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

In the matter of an appeal made in terms of Section 331(1) of the Code of Criminal Procedure Act No. 15 of 1979, Section 14 of the Judicature Act No.02 of 1978, Section11 of the High Court of the Provinces (Special Provisions) Act No.19 of 1990 read with Article 138 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No:
CA/HCC/21/2023

High Court of Hambantota Case No:
HC 26/2015

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

Complainant

Vs

Mavelage Sanjeewa Rajapaksha,
No.78, Bisokotuwa,
Kolombageara

Accused

AND NOW BETWEEN

Mavelage Sanjeewa Rajapaksha,
No.78, Bisokotuwa,
Kolombageara

Accused – Appellant

Vs

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

Complainant – Respondent

Before	:	**P. Kumararatnam, J.**
		Pradeep Hettiarachchi, J.
Counsel	:	Darshana Kuruppu with Tharushi Gamage for the Accused – Appellant Jehan Gunawardhana S.C. for the Respondents
Argued on	:	20.06.2025
Decided on	:	03.10.2025

Pradeep Hettiarachchi, J

Judgment

1. This appeal arises from the Judgment dated 31.10.2022, delivered by the learned High Court Judge of Hambantota, by which the appellant was convicted of the offence of murder under Section 296 of the Penal Code and sentenced to death.

2. The Accused–Appellant (hereinafter referred to as "the Appellant") was indicted for committing the murder of T.B. Jeewani Samanmalee, a 12-year-old girl, by stabbing her at her residence. The prosecution case rested entirely on circumstantial evidence.

   The grounds of appeal advanced by the Appellant are as follows:

   a. The learned High Court Judge has failed to consider that the items of circumstantial evidence surrounding the case are wholly inadequate to prove the case of the prosecution against the Appellant beyond reasonable doubt;

   b. The learned High Court Judge has failed to consider the failure of the prosecution to rule out the possibility of a third party committing the crime;

   c. The learned High Court Judge has failed to consider the inherent improbable nature of the prosecution case;

d. The learned High Court Judge has failed to consider that the Appellant was denied the right to a fair trial by not permitting the defense to mark and produce the photographs of the crime scene through the prosecution witness who had taken the relevant photographs.;

e. The learned High Court Judge has failed to consider that the prosecution has not establish the link between the recovery under section 27(1) of the Evidence Ordinance and the guilt of the Appellant beyond a reasonable doubt;

f. The learned High Court Judge has perused the police statement when writing the judgment in contravention of section 110(4) of Cide of Criminal Procedure Act and thereby denied a fair trial to the Appellant;

g. The learned High Court Judge has failed to consider that the Appellant is deprived of the right to fair trial as the Appellant was denied to the right of fair investigation; and,

h. The learned High Court Judge has failed to consider that the prosecution has failed to prove the case beyond reasonable doubt.

Background to the facts:

3. The deceased was living with her mother and stepfather at their residence at Lunugamwehera. The Appellant was married to the elder sister of the deceased. Two weeks before the alleged incident, the Appellant came to the deceased's house in search of her wife who had gone missing.

4. On the day of the incident, the deceased's mother (PW1) and her husband had gone out to attend to some work and to collect an appointment letter for the position of hospital attendant, leaving only the Appellant and the deceased at home.

5. As the deceased did not attend school on that day, the Appellant and the deceased were the only occupants of the house. After collecting the letter of appointment and completing her work, PW1 attempted to call the deceased, but received no response, which aroused her suspicion. PW1 then set off for home by bus and, on the way, saw her husband near a hotel in Lunugamwehera.

6. She then alighted from the bus and informed her husband of the incident, after which she lodged a complaint with the police. Subsequently, they returned home accompanied by several police officers and found the deceased lying dead in a pool of blood in one of the rooms of the house. The Appellant was not present in the house.

7. According to her evidence, when they were leaving the house in the morning, the deceased was playing in the compound with the Appellant. The witness identified the school bag of the deceased, which was marked as P2. The defence admitted the identity of the school bag, and the admission was recorded under Section 420 of the Code of Criminal Procedure Act.

8. The second witness who testified for the prosecution was PW2, Chandrasiri Munasingha, a neighbour residing opposite the house of the deceased. According to his testimony, on the day of the incident he was at home with his wife and son. The witness's house and the deceased's house were separated by a narrow path and enclosed by a barbed-wire fence. Around 9.00 a.m. on the day of the incident, PW2 saw the deceased and the Appellant playing in the compound. A dog at PW2's house, which was in the habit of biting people, had been tied to a tree. Suddenly, the dog started barking at someone, and upon inquiry PW2 saw the Appellant walking hastily towards the main road carrying a bag on his shoulder.

9. According to this witness, whenever the deceased was alone, she would usually come to PW2's house. On that day, as the deceased had not come even after the Appellant left, PW2 became suspicious. After discussing the matter with his wife, he dialed the landline number of the deceased's house but received no response.

10. Thereafter, he went to the deceased's house with his wife and found a window ajar. When they peeped through the window, they could not see anyone inside, and PW2 then telephoned the police.

11. After the police arrived at the scene, PW2 also went there and saw the body of the deceased. However, PW2 was not certain whether the police had come as a result of his telephone call or otherwise.

12. Anura Indika Gamage the Officer in Charge of the Police Station Lunugamwehera was the next witness testified for the prosecution. He was the person who recorded the statement of the mother of the deceased. On his instructions, two police officers went to the deceased's house and found the body of the deceased. This witness also reached the scene around 17.00 hours and inspected the scene of crime. According to him the body was lying under a bed in a room. The witness arrested the Appellant at the Udawalawa junction on 02.06.2011 and recovered a dark green school bag and 7.5 inches long sheath with a carving of a face of a lion. In addition, personal belongings of the Appellant were also found inside the said bag. The said bag and the sheath were identified by the witness in open court when giving evidence. Thereafter, a statement was recorded from the Appellant, and PS 26662 Bandula was directed to conduct further investigations.

13. Dr. Sumith Ambepitiya was the Judicial Medical Officer who conducted the autopsy of the deceased. The witness explained the number and extent of the injuries and expressed his opinion regarding the cause of death, referring to the Post Mortem Report marked as P8.

14. PW8, Hemakumara Wickramarathna, was a Sub-Inspector of Police at the relevant time and participated in the autopsy.

15. PW6, Ranjan Kodituwakku, was the officer who inspected the crime scene. He recorded his observations and made notes. An officer named Nishantha, who accompanied him to the scene, photographed the scene of the crime.

16. PW5, H.K.B. Kumarasiri, made a recovery under Section 27 of the Evidence Ordinance. According to his evidence, a knife and a pair of trousers, concealed in a black plastic bag, were recovered pursuant to a statement made by the Appellant. The witness identified the knife and the trousers in court, which were marked as P7 and P10, respectively.

17. Evidently, four items were sent to Genetech for DNA profiling, namely: the knife, the denim shorts, a blood sample from the deceased, and a control gauze. The report dated 16.06.2016, signed by Ruwan Illeperuma, Senior Scientist, and Parami W. Wakista,

Scientist at Genetech, was marked as P14 through the interpreter of the High Court. The said report was never challenged by the defense.

18. The Appellant made a dock statement. Two witnesses, namely I.P. Kodituwakku and S.I. Nishantha Gallearachchi, were also summoned by the defense to give evidence. According to I.P. Kodituwakku, a "Katti" knife was seen near the body of the deceased, but it was not produced in Court. S.I. Gallearachchi photographed the scene; however, when the defense sought to mark these photographs, the request was refused by the Judge, as the prosecution objected on the ground of non-compliance with Section 7 of the Evidence Ordinance (Special Provisions) Act.

19. Since this case is entirely based on circumstantial evidence, it is of paramount importance to discuss the established legal principles relating to circumstantial evidence.

20. Sir Alfred Wills in his admirable book `***Wills' Circumstantial Evidence' (Chapter VI)*** lays down the following rules specially to be observed in the case of circumstantial evidence:

    1) *the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum;*

    2) *the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability;*

    3) *in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits;*

    4) *in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the appellant and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and*

    5) *if there be any reasonable doubt of the guilt of the appellant, he is entitled as of right to be acquitted.*

21. In the case of ***The Queen v Kularatne*** 71 NLR at page 534 the Court of Criminal Appeal quoted with approval the dictum of Whitemeyer, J. In ***Rex v Blom*** stated as follows:

> *Two cardinal rules of logic which governs the use of circumstantial evidence in the criminal trial. (1) The inference sought to be drawn must be consistent with all the approved facts. If it does not, then the inference cannot be drawn. (2) The proof of facts should be such that they exclude every reasonable inference from them, save the one to be drawn. If they had not excluded the other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct.*

22. In ***Don Sunny v Attorney General*** [1988] 2Sri LR 1**,** it was held:

i. *When a charge is sought to be proved by circumstantial evidence the proved items of circumstantial evidence when taken together must irresistibly point towards the only inference that the appellant committed the offence. On a consideration of all the evidence the only inference that can be arrived at should be consistent with the guilt of the appellant only.*

ii. *If on a consideration of the items of circumstantial evidence if an inference can be drawn which is consistent with the innocence of the appellant, then one cannot say that the charges have been proved beyond reasonable doubt.*

iii. *If upon a consideration of the proved items of circumstantial evidence if the only evidence that can be drawn is that the appellant committed the offence then they can be found guilty.*

iv. *The prosecution must prove that no one else other than the appellant had the opportunity of committing the offence. The appellant can be found guilty only if the proved items of circumstantial evidence is consistent with their guilt and inconsistent with their innocence.*

23. In this matter, the prosecution placed considerable reliance on the *last seen* theory, contending that the deceased was last seen in the company of the Appellant prior to

the recovery of her body, and that this circumstance constitutes an incriminating piece of evidence against him.

24. In ***Sahadevan alias Sagadevan v State represented by Inspector of Police, Chennai (2003) Vol. 1 SCC 534***, the prosecution established the fact that the deceased was seen in the company of the appellants from the morning of March 5, 1985 till at least 5 p.m. On that day when he was brought to his house, and thereafter his dead body was found in the morning of March 6, 1985. In the background of such facts the Court observed:

> *"Therefore, it has become obligatory on the appellants to satisfy the court as to how, where and in what manner Vadivelu parted company with them. This is on the principle that a person who is last found in the company of another, if later found missing, then the person with whom he was last found has to explain the circumstances in which they parted company. In the instant case the appellants have failed to discharge this onus. In their statement under Section 313 CrPC they have not taken any specific stand whatsoever"*

25. The last seen theory comes into play where the time-gap between the point of time when the appellant and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the appellant being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the appellant when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the appellant and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.

26. In the present case, the Appellant was seen with the deceased at around 9.00 a.m. on the day of the incident. The body of the deceased was recovered at approximately 5.00 p.m. on the same day, lying under a bed inside the house, as testified by PW3. Significantly, neither the post-mortem report nor the evidence of the JMO provides any indication of the approximate time of death, and the prosecution did not seek to question the JMO on this crucial aspect. This evidentiary gap prevents any definitive conclusion regarding the time of death.

27. According to PW2, he referred to the deceased's stepfather as 'Loku Mama'. A careful examination of PW2's testimony reveals that after PW2 had gone to a shop 3 kilometers away from his home to buy a phone card, the deceased's stepfather had come to the house, and PW2's wife had asked him about the whereabouts of the Appellant.

28. In her evidence-in-chief, PW1 stated that when she saw her husband near a restaurant in Lunugamwehera, she alighted from the bus and informed him that the deceased had not responded when she called her. At that point, her husband told her that both the Appellant and the deceased were missing. This prompted her to rush to the Lunugamwehera police station and lodge a complaint. This further confirms that PW1's husband, referred to as 'Loku Mama' by PW2, had gone to the house before the police arrived at the scene and was already aware that both the Appellant and the deceased were missing.

29. What is discernible from the above evidence is that between the Appellant's departure and the recovery of the body, another person, namely, PW1's husband had come home. More significantly, the time of death was also not established to the satisfaction of the Court.

30. The Indian Supreme Court in ***Digamber Vaishnav & Another v State of Chhattisgarh*** (2019) INSC 308 ruled that there must be a reasonable proximity between the time of last seen and the discovery of the dead body. If the time gap is too large, it introduces doubt about the appellant's involvement.

31. In ***State of UP v Satish*** (2005) (3) SCC 114, the Supreme Court held that the Last Seen Theory applies when the time gap between the appellant's last sighting with the victim and the discovery of the victim's dead body is so small that no third party could have intervened. If the appellant does not provide a satisfactory explanation, an adverse inference can be drawn.

32. Nonetheless, in the present case, the involvement of a third party is clearly evident, as previously noted. In light of the above evidence, this Court finds it impossible to apply the "last seen" theory, as there existed a considerable time gap between the

point at which the deceased was last seen in the company of the Appellant and the subsequent discovery of the body. Additionally, the involvement of a third party cannot be completely ruled out, as there is evidence that the deceased's stepfather had come in between.

33. Hence, I shall now consider whether the circumstantial evidence adduced by the prosecution is sufficient to establish the guilt of the Appellant beyond reasonable doubt.

34. It is well settled that in a case resting solely on circumstantial evidence, the prosecution must establish a complete chain of circumstances which solely points to the guilt of the accused. The circumstances proved should be consistent only with the hypothesis of the guilt of the appellant and wholly inconsistent with any reasonable inference of his innocence. It is only when such a chain of evidence is established that the guilt of the appellant can be said to be proved beyond reasonable doubt.

35. The following incriminating circumstances are clearly established against the Appellant:
    a) The Appellant had come to the deceased's house about five days prior to the incident in search of his wife and had remained there until 30th May 2011.
    b) On the morning of 30 May 2011, at around 9.00 a.m., the Appellant was seen in the compound of the house with the deceased.
    c) At around 9.30 a.m., PW2 observed the Appellant hastily leaving with a bag slung over his shoulder.
    d) PW2 attempted to inquire about the whereabouts of the deceased by dialing the landline of the deceased's house, but received no response.
    e) Husband of PW1 had come to the house around mid noon but did not see either the deceased or the appellant.
    f) PW1 called the land line but received no response.
    g) The body of the deceased was discovered lying in a pool of blood at around 5.00 p.m. on the same day.
    h) The Appellant was arrested on 02 June 2011 at the Uda Walawe junction. At the time of his arrest, the school bag of the deceased was found in his possession, and inside the bag was a knife sheath along with the Appellant's personal belongings.

i) Pursuant to a statement made by the Appellant, a knife and a trouser were recovered from beneath a culvert.

j) The knife recovered from beneath the culvert, together with a blood sample of the deceased and the trouser, was sent for DNA profiling.

k) According to the DNA report dated 20 June 2016, the DNA present in the brownish stains on the knife (P1) matched that of the deceased, and the DNA tested on the stains on the denim three-quarter trouser (P2) also originated from the deceased.

36. The following authorities provide valuable guidance in evaluating the sufficiency of the circumstantial evidence.

37. In the case of ***King v Abeywickrema*** 44 NLR 254 Soertsz J. remarked thus:

> *In order to base a conviction on circumstantial evidence the jury must be satisfied that the evidence was consistent with the guilt of the accused and inconsistent with any reasonable hypothesis of his innocence.*

38. In ***King v Appuhamy*** 46 NLR 128, Keuneman J. held thus:

> *In order to justify the inference of guilt from purely circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt."*

39. In ***Gunawardena v. The Republic of Sri Lanka*** [1981] 2 Sri.LR 315 it was observed that:

> *In a case of circumstantial evidence, the facts given in evidence may, taken cumulatively be sufficient to rebut the presumption of innocence, although each fact, when taken separately may be a circumstance of suspicion. Each piece of circumstantial evidence is not a link in a chain for if one link breaks the chain would fail. Circumstantial evidence is more like a rope composed of several cords. One strand of rope may be insufficient to sustain the weight but three stranded together may be quite sufficient.*

In a case resting on circumstantial evidence the judge in addition to giving the usual direction that the prosecution must prove the case beyond reasonable doubt must give a further direction in express terms that they must not convict on circumstantial evidence unless they are satisfied that the facts proved are

(a) consistent with the guilt of the accused; and

(b) exclude every possible explanation other than the guilt of the accused.

40. As observed by Sisira De Abrew J. in ***Samantha v Republic of Sri Lanka*** [2010] 2 Sri LR 236 ;

(1) In a case of circumstantial evidence if an inference of guilt is to be drawn against the accused such inference must be the one and only irresistible and inescapable inference that the accused committed the crime.

(2) It is the duty of the trial Judge to tell the jury that such evidence must be totally inconsistent with the innocence of the accused and must only be consistent with his guilt.

41. In the present case, it is evident that after the Appellant left, the deceased's stepfather visited the house around noon and found that neither the deceased nor the Appellant was at home, a fact confirmed by PW1 in her testimony. Surprisingly, the deceased's stepfather was not listed as a witness by the prosecution. According to PW1's testimony, it was her husband who first informed her that both the deceased and the Appellant were absent from the house.

42. Therefore, the question arises as to whether the evidence presented by the prosecution is sufficient to draw the sole inference of the Appellant's guilt and whether it is inconsistent with any other inference that could suggest his innocence.

43. The evidence indicates that the stepfather visited the house sometime between the discovery of the body and the Appellant's departure. Furthermore, the items recovered under Section 27 of the Evidence Ordinance, based on the statement made by the Appellant, cannot be treated as conclusive evidence. They only demonstrate that the Appellant knew the whereabouts of those items.

44. In ***H. M. Heen Banda v The Queen*** 75 NLR 54 the Court held that:

> *Where part of a statement of an accused person is put in evidence under section 27 of the Evidence Ordinance, it is the duty of the trial Judge to explain to the Jury that such a statement is only evidence of the fact that the accused knew where the article discovered could be found, and nothing more.*

45. Similarly, in ***Ranasinghe v Attorney-General*** [2007] Sri LR 218, it was held *inter alia* that:

> *.....since discovery is consequence of a section 27 statement only leads to the conclusion that the accused had the knowledge as to the weapon being kept at the place from which it was detected;*

46. A bag, allegedly recovered from the Appellant's possession at the time of his arrest, was identified by PW1 as the deceased's schoolbag. However, when the same bag was shown to PW2 during his testimony, it contradicted PW1's account. PW2 clearly stated that the bag the Appellant carried when leaving the house was of a different color, though similar in shape. This inconsistency raises doubts about the recovery of the deceased's schoolbag from the Appellant's possession as alleged by the police.

47. Furthermore, the trouser allegedly recovered upon the arrest of the Appellant was not identified by PW2. On the contrary, PW2 categorically stated that the Appellant was wearing a denim trouser with a white front part, and that the trouser produced at the trial was not the one he had seen the Appellant wearing on the day of the incident. This discrepancy casts serious doubt on the prosecution's evidence regarding the alleged recovery.

48. It is also important to emphasize that the finding of the Appellant's personal belongings inside the bag, particularly his marriage certificate, is improbable given the circumstances under which he is alleged to have left the house, as well as the circumstances under which he came to the deceased's house.

49. When the evidence is considered in its entirety, it does not, in my view, lead to an irresistible inference of the Appellant's guilt. This is especially so, since the testimony

of PW1 and PW2 indicates the presence of a third party, namely the deceased's stepfather, at the scene before the body was recovered. Notably, the prosecution also failed to establish the approximate time of death. Had the prosecution questioned PW1 regarding the meals provided to the deceased and their timing, and examined the JMO on the contents and condition of the stomach, an inference as to the time of death could have been drawn. Regrettably, the prosecution failed to do so, leaving a vital piece of evidence undisclosed.

50. It is significant to note that, according to the evidence of PW1, the rear door of the house remained unlocked when the police arrived at the scene. If that was the case, the question arises as to why the stepfather of the deceased, who according to the evidence had returned home, did not enter the house.

51. It is further in evidence that one of the windows was open when PW2 searched for the deceased, and that it had no grill. Had PW2 been as vigilant and concerned about the deceased as he claimed, it is improbable that he would have failed to notice the rear door, which remained unlocked. Also, considering the manner in which PW2 conducted the search of the house, a serious doubt arises as to whether the body of the deceased was inside the house at that time.

PW2 testified as follows:

ප්‍ර : තමුන් ඔය දුරකථන ඇමතුම land phone එක තිබෙනවා කියලා දැක්කාම මොකක්ද
කලේ ?

උ : ගෙදර මුදුන් බිත්තියෙ පැත්තේ ජනේලය ඇරලා තිබුණා

ප්‍ර : ඒ කියන්නේ තමුන් ඒ වෙලාවේ චන්ද්‍රානිගේ ගෙදරට ගියාද ?

උ : ඔව් ගියා මම නෝනාට කිව්වා ජනේලෙන් පොඩ්ඩක් එබිලා බලන්න කියලා කිව්වා
නෝනා බලලා පෙන්න නැහැ කියලා කිව්වා.

ප්‍ර : ඊට පස්සේ තමුන් මොකද්ද කලේ?

උ : මමත් ගියා මමත් ජනේලයෙන් ඔලුව දාලා බැලුවා කවුරුවත් පෙනෙන්න හිටියේ නෑ.
ගෙයි අනිත් පැත්තෙන් ගිහිල්ලා කුස්සියේ යට ලීයෙන් එබිලා බැලුවා කුස්සිය පැත්තෙන් එනවද කියලා ,ඒත් හිටියේ නෑ

52. PW1 clearly stated that when the police officer touched the rear door it simply opened, thereby confirming that it was not secured at any stage. Since it was established that the stepfather of the deceased knew that both the Appellant and the deceased were not at home at the time PW1 became alarmed, when she received no response upon dialing the landline number, one must ask why the stepfather remained silent and refrained from searching for them until PW1 informed him of the situation. No plausible explanation for this conduct was forthcoming from the prosecution evidence.

53. In evaluating and assessing the evidence led by the prosecution, certain critical issues arise which cannot be ignored, as they go to the root of the case. The prosecution has failed to establish the time of death of the deceased, even approximately. Consequently, it is difficult, if not impossible, to determine whether the death occurred shortly before the Appellant left or after his departure.

54. It is also in evidence that the rear door of the house remained unlocked when the police arrived at the scene. Thus, the possibility of the involvement of a third party cannot be completely ruled out. Furthermore, certain notable shortcomings are apparent in the conduct of the investigation. No attempt was made to trace fingerprints at the scene. Although another knife (known as Katti knife) was found under the bed where the body lay, it was neither examined nor taken into police custody as a potential item of evidence.

55. It also transpired from the evidence of PW2 that his wife had gone into the compound of the deceased's house in search of the deceased. Yet, no statement was recorded from the wife of PW2. Another significant aspect requiring attention is the unusual conduct of PW2 and the husband of PW1, which remains unexplained.

56. Had PW2 been genuinely watchful and concerned about the whereabouts of the deceased, he could have easily entered the house and searched before attempting to contact the police. Likewise, PW1's husband could also have entered the house and searched for the deceased, as the rear door was found to be unlocked by the police.

57. The evidence of the stepfather's presence at the scene around midday, combined with his subsequent conduct, particularly his failure to attempt a search inside the house despite the rear door remaining unlocked and a window left open, certainly casts doubt on the prosecution's case.

58. The above facts, which render the prosecution's version doubtful, have escaped the attention of the learned High Court Judge. As stated earlier, the failure of the prosecution to establish the approximate time of death substantially severs a vital link in its case, as it prevents the Court from inferring the proximity between the death and the Appellant's departure.

59. More importantly, the absence of such evidence regarding the time of death precludes the Court from excluding the possible involvement of persons other than the Appellant. Consequently, the only inference that can reasonably be drawn from the evidence adduced by the prosecution is not the guilt of the Appellant; rather, it is equally consistent with other inferences pointing to the innocence of the Appellant. Thus, case is undoubtedly a case of some suspicion, and it is not safe to allow the conviction to stand.

60. For the reasons stated above, I am of the opinion that the Appellant should not have been convicted of the offence of murder. In the circumstances, the appeal of the Appellant is allowed and he is acquitted.

Judge of the Court of Appeal

P. Kumararatnam,J

I agree,

Judge of the Court of Appeal

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