.

The evidence given by Sivarasa Anushya (PW 2) is the most important evidence in this case. According to the evidence of PW 2, the 1<sup>st</sup> appellant had been a frequent visitor to their house. On that particular day of the incident, the 1<sup>st</sup> appellant had been engaged in a conversation with the 2<sup>nd</sup> appellant in their house and while the conversation was going on the deceased had come to the house and asked from the 1<sup>st</sup> appellant why he was coming there. Then the 1<sup>st</sup> appellant had replied saying that he would come there but what was the matter for him. Due to this reply a quarrel erupted between the deceased and the 1<sup>st</sup> appellant. At that time the 1<sup>st</sup> appellant had threatened the deceased by saying that day would be his last day. PW 2 had been attempting to conceal certain matters during the trial at certain stages.

This witness had been treated as an adverse witness by the prosecution. However, the court had clarified the *mens rea* of the crime by observing the essence of the evidence given by PW 2.

The section 154 expressly vests the court with discretion as to whether to permit the person calling the witness to put any questions to him which might be put in cross examination. In English Law there is a distinction between a 'hostile' or 'adverse' and 'unfavourable' witness. An 'unfavourable' witness is one who is called by a party to prove a particular fact in issue or relevant to the issue who fails to prove that fact.

A 'hostile' witness is one who is not desirous of telling the truth at the instance of the party calling him. (Stephen Digest 12th Ed. 147, Cross and Tapper 6 Ed. 270, Alexander v Gibson (1881) 2 Camp. 556 also quoted in E.R.S.R. Coomaraswamy Law of Evidence Vol 11 book 2 page 812) At English Common law a party was allowed to contradict his own witness by calling other evidence if he was unfavourable. In the case of a hostile witness the Judge in his discretion may allow the examination in chief to be conducted in the manner of cross examination to the extent to which he (Judge) considers it necessary for the purpose of doing justice (R. v. Pitt (1983) Q.B. 25, (1982) 3 A.E.R. 63).

The word 'adverse' is mentioned in section 3 of the Criminal Procedure Act 1865 of England. In R v Thompson (1977) 64 Cr. App.R. 96 at 99 it was argued in appeal that section 3 of the Criminal Procedure Act did not apply as the witness did not contradict the previous statement but merely refused to speak.(Under section 3 a witness can be contradicted with other evidence or by leave of judge, prove that he had made at other times a statement inconsistent with his present testimony) In dismissing the appeal the Court of Appeal held that section 3 of the Act had not in any way remove the basic common law right' of the judge in his discretion to allow cross examination when a witness is proved hostile.

The section 154 does not use any of the terms as 'hostile' 'adverse' or 'unfavourable'. In dealing with the position in Sri Lanka as against the English Law in regard to hostile witnesses, in King v Thegis N.L.R. 107 at 113, Moncrief, J. pointed out a departure from the English Law he said: 'it may be that the evidence of the party or his witness is very adverse to his own contention, and possibly it may be in favour of somebody else, or even to the other party in the suit. But it is therefore not excluded as evidence, and questions may be put, and the answers of an adverse character elicited by them are admissible.

It is true that in England a party may not cross examine his own witness unless hostile, but section 154 of our Evidence ordinance has released him from that restriction.' These decisions though show a departure from the English Law, it must be stated that the Common Law right of the Judge to allow cross examination remained notwithstanding the statutory Intervention. But that discretion was not a wide one as Phipson submits (Phipson on Evidence 15th edition Para 11-57) that discretion should not be extended too far.

Thillaiambalam Puwanenthiran (PW 3) had mentioned about the relationship between the 1<sup>st</sup> and 2<sup>nd</sup> appellant stating that the 1<sup>st</sup> appellant had been taken the 2<sup>nd</sup> appellant on a motorcycle.

According to the evidence led by PW 13 Nallan Priyadarshani, (WPC) the police had recovered a mamoty and a knife based on the statements given by the 1<sup>st</sup> and the 2<sup>nd</sup> appellants. Those productions had been marked as P 4 and P 5. The evidence given by Inspector Tissa Senanayake, (PW 7) was corroborated with the PW 13. During the investigation he had found a frock marked as 'P 6' with blood stains and the frock was belonging to the 2<sup>nd</sup> appellant.

According to the evidence given by the JMO two productions which had been recovered from the Appellants can cause the fatal injuries on the body of the deceased. He had said that considering the pattern of the injuries found on the body of the deceased, he had confirmed that such weapon can cause the injuries which had been found on the body of the deceased.

The learned High Court Commissioner allowed an application made by the Counsel for the prosecution, in the course of her examination - in chief, to treat PW 2, as an adverse witness, she was examined further and thereafter subjected to cross examination by the defence counsels. The evidence of witness Anushya lacked credibility for not only she gave contradictory answers to the questions put to her by both parties, the state counsel and the defence counsels, but also kept silent to some searching questions. Her evidence failed to throw any light on the murky mystery surrounding the death of her father, the deceased in this case.

The police witnesses namely Woman Police Constable Nallan Priyadarshini, witness number 13 and Chief Inspector of Police, Dhammika Arachchige Don Thissa Senanayake, witness number 7 and who was the Officer-in-charge of the Crime Prevention Division of the Jaffna Police Station at the time of the said incident, testified in regard to the arrests of the accused-appellants, the recording of their statements. Inspector Senanayake also testified about the recovery of productions P 4 (knife), P 5 (mamoty) and P6 (frock), which according to the case of the prosecution were recovered in consequence of the said statements.

The statement of the second accused-appellant Sumathy was recorded by the Woman Police Constable Priyadarshini at the Jaffna Police Station on 03.02.2010 at 18.15 p.m. Thereafter according to her, she had recorded the statement of Gangatharan, the 1<sup>st</sup> accused-appellant at 8.00 am on 04.02.2010, the following day, at his house situated at 3<sup>rd</sup> Cross Street, Columputhurai.

The learned counsel for the accused appellants submitted the following questions and answers in the evidence of PW 13 were very significant.

Page 101, 102, 103 & 104 of the English translation of the appeal brief is as follows;

Q : Were you in Columputhurai on 03.02.2010 at 18.15 p.m.?

A : I was there to record the statement of Sumathy

Q : Where was the statement of the 1<sup>st</sup> accused of this case recorded?

A : It was recorded at 3<sup>rd</sup> Cross Street, Columputhurai

Q : At what time?

A : On 04.02.2010 at 8.00 a.m.

Q : At which place was the statement of Sumathy recorded?

A : At the Police Station

Q : In which place at Columputhurai was the statement of the 1st accused recorded?

A : At 3<sup>rd</sup> Cross Street

Q : Whose house is that?

A : It is Gangatharan's house

Q : When did you see this accused before recording the statement?

A : I saw him only on the day

Q : Didn't you see him at the Police Station, even before recording his statement?

A : No (page 102 of the appeal brief)

Q : When the O.I.C. asked you to record his statement, did he tell anything about his statement being already recorded?

A : Yes (page 102 of the appeal brief)

Q : When he said so, whose statement, did he say was to be recorded?

A : He told me at the Police Station to record the statement of Gangatharan, according to the statement of Sumathy. (Emphasis added)

Q : When you were leaving the Police Station, was Gangatharan in the Police Station?

A : No

Q : In which place, did you record the statement of Sumathy on the 3<sup>rd</sup>.

A : At the Station

Q : When you recorded the statement of Sumathy on the 3<sup>rd</sup>, was Gangatharan there?

A : No

Q : Did you go straight to Gangatharan's house from the Police Station with the O.I.C.?

A : Yes

Q : Did you go to the place of the incident or to the house of Gangatharan?

A : We went to the address of Kamalanathan Gangatharan

Q : Did you go to the place of the incident?

A : No

Q : You said it was only on the day you saw Gangatharan for the 1<sup>st</sup> time?

A : Yes (page 103 of the appeal brief)

Q : Was he there in that address?

A : He was there at 8'o clock

Q : When you recorded his statement, who were those present there?

A : His father was there, his statement too has been recorded (page 104 of the appeal brief)

Learned Counsel for the accused-appellant says that the learned High Court Commissioner, before whom the trial in this case commenced and proceeded up to the time when the case was taken up for further trial before another learned trial Judge, intervened while the said witness W.P.C. Priyadarshini was being cross-examined further by the Counsel for the 1<sup>st</sup> accused-appellant Gangatharan. This was in regard to the recording of his statement at his house on the said day, and abruptly brought the cross-examination to an end stating that the defence counsel was repeatedly asking irrelevant questions (vide page 105 of the appeal brief).

The learned counsel for the accused-appellant further says that certain questions that were put to, Chief Inspector Thissa Senanayake and the answers given by him, while under cross-examination are quoted below for, they are not only relevant, but also very revealing.

Page 141, 142, 143, 146 & 147 of the English translation of the appeal brief is as follows;

Q : Witness you identified the 1<sup>st</sup> accused. Who arrested him with regard to this crime?

A : I arrested him

Q : Was he arrested when he surrendered at the Police Station or was, he arrested anywhere else?

A : He was arrested elsewhere.

Q : Can you tell what the place was?

A : I arrested him on the road, close to the place of this crime.

Q : Have you correctly recorded the date and the time of arresting the 1<sup>st</sup> accused?

A : It had been recorded. It was on 03.02.2010 at 20.35 hrs (8.35 p.m.) (page 141 of the brief)

Q : During the examination-in-chief you said that you recorded his statement?

A : Yes. WPC Priyadarshini recorded it under my supervision.

Q : Can you tell the date, month and the year in which the statement of the 1<sup>st</sup> accused was recorded?

A : It is only found in Tamil as 04.02.2010 at 8'o clock.

Q : Now you very clearly said to my question that the statement was taken on 04.02.2010 at 8'o clock in the morning?

A : Yes.

Q : Did you record the statement?

A : No.

Q : Who recorded it?

A : It was recorded by WPC Priyadarshini (page 142 of the brief).

Q : Did she record the statement of the 1<sup>st</sup> accused under your supervision?

A : Yes.

Q : It is only after confirming the date you say that it was recorded on 04.02.2010 at 8 am?

A : Yes (page 143 of the brief)

The learned counsel for the accused-appellant stated that under further cross-examination, the witness, Chief Inspector Thisa Senanayake came out with a startling reply in regard to the place where the statement of the 1<sup>st</sup> accused (1<sup>st</sup> accused-appellant Gangatharan) was recorded.

Page 146 & 147 of the English translation of the appeal brief is as follows;

Q : From where was the statement of the 1<sup>st</sup> accused recorded? (Last line on page 145)

A : It was recorded at the place of the incident.

Q : You said it was recorded at the place of the incident. If so, was it recorded at the well from where the corpse of the deceased was recovered?

A : No.

Q : Where was it recorded from?

A : It was recorded near the place, where the crime had taken place.

Q : Was it in that house?

A : It was recorded in a place selected within the premises of that house.

Q : Do you categorically say that it was recorded at that place?

A : Yes. (Pages 146)

Q : Did you see the 1<sup>st</sup> accused while WPC Priyadarshini recorded his statement, didn't you?

A : Yes. (Page 147)

The learned counsel for the appellant submits that the attention of this Court is sought to the important question pertaining to the recovery of the productions P4 (knife), P5 (mamoty) and P6 (frock).

It is the position of the Chief Inspector Thissa Senanayake that the production P4 (knife) was recovered by WPC Priyadarshini,

Page 148, 149 & 150 of the English translation of the appeal brief is as follows;

Q : What was recovered?

A : A knife was recovered with regard to this incident. (Page 148 - last question and answer)

Q : The knife that you mention now is the one that you already identified during the examination-in-chief, isn't?

A : Yes.

Q : From where the knife was taken from?

A : There is a Poultry shed in that house. It was between the house and the road and there was a space found between the bottom of the shed and the floor. It was in that space, the knife was thrust into the earth.

Q : Did you see the knife kept thrust into the earth within the space between the shed and the floor?



A : No. I took into my charge after it was handed over by WPC Priyadarshini, who recovered it.

Q : That is, I have mentioned what you said during the examination-in-chief. Do you in that case say in your evidence that it was the knife that was kept thrust in the earth between the floor and the shed (that) was recovered?

A : I am telling what was said by that officer.

Q : Didn't you see that?

A : No

Q : Didn't you, yourself recover it while it was being recovered?

A : No

Q : Was it not in that place?

A: It was not in that place. (Page 150)

Thus, it is very clear that this witness, Chief Inspector Thissa Senanayake was not the Police officer, who recovered the P 4 - the knife. According to him, it was WPC Priyadarshini, who did recover the said production. WPC Priyadarshini did not utter a word about her recovering any production in her evidence. Her evidence was totally devoted to the fact of her having recorded the statements of both the accused-appellants and it was through her, the prosecution led in evidence the relevant portions of the said statements under section 27 (1) of the evidence ordinance and marked them as P 1 and P 2 respectively (pages 94 & 95).

To a specific question of the learned State Counsel, as to "What other duties did you undertake than recording the statements?", WPC Priyadarshini (PW 13) answered that, "No other duties were undertaken by me". This witness (PW 13) was very categorical on this point of fact. It is equally pertinent that no productions, including a knife was shown to this witness by the Learned State Counsel either before or after leading in evidence the above-mentioned portions of the statements of the accused-appellants and marking them as P 1 and P 2 respectively.

Learned Counsel for the appellant argued that the leading in evidence of the said portions of the said statements under section 27 (1) of the Evidence ordinance was, in fact, a blatant and gross abuse of the said section 27, for the said witness WPC Priyadarshini did not, at any time and at any stage of her evidence speak about any recovery in consequent of, any or both statements made by the accused-appellants respectively and recorded by her. It is a travesty of justice that the said evidence was led in this manner through this witness WPC Priyadarshini. Learned Counsel for the appellant says that both P 1 and P 2, and the evidence connected and related to both, deserve to be rejected in terms of the law and in the interests of Justice.

Witness, Chief Inspector Thissa Senanayake had stated that P 5 the mamoty was "recovered based on the statement of Sumathy", the 2<sup>nd</sup> accused-appellant. (Page 148)

Later, he has taken a different position.

Page 157 & 158 of the English translation of the appeal brief is as follows;

Q : According to what you say, were both the mamoty and the frock found in the same place?

A : They were on the same loft above.

Q : Has it been recorded? (Page 157)

A : It was recorded by Priyadarshini. Her record is here.

Q : Were you the one, who took the productions into custody?

A : No, they were taken into custody by Priyadarshini.

Q : Who recorded the statements?

A : It was Priyadarshini. All their productions were recovered by her and shown to me. I took them into my charge.

Q : Did you or Priyadarshini take the productions into custody?

A : Priyadarshini.

Q : The productions were not taken into custody by you, were they?

A : I took into my charge when the productions handed over to me by Priyadarshini.

Q : Has Priyadarshini written here stating that they were taken into custody by you?

A : No, I have recorded in the notes saying that the productions taken into custody had been handed over to me (page 158)

It was the contention of the learned counsel for the accused-appellant that in the light of all that was stated by this witness Chief Inspector Thissa Senanayake, in regard to the recovery of the productions, P4, P5 and P6 (knife, mamotty and frock respectively), all of them were recovered by WPC Priyadarshini. This position of Sub-Inspector Thissa Senanayake was in fact clearly reinforced by the following Question and Answer.

Page 150 of the English translation of the appeal brief is as follows;

Q : Were the productions recovered in your presence?

A : I entrusted the duties to the officers under my supervision. It was those officers who said that the productions were recovered in that manner. (Page 150)

It is important to note that the fact remains that while Chief Inspector Thissa Senanayake stated that the said productions were handed over to him by WPC Priyadarshini following their recovery, she never said anything about their recovery. None of the said productions were shown to WPC Priyadarshini, while she was giving evidence, for identification by her in accordance with the Law.

The learned counsel for the accused-appellant submits that the prosecution had failed to establish the recovery of the said productions P 4, P 5 and P 6 (knife, mamoty and frock respectively) in consequence of P 1 and P 2, the portions of the statements attributed to the

accused-appellants respectively. It is definitely not a technical failure. It is, indeed, a fatal flaw in the case of the prosecution, for in the absence of any direct evidence in regard to the commission of murder in this case, the prosecution was depending totally on the evidence in respect of the recovery of the said productions P 4, P 5 and P 6 (knife, mamoty and frock respectively) in consequence of P 1 and P 2, the respective portions of the statements attributed to the accused-appellants.

Since, section 27 (1) of the evidence ordinance is an exception to the inadmissibility of a statement made to a Police officer, by a person accused of an offence in the trial, a recourse to it should be in strict accordance with the requirements laid down in clear terms, under the Law. Therefore, the totality of the evidence led through the witnesses Chief Inspector Thissa Senanayake and WPC Priyadarshini, in regard to the said recovery of the said productions in consequence of the portions of the statements attributed to the accused-appellants and marked as P 1 and P 2 respectively, remaining disconnected and in disarray apart from leaving many relevant questions unanswered, the prosecution has miserably failed to satisfy the legal requirements that constitute the standard of proof in this regard.

There is also, a grave doubt in regard to the place where and the circumstances under which the statements of the 1<sup>st</sup> accused-appellant Gangatharan was recorded. If the 1<sup>st</sup> accused-appellant Gangatharan was arrested on 03.02.2010 at 8.15 pm on the road as stated by Chief Inspector Thissa Senanayake (page 129), one is at a loss to understand as to how WPC Priyadarshini was able to see him at his house 3<sup>rd</sup> Cross Street, Columbuturai on the following day, 04.02.2010 at about 8 am and recorded his statement, after recording his father Nadarasa Kamalanathan's statement at the same place and on the same day.

This glaring contradiction militates against the credibility of both these Police witnesses Chief Inspector Thissa Senanayake and WPC Priyadarshini, and assumes much significance in view of the stand of the prosecution that P 4 - the knife was recovered in consequence of the statement made by the 1<sup>st</sup> accused-appellant Gangatharan. The sensible and logical explanation for this contradiction in the evidence of both these police witnesses can only be that both of them were not speaking the truth in this regard.

An irresistible question that arises in this regard is that whether the facts pertaining to the time and place of arrest and the recording of the statement of the 1<sup>st</sup> accused-appellant Gangatharan had been falsified on record to suit the purpose of the Police officers involved in the investigation to fabricate a case against him, in the absence of any incriminating evidence. I think the same question is relevant in regard to the 2<sup>nd</sup> accused-appellant Sumathy as well.

It is indisputable that the case of the prosecution was entirely dependent on the said recovery of productions marked P 4, P 5 and P 6 respectively. With clear contradictions in the evidence led in this regard, coupled with the total absence of any corroboration of even one single fact pertaining to the alleged recovery in consequence of the statements attributed to the accused-appellants, the case of the prosecution had fallen far short of the proof required under the Law in a Criminal case, that too, a case of murder.

After the closure of the prosecution case the learned Judge called for the defence. 1<sup>st</sup> and 2<sup>nd</sup> accused-appellants had given evidence from the witness box. Two witnesses had been called on behalf of the 1<sup>st</sup> accused-appellant.

The 1<sup>st</sup> accused-appellant in his evidence said that deceased was the one who came to his house with his daughter. He had denied any relationship with the 2<sup>nd</sup> appellant. He had testified that he was at home when the crime was taken place. The 2<sup>nd</sup> appellant had said that 1<sup>st</sup> appellant and his brother had come to her house in search of her husband at around 11.45 pm and at that time her husband had been already gone for fishing. After predicting that the deceased had not gone out, she had searched deceased around the house. She had seen that the pulley of the well had been broken. Then she had shouted and the 1<sup>st</sup> appellant and his brother had come near the well. They had mentioned in their evidence that the police statements have been recorded under duress.

The counsel for the accused-appellant had mentioned that the evidence led by PW 2 had failed to throw any light on the murky mystery surrounding the death of the deceased. He had further stated that PW 2 was at the age of 13 when giving evidence at the trial and that had created a lack of creditability in evidence.

Section 118 of the Evidence Ordinance is as follows;

“All persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.”

The court had found that the PW 2 had given evidence clearly and without any hesitation during the trial. The counsel for the accused-appellant had stated that the PW 2 had been tutored and had given evidence similar to that of a parrot. It is important to note that the father of the Anushya had died. Her mother Sumathy is charged as the accused. In such a situation who tutors or coaches the child? The prosecution had marked the evidence of PW 2 as adverse evidence and she had been cross-examined by both parties. In this context the court had rejected the argument of the appellant that the PW 2 had been tutored or coached.

The learned counsel for the appellant had contended that the police had not recovered any productions upon on the statements of the appellants.

The evidence given by JMO is important in this case. According to the evidence of the judicial medical officer, he had said that the injuries found on the head of Sivarasa could have been caused with a mamoty and the injury on the lower part of the stomach could have been caused by a sharp weapon similar to a knife.

When considering entirety of evidence led during the trial by the prosecution, the learned counsel for the respondent argued that the case had been proved beyond the reasonable doubt although there had not found any direct evidence. The court had evaluated the circumstantial evidence clearly and severely when delivering the judgment. The attempt which had been brought up by the defence to create a reasonable doubt was not successful during the trial. I do not agree with the said argument of the learned counsel for the respondent.

The inbuilt improbabilities in the version of the prosecution which will go to show that no conviction could be possible even if the evidence of the witnesses is taken on their face value, warrant a court dealing with a criminal appeal not to shut its eyes particularly when the criminal proceedings set in motion against the appellant appear to be a probable cause of abuse of process of Court to put the appellant's liberty in jeopardy.

Though the legal proposition points towards such evidence not strictly requiring corroboration, in the singular facts and circumstances of the present case, having regard to the quality of the version of the prosecution about the incident, it cannot be safely relied upon to sustain the conviction against the accused of multifaceted reasons.

Taking into consideration, all these circumstances, I am of the view that the conviction of the accused cannot be allowed to stand as the prosecution had failed to prove the case beyond all reasonable doubts. The 1<sup>st</sup> accused-appellant is acquitted from all charges in the indictment.

The appeal is allowed and the conviction quashed.

Registrar is directed to send a copy of this judgement along with the original case record to the High Court of Jaffna and the Prison Authorities forthwith.

**Judge of the Court of Appeal**

**R. Gurusinghe J.**

**I agree.**

**Judge of the Court of Appeal**