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

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

**Court of Appeal No:  
CA/HCC/0270/2009**

Siriwardanage Chaminda Udaya  
Kumara

**High Court of Colombo  
Case No. HC/ 3324/2006**

**ACCUSED-APPELLANT**

**vs.**

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

**COMPLAINANT-RESPONDENT**

**BEFORE** : **Sampath B. Abayakoon, J.  
P. Kumararatnam, J.**

**COUNSEL** : **Tirantha Walaliyadda, PC with Chamara  
Rathnayake for the Appellant.  
Rohantha Abeysuriya, ASG for the  
Respondent.**

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**ARGUED ON** : **30/08/2022**

**DECIDED ON** : **22/09/2022**

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### **JUDGMENT**

**P. Kumararatnam, J.**

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General on following charges:

1. On or about the 09<sup>th</sup> January 2004 the accused committed the murder of Usliyanage Ruwan Dammika Perera alias Dammika Amarasinghe which is an offence punishable under Section 296 of Penal Code.
2. In the course of the same transaction for committing the offence of attempted murder of Jeinulabdeen Naufer which is an offence punishable under Section 300 of the Penal Code.
3. In the course of the same transaction for committing the offence of attempted murder of Mohamed Ismail Hamdoon which is an offence punishable under Section 300 of the Penal Code.
4. In the course of the same transaction for committing the offence of possession of a firearm without a valid licence which is an offence punishable under Section 22(3) read with 22(1) of the Firearms Ordinance.
5. In the course of the same transaction for committing the offence of possession of a live bullet without a valid licence which is an offence punishable under Section 27(1) of the Explosive Act No. 21 of 1956.

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As the Appellant opted for a non-jury trial, the trial commenced before a judge and the prosecution had led twenty witnesses and marked production P1-11 and X-1 and closed the case. Learned High Court Judge having satisfied that the evidence presented by the prosecution warrant a case to answer, called for the defence and explained the rights of the accused. Having selected the right to make a statement from the dock, the Appellant had proceeded to deny the charges by way of his dock statement.

After considering the evidence presented by both the prosecution and the defence, the Learned High Court Judge had convicted the Appellant as charged on 26/08/2009 and sentenced him as follows:

1. Count 01 – death sentence.
2. Count 02 – 4 years RI with a fine of Rs.1000/-. In default 03 months simple imprisonment.
3. Count 03 – 4 years rigorous imprisonment with a fine of Rs.1000/-. In default 03 months simple imprisonment.
4. Count 04 – 2 years rigorous imprisonment.
5. Count 05 – 1-year rigorous imprisonment.

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

The Learned Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence due to the Covid 19 pandemic. At the hearing the Appellant was connected via Zoom platform from prison.

**The following Grounds of Appeal were raised on behalf of the Appellant.**

1. The Learned High Court Judge has abdicated his powers to the Government Analyst and thereby the Judge's findings are unacceptable regarding the weapon.
2. The production chain regarding the gun is totally contradictory and therefore unacceptable.

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3. The dock statement given by the Appellant has not even been referred to in the judgment thereby making the judgment invalid.

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

According to the eye witness PW8, Liyanage Gunadasa, he is a prison officer by profession and on the date of the incident he had been assigned duties with two other prison officers to escort the deceased to Colombo Magistrate Court No.06 to extend his remand period. After producing the deceased before the Learned Magistrate, they remained inside the court until the Learned Magistrate signed the committal. At about 11.30 a.m. when they were about to leave the court room, suddenly the Appellant had started to shoot at the deceased with a pistol. At that time the deceased was standing between the benches in the left side of the witness. Although the deceased had run toward the door the Appellant had continued firing at the deceased. The witness could identify the Appellant clearly as the people in the court knelt on the ground for their safety. After shooting at the deceased, the Appellant had held a person at gun point as a hostage and entered into a glass partitioned room nearby. Thereafter, PW8 had run towards the deceased who was lying on the corridor with bleeding injury. With the assistance of other officers and the police officers the deceased was taken to the National Hospital but was pronounced dead on admission.

PW5 Jayawardena who is an Army Soldier with two others were assigned to special duty around Colombo Magistrate Court Complex on 09/01/2004. At about 11.30 a.m. having heard sound of a gun, PW5 Jayawardena with his colleague Pushpakumara had rushed to the Magistrate Court Complex. As the people exclaimed in fear and reported the shooting which transpired where Court No.06 functioned, the witness directed his colleague to guard the downstairs and went up to the building. He had seen three people were lying on the corridor and another was crying for help. Having heard the shooting had taken place inside the Court room and when he entered, he

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had seen people exclaiming and trying to get out from the Court room. As he entered the Court room, he had seen the Appellant holding another person on gun point and shouting “I won’t trouble anyone anymore”. Acting promptly the witness had kicked the Appellant and facilitated the police officers to arrest him with the gun.

PW37 a three-wheeler driver by profession had confirmed that he went on a hire with the Appellant and dropped him near the Colombo Magistrate Court Complex.

According to PW47, the JMO who held the post-mortem examination opined that the death of the deceased resulted due to the firearm injuries sustained in the heart and liver.

PW46 the ballistic expert who examined the gun and the 07 spent cartridges opined that that the spent cartridges which had been marked as P-2 had been fired from the gun which had been marked as P-1 by the prosecution.

After the closure of the prosecution case, the Learned High Court Judge had called for defence and explained rights of the accused. The Appellant opted to make a statement from the dock.

The Appellant in his dock statement denying the charge stated that he witnessed the shooting and grabbed the gun from the person who was shooting, and when this happened, he was held by an Army officer and thereafter arrested by the police and army.

In the first ground of appeal the Learned President’s Counsel appearing for the Appellant contended that the Learned High Court Judge has abdicated his powers to the Government Analyst and thereby the Judge’s findings are unacceptable regarding the weapon.

Experts can be of great assistance to Judges and juries in aiding them to determine the issues in a case, including the guilt or innocence of an accused. Also, the opinion of experts is relevant only when the court is

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required to form an opinion as to any one or more of the following matters; foreign law, science or art, or the identity or genuineness of handwriting or finger impression, palm impression or foot impression.

**Section 45 of the Evidence Ordinance states:**

When the Court has to form an opinion as to foreign law, or of science, or art, or as to identity or genuineness of handwriting or finger impressions, palm impressions or foot impressions, the opinions upon that point of persons specially skilled in such foreign law, science, or art, or in questions as to identity or genuineness of handwriting or finger impressions, palm impressions or foot impressions, are relevant facts. Such persons are called experts.

**In W.M.R.B. Wijayaratna and four others (Udathalawinna Murder Case)**

SC/TAB/1/2007 decided on 24/07/2009 J.A.N. de Silva, C.J. held that:

*“(a) it is the function of the Court, with the assistance of an expert, to decide on the similarity of hand writing, and that it is not proper to act solely on the opinion of the expert. A Court cannot, of course, without the assistance of an expert, come to an opinion on so difficult a question, and the Courts have deprecated, indeed condemned, any attempt on the part of a judge to come to a decision without the help of an expert in handwriting.*

*(b) at the same time the decision being the Judge’s he should not delegate his function to the expert. The opinion of the expert is relevant, but the decision must, nevertheless, be the Judge’s. To reach his decision his attention must be drawn to the points of similarity and dissimilarity.*

*(c) once the ground rules of the analysis have been explained by the expert and the material unearthed by him is placed before the Court, and the material is such or should be such that the Court could legitimately come to its own conclusions regarding the*

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*accuracy of the analysis, then the ultimate issue should never be left to the expert.*

*(d) the decision on the ultimately issue in a scientific analysis to which an expert's evidence relates must not be left to the expert, but must be decided by the Court with the acceptable assistance of an acceptable expert after considering the material placed before it by the expert as the basis of his opinion”.*

The Learned High Court judge in his judgment very extensively discussed the evidence given by PW46, the Senior Deputy Government Analyst with regard to the gun and the cartridges both spent and live. But he has not totally relied on or delegated his functions to the Government Analyst. Nowhere in the judgement indicate that the Learned High Court Judge had abdicated his powers to the Government Analyst. Although the opinion given by the Government Analyst is a scientific one, the Learned High Court Judge only considered his evidence to his own decision with consideration of other evidence.

Hence, it is incorrect to say that the Learned High court Judge had delegated his function to the expert in this case. Hence, this ground has no merit.

In the second ground of appeal the Learned President's Counsel argues that the production chain regarding the gun is totally contradictory and therefore unacceptable.

In a case of this nature the evidence pertaining to the chain of production plays a crucial role in adjudicating the matter at hand. It has to be proven before court that the same items of recovery had been placed before the court for its consideration. The chain of custody proves the integrity of a piece of evidence. The chain of custody includes the recovery of production, its custody, its movement from the recovery to the analyst and until it is allowed and admitted in the court. The chain of custody needs to be documented for every transmission, that is from the moment the evidence is collected,

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transferred from one person to another, and to establish that nobody else could have accessed or possessed that evidence without authorization.

According to PW21 PC 31559, he was the Court Officer of the Magistrate Court No.06 on 09/01/2004. After the commencement of the court proceedings he was seated closed to the Learned Magistrate of Court No.06. After the deceased's case was taken up, he was kept in custody of the prison officers till the signing of the committal. After signing the committal he had handed over the same to the prison officers. Thereafter the deceased was escorted to the Magistrate Court No.04. When the deceased was about to be taken out of the Court No.06, he suddenly heard a report of a gun. When he removed the Learned Magistrate to his chambers, he had heard the sound of another two or three shots being fired. When he came again to the court, he had seen the Appellant holding a person at gun point had entered in to the Registrar's room. He had shouted at the Appellant to surrender, as the Appellant had come out from the Registrar's office. At that point the Appellant was overpowered by the combination officers from police, army and prison and the gun was recovered from him by PW17 SI/Perera and handed over the same to this witness. Upon the direction of the Officer-in-Charge of Keselwatte Police Station he had handed over the same to PW56 PS 29780 Jayawardena who was on duty at the court police post.

According to PW56 PS 29780 Jayawardena, he had received a 9mm pistol bearing No. F 00585, an empty magazine with one live bullet and the Appellant on 09/01/2004 and handed over the gun, empty magazine, the live bullet and the Appellant to the Keselwatte Police Station reserve police officer PW55 PC 9290 Nawaratne.

PW56 had handed over the Appellant to RPC Shantha from the Colombo Crime Division. The pistol with empty magazine and one live bullet which had been entered under PR 75/4 were handed over to IP/Iddamalgoda from Colombo Crime Division.



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PW13 CI/Iddamalgotoda from the Colombo Crime Division had visited the scene of crime on 09/01/2004. He had noticed three empty cartridges fallen near the Registrar's office door which is situated close to the entrance door of the Court. Another empty cartridge was found fallen under a chair of the bar table. The record room is situated on the corridor of the Court No.06. Another empty cartridge with a pallet was found fallen near the record room which is situated left side of the entrance to the court. Another empty cartridge with two pallets were found fallen near the window of the record room. A bullet mark was observed on the door of the record room. According to the witness, he had collected 07 empty cartridges and three pallets from the crime scene.

After collecting the above-mentioned productions upon further instructions received from higher officers, PW13 had gone to Keselwatte Police Station and taken the Appellant, the gun and a pair of shoes under his custody and taken the same with other productions to the Colombo Crime Division. The gun, live bullet, empty cartridges and the pallets were handed over to the Colombo Crime Division reserve police officer under PR No.45/04. The pair of shoes had been entered under PR No.46/04.

According to PW8 Jayawardena, he had seen the Appellant firing at the deceased and the deceased had run towards the door of the court. The deceased was found with injuries on the corridor of the court. His evidence is very well tallying with the observation made by PW13 who had observed a bullet mark on the door of the court record room which is situated very close to the entrance of the court room. Due to aforesaid reasons, it is incorrect to say that that the deceased was shot in the corridor and not in the court room.

PW50 PS 24766 Ranatunga had received the productions entered under PR45/04 and PR46/04 from PW13 CI/ Iddamalgotoda at the Colombo Crime Division on 09/01/2004. On the same day he had handed over the same to PW51 PC 5448 Ranasinghe at 21.20 hours. Again on 10/01/2004 at 5.00 a.m. PW50 had received the PR No.45/04 and 46/04 when he reported for

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duty. On the same day he had handed over the PR No.45-46/04 to the person in charge of the production room PW53 PS 29729 Dharmadasa.

PW53 PS 29729 Dharmadasa had received the production No.45/04 and PR 46/04 on 10/01/2004 and kept it in the production room. On 28/01/2004 he had taken the same to the Colombo Magistrate Court. Thereafter, on the order of the court he had handed over the same to the Government Analyst Department on the same day.

Considering the evidence led pertaining to the recovery of productions and it reaching the Government Analyst Department, there is no evidence contradicting with the evidence led by the Prosecution as claimed by the Appellant. As the production chain, specially pertaining to the gun is not disturbed at any stage of its recovery and reaching the Government Analyst Department, I conclude this ground of appeal also without any merit.

In the final ground of appeal, the Appellant contends that the dock statement given by the Appellant has not even been referred to in the judgment thereby making the judgment invalid.

Treating unsworn statement of an accused from dock as evidence has been recognised and consistently followed in our courts despite the fact that statement not being subjected to cross examination. It has to be treated as other evidence which had been subjected to cross examination. Acceptance of dock statement as evidence has been recognised in several land marked cases in our jurisdiction.

In **Kathubdeen v. Republic of Sri Lanka** [1998] 3 SLR 10 the court held that;

*“It is settled law that an unsworn statement must be treated as evidence. It has also been laid down that if the unsworn statement creates a reasonable doubt in the prosecution case or if it is believed, then the accused should be given the benefit of that doubt”.*

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In this case the Learned High Court Judge had considered the dock statement of the Appellant in his judgment at page 437-438 of the brief. As the Learned High Court Judge had considered the dock statement of the Appellant in his judgment adequately, the judgment cannot be considered as an invalid judgment as contended by the Learned President's Counsel. Hence, the final ground of appeal also devoid any merit.

Considering all the circumstances, I am of the view that the appeal ought to be dismissed as there is no merit in the pleaded grounds of appeal. Hence, I affirm the conviction and sentence of the Appellant and proceed to dismiss his appeal.

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

**JUDGE OF THE COURT OF APPEAL**

**SAMPATH B. ABAYAKOON, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**