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

In the matter of an Appeal under Article 128(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

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

SC/Appeal/ 21/ 2021
SC (Spl.) L.A. No 210/2019
CA Case No. 238-239/13
HC Kegalle Case No. 2438/06

COMPLAINANT

Vs.

1. Poththegodage Anula Chandralatha
2. Andawalage Nimal Sarath Kumara

ACCUSED

AND BETWEEN

1. Poththegodage Anula Chandralatha
2. Andawalage Nimal Sarath Kumara

ACCUSED-APPELLANTS

Vs.

Hon. Attorney- General,
Attorney-General'sDepartment
Colombo 12

COMPLAINANT- RESPONDENTS

AND NOW BETWEEN

Andawalage Nimal Sarath Kumara

2nd ACCUSED APPELLANT-APPELLANT

Vs.

Hon. Attorney- General,
Attorney-General'sDepartment
Colombo 12

COMPLAINANT- RESPONDENT-RESPONDENT

Poththegodage Anula Chandralatha

1ST ACCUSED- APPELLANT- RESPONDENT

BEFORE: **MURDU N.B. FERNANDO, PC, J.**
K.KUMUDINI WICKREMASINGHE, J.
MAHINDA SAMAYAWARDHENA, J.

COUNSEL: Srinath Perera, PC with Miss. Angela and Rahul Jayathillake for the 2nd Accused- Appellant- Appellant.

Azard Navavi, DSG for the
Complainant-Respondent-Respondent.

WRITTEN SUBMISSIONS: Written Submissions by the 2nd Accused-Appellant- Appellant on 29.06.2021

ARGUED ON: 26.05.2022

DECIDED ON: 27.09.2023

K. KUMUDINI WICKREMASINGHE, J.

The application for special leave to appeal was preferred by the 2nd Accused Appellant Appellant (hereinafter referred to as the Appellant) against the judgment of the Court of Appeal dated 10.05.2014 affirming the convictions and the sentences imposed against the 1st and 2nd Accused Appellants and dismissing their Appeal. Aggrieved by which the 2nd Accused Appellant Appellant appealed to the Supreme Court.

Accordingly, this Court by order dated 22.02.2021 granted Special leave to appeal on the following questions of law:

1. That the Hon. High Court and the Hon. Judges of the Court of Appeal failed to take into consideration and properly evaluate the items of evidence led on behalf of the parties at the trial.
2. This being a case based on circumstantial evidence, the Hon. High Court Judge and the Hon. Judges of the court of appeal failed to properly consider and correctly apply the relevant principles applicable to such a case in order to arrive at a decision in the said case.
3. The Hon. High Court Judge and the Hon. Judges of the Court of Appeal failed to evaluate the evidence led against each accused in this case, separately, in arriving at a decision against each such accused.

Two Accused namely, Poththegodage Anula Chandralatha who was the 1st Accused (1st Accused Appellant Respondent) and Andawalage Nimal Sarath Kumara who was the 2nd Accused (2nd Accused Appellant Appellant) were indicted in the High Court of Kegalle under section 296 of the Penal Code read with section 32 of the Penal Code, for committing murder of one Ajith Kithsiri Ruwan Kumara. Both Accused, upon the charge in the indictment being read over and explained to them, pleaded not guilty to the said charge. Both Accused opted to try the case without a jury and the trial commenced on 25.11.2013. The

prosecution called 7 witnesses and closed its case after marking P1 to P6 as productions. When the defense was called both Accused gave dock statements denying the charge. After the conclusion of the trial, the Learned High Court Judge convicted both the Accused for committing murder as per the indictment and imposed the death sentence as required under section 296 of the Penal Code.

The facts of the case briefly are as follows,

As per the evidence given by Prosecution Witness Thilakarathna (PW1), on the date in question the witness had visited the house of the 1st Accused Appellant Respondent around 6:30 pm to consume illicit alcohol (Kasippu). The witness stated that he had seen the deceased who was the husband of the 1st Accused Appellant Respondent lying on a partially built wall in close proximity to the house of the 1st Accused Appellant Respondent. The witness claimed that when he inquired about the condition of the deceased, the 1st Accused Appellant Respondent replied asking him to mind his own business. The witness stated that the 2nd Accused Appellant Appellant was present a few feet away from the 1st Accused Appellant Respondent at that time and that both of them had asked the witness not to leave the premises. The witness stated that at around 9:00 or 9:30 pm he saw the 2nd Accused Appellant Appellant carrying the body of the deceased, closely followed by the 1st Accused Appellant Respondent. When questioned during the Examination in chief on what the witness had observed when the body of the deceased was carried by the 2nd Accused Appellant Appellant, the witness stated he had observed that the deceased's neck had been displaced and stated that "බල්ලෙල පැත්තකට වනේන තිබුණෙ". After which the two accused had proceeded to dispose of the body of the deceased into the toilet pit located at the premises of the 1st Accused Appellant Respondent. When the witness was questioned on the events that he had witnessed the witness stated in response that "මට හිතුනා බාසුන්නැහෙ මැරිලා තමයි කියා". Thereafter, the 2nd Accused Appellant Appellant had placed timber planks and laid fertiliser bags on top of the pit in order to cover the pit.

According to the evidence of the Investigative Officer J R Seneviratne (PW9) the 1st Accused Appellant Respondent had made a complaint to the Police that her husband had disappeared. The formal investigation into the incident commenced on 03.05.1999. The Investigating Officer claimed that on information received by informants and persons who visited the town, the property of the 1st Accused Appellant Respondent was searched. On the search of the property the officer made observations of a toilet pit, which was situated within the said property. The

officer stated that he commenced investigations regarding a toilet pit in the compound of the house where the deceased had lived with the 1st Accused Appellant Respondent, after a statement had been recorded from the 1st Accused Appellant Respondent. Following which, the body of the victim was discovered. A section 27 statement of the Evidence Ordinance has been led in evidence by the Prosecution which stated that "පුදුමයාගෙ මළ සිරුර දමා ඇති වැසිකිලි වල මට පෙන්වීමට පුළුවන්". The officer further stated that witness PW1 was arrested on suspicion but he was not named as an accused.

Dr. Prassana Bandara Dissanayake (PW7), the Judicial Medical Officer gave evidence with regard to the post-mortem examination of the body of the deceased, conducted by him. He observed that there were 10 injuries on the body of the deceased. The first injury was a stab injury which in his opinion was caused by an axle and that was fatal. He stated that the 3rd and 4th injuries could have been caused as a result of falling. He stated that there were serious injuries on the head that may have been caused by a blunt weapon like a stone.

According to the evidence of the S. I. Thilakaratne Nissanka (PW14), a stone had been recovered in terms of a section 27 statement of the Evidence Ordinance made by the 2nd Accused Appellant Appellant., stating that "ගල මට පෙන්නන්න පුළුවන්". However, the recovered stone has not been produced in evidence at the trial.

The Deceased and the 1st Accused Appellant Respondent's daughter K.V. Tharusha Chathurika Kithsiri (PW2) gave evidence. She stated that on the 16.04.1999 morning, she had asked her mother, the 1st Accused Appellant Respondent about the whereabouts of her father (the deceased) to which her mother had replied stating that he had gone for work. The witness stated that she did not observe anything along the footpath; however, she saw her mother removing some earth with red colour powder. The witness stated that she inquired from her mother what the red colour powder was and she stated that her father had left after having a row with her and hitting her with bricks.

Having considered at length the evidence of witness PW1, the evidence of the daughter witness PW2 and the evidence provided by the Police officers investigating the incident, the Learned High Court Judge decided against both the 1st Accused Appellant Respondent and the 2nd Accused Appellant Appellant. Considering the conduct of the two Accused, the method thereof have adopted in disposing the body, to their conduct soon after, amount to the one and only

conclusion that can be arrived by court is that both of them have committed the murder of the deceased.

Being aggrieved by the judgement of the High Court, the 1st Accused Appellant Respondent and the 2nd Accused Appellant Appellant had appealed to the Court of Appeal complaining inter alia that the Learned High Court Judge misdirected herself when admitting the evidence under section 27 of the Evidence Ordinance, the evaluation of the evidence given by PW1 is bad in law, the Learned High Court Judge misdirected herself by anticipating a reasonable explanation from the said Appellant when the prosecution had failed to establish a prima facie case against the 1st Accused Appellant Respondent, the Learned High Court Judge failed to evaluate the medical evidence against the sole eye witness testimony and the Learned High Court Judge has not properly considered and evaluated the evidence against the 2nd Accused Appellant Appellant.

The Honourable Judges of the Court of Appeal upon perusal of the evidence concluded that on the 1st ground of appeal that the evidence under section 27 of the Evidence Ordinance is unsafe to act upon. The Honourable Judges of the Court of Appeal thereafter considered the 2nd, 3rd, 4th and 5th grounds of appeal together as it was all in relation to the credibility of evidence given by witness (PW1). The Honourable Judges of the Court of Appeal observed that the Learned High Court Judge had placed a heavy reliance on the evidence provided by PW1 to hold the 1st Accused Appellant Respondent and the 2nd Accused Appellant Appellant guilty. PW1 was initially a suspect in this case however, no evidence was provided on the circumstances that led to his arrest. The Learned Counsel for the Appellants questioned the belatedness of the statements given to the police by PW1. The Honourable Judges of the Court of Appeal observed that not a single question had been put forth towards the witness for the belatedness of making the said statement. The witness, however, in his evidence had offered an explanation as to why he could not make a statement to the Police soon after the incident had taken place, as the 1st Accused Appellant Respondent and the 2nd Accused Appellant Appellant had repeatedly threatened him and asked him to refrain from giving any information about the incident. Further, PW1 had seen both the 1st Accused Appellant Respondent and the 2nd Accused Appellant Appellant at the crime scene at or about the time the crime was committed, he observed that the dead body was held by the 2nd Accused Appellant Appellant who was closely followed by the 1st Accused Appellant Respondent and dumped into the toilet pit. PW1 has stood by this position in both the examination in chief and

cross-examination and the Honourable Judges of the Court of Appeal observed that there was no motive on part of PW1 to implicate the Appellants in this crime.

The Honourable Judges of the Court of Appeal upon evaluation of the evidence concluded that there was no inconsistency in the lack of credibility with regard to the evidence given by PW1 and that the Learned High Court Judge was correct in accepting the said evidence. The Honourable Judges of the Court of Appeal upheld the conviction and sentence of the Learned High Court Judge, dismissing the appeal.

Being aggrieved by the decision of the Court of Appeal, the 2nd Accused Appellant Appellant by Petition dated 17.06.2019 sought Special Leave to Appeal from this Court. Accordingly, this Court granted Special Leave to Appeal from the aforementioned judgement of the Court of Appeal.

The Learned Counsel for the 2nd Accused Appellant Appellant submitted that there were no eyewitnesses to this case and it was purely based on the circumstantial evidence. The witness PW1 had been arrested by the police as a suspect, however later on named as a witness of the prosecution. 4 contradictions had been marked on behalf of the Appellant during the cross-examination of the witness of PW1 but the Learned Trial Judge has failed to properly evaluate those contradictions. The Learned Counsel further submitted that even though evidence has been led by the Prosecution that several productions were recovered on the statement of the appellant, but failed to mark the said production in the course of the trial. No Government Analysis Reports were marked. Only a section 27 statement under the Evidence Ordinance has been marked in evidence against the Appellant without even the productions being produced.

The Learned Counsel for the 2nd Accused Appellant Appellant submitted that the only evidence available against the appellant is that he assisted in the disposal of the body and that a stone on which there is said to have been a few strands of hair had been recovered on a Section 27 statement however the stone or strands of hair had not been produced in court and there was no expert evidence placed before the court that the said strands recovered by the Police. The Learned Counsel for the 2nd Accused Appellant Appellant further submitted that the daughter of the 1st Accused Appellant Respondent, witness PW2 (K. V. Tharusha Chathurika Kithsiri) commenced giving evidence on 25.11.2013, at the conclusion of the proceedings she had been released on Rs.10,000/- bail and that this amounts to pressure/fear being put on the witness.

I will now proceed to address the first question of law namely that "The Learned High Court Judge and the Hon. Judges of the Court of Appeal failed to take into consideration and properly evaluate the items of evidence led on behalf of the parties at the trial"

In order to address and answer the first question of law I must first evaluate the evidence led at the trial. The evidence led included the testimony of the PW1 Thilakarathna and PW2 Chathurika Kithsiri, the testimony of the investigating Police Officers and the testimony of the JMO who conducted the Post Mortem Examination. The Learned High Court Judge had placed heavy reliance on the testimony of PW1 and PW2. PW1 in his testimony stated the manner in which the 2nd Accused Appellant Appellant along with the 1st Accused Appellant Respondent had disposed of the body of the deceased by putting the body into the toilet pit situated on the property of the 1st Accused Appellant Appellant. Based on the testimony of the investigating Police Officer (PW9), who stated that, the search of the property which led to the discovery of the body of the deceased in the toilet pit was initiated based on information that he received from informants. The testimony of evidence provided by the Police Officer (PW14) investigating the offense stated that following a statement made to him by the 2nd Accused Appellant Appellant that a stone had been discovered with strands similar to human hair seen on that stone. It is important to note however that this stone has not been produced to the court for the purposes of examination nor has any expert evidence been led on the ground that the strands of hair alleged to be caught on the stone came from the body of the deceased or of the fact if the hair on the stone was even human hair.

Based on the evidence of the Judicial Medical Officer (PW7) who conducted the post-mortem inquiry there were 10 injuries on the body, the 1st injury was most likely caused as a result of a stabbing and was fatal. He explained that there were other injuries that could have been caused either by a blunt object or as a result of falling. The Judicial Medical Officer further stated that there were serious injuries caused to the head of the deceased, he stated that it is difficult to adduce the extent of the injuries without conducting an examination of the brain however he testified that these injuries were grave injuries caused to the head most likely by a blunt object.

The Police Officer who investigated the incident (PW9) stated in his evidence that the investigation commenced on 03.05.1999 after 3 complaints were made to him by the 1st Accused Appellant Respondent regarding the disappearance of her

husband. PW9 in his testimony stated that based on information received by informants he became suspicious of the 1st Accused Appellant Respondent and decided to search her property. After which he observed a toilet pit covered with wooden planks and fertiliser bags stacked on top of it situated within the property belonging to the 1st Accused Appellant Respondent. The witness stated he became suspicious upon such observation and recorded a statement from the 1st Accused Appellant Respondent and based on her statement, the body of the deceased was recovered. However, the Honourable Justices of the Court of Appeal correctly observed that, the part of the statement that led to the discovery of the body is dated 05.04.1999 marked එ 1, which is almost one month prior to the date the investigation had been initiated as stated by PW9 in his testimony before court. The testimony of PW9 reflects the correct date of discovery of the body which he stated to be 03.05.1999. The true copy of the extract of the Information Book of Ruwanwella Police is dated 05.04.1999 which could be a typing error. However, I agree with the reasoning of the Learned Justices of the Court of Appeal for not acting upon the section 27 statement of the Evidence Ordinance (This could have been clarified by the Learned High Court Judge during the trial stage).

Thus, the main evidence that remains is the evidence led against the two Accused are the statements made by the Witnesses PW1 and PW2. Justice Jayasuriya in **Sumansena V Attorney General [1999] 3 Sri L.R. at 137** observed that "In *our law of evidence the salutary principle is enunciated that evidence must not be counted but weighed and the evidence of a single solitary witness if cogent and impressive could be acted upon by a court of law. Section 134 of the Evidence Ordinance sets out that no particular number of witnesses shall, in any case, be required for the proof of any fact*". Their Lordships in the above judgement are of the view that a person may be convicted even on the evidence of one witness.

In the case of the **Attorney General V. Sandanam Pitchi Mary Theresa [2011] 2 Sri LR 292** Supreme Court held; "*Credibility is a question of fact and not law. Appellate Judges have repeatedly stressed the importance of Trial Judges' observation of the demeanor of witnesses in deciding questions of fact. Demeanor represents the Trial Judges' opportunity to observe the witness and his deportmen*t." The Learned High Court Judge in her judgement states that she is convinced of the truthful nature of the witness's testimony of PW1, by observing the demeanor of and deportment of the witness despite being subjected to a long and protracted cross-examination.

In the case of **Kotuwila Kankanamalage Premalal Leonard Perera v Attorney General [SC/Appeal/220/2014] decided on 09.11.2018 at page 05** the Supreme Court observed that *"It is evident that a Magistrate will only act on the evidence of a witness if the witness is a credible witness and the credibility is tested mainly on the demeanor or deportment of a witness after applying several tests such as probability/ improbability, spontaneity, belatedness, consistency/ inconsistency, and/or interestedness/ disinterestedness/".* It is apparent that the Learned High Court Judge and the Honourable Judges of the Court of Appeal have carefully analysed, evaluated, and weighed the evidence that was led in the trial and was convinced that the testimonies of these two witnesses in Court were cogent and truthful in nature.

I am of the view that the prosecution has established a strong case with incriminating and cogent evidence against the Accused Appellants. Under these circumstances the evidence of the 2nd Accused Appellant Appellant (the dock statement denying any and all involvement in the incident) had failed to create any reasonable doubt in the prosecution case.

Now I will proceed to address the second question of law namely that "This being a case based on circumstantial evidence, the Learned High Court Judge and the Hon. Judges of the Court of Appeal failed to properly consider and correctly apply the relevant principles applicable to such a case in order to arrive at a decision in the said case".

The rule regarding circumstantial evidence and its effect, has been stated by Chief Justice Shaw in the American Case of **Commonwealth v Webster [1850] 5 Cush. 295, 59 Mass. 295** the following words which have been referred to in **Seetin v The Queen [1965] 68 NLR 316 at 322**. "*Where probable proof is brought of a statement of facts tending to criminate the accused, the absence of evidence tending to a contrary conclusion is to be considered though not alone entitled to much weight, because the burden of proof lies on the accuser to make out the whole case by substantive evidence. But when pretty stringent proof of circumstances is produced tending to support the charge, and it is apparent that the accused is so situated that he could offer evidence of all the facts and circumstances as they exist, and show, if such was the truth, that the suspicious circumstances can be accounted for consistently with his innocence and he fails to offer such proof, the natural conclusion is that the proof, if produced, instead of rebutting, would tend to sustain the charge*"

This view has been reiterated in the case of **King vs. Abeywickrama [1943] 44 NLR 254** where it was held that "*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*".

Based on the evaluation of the evidence, the prosecution case hinges entirely on the testimony of Thilkaratne (PW1) in which he stated that he witnessed the 2nd Accused Appellant Appellant followed by the 1st Accused Appellant Respondent dispose of the body of the deceased into the toilet pit.

In the case of **Bhojraj v Sita Ram [1935] AIR, 193 PC 60 at 62** Lord Roche set out the real test for accepting and rejecting a testimony of a witness based on testimonial trustworthiness stating that "*How consistent is the story with itself (consistency per se). How does it stand the test of cross-examination? (Stability under cross-examination) How far it fits in with the rest of the evidence and the circumstances of the case (inconsistency inter se)*." It is important to note that PW1 has maintained the same position in his testimony throughout the trial.

In order to convict an Accused person on the basis of circumstantial evidence it is the duty of the court to be satisfied that the facts proved are consistent with the guilt of the accused and that the facts proved exclude every other possibility other than the guilt of the accused. In the case of **Gunawardena v the Republic [1981] 2 SLR 315 CA** it was held that "*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 the case of **Hanumant vs State of M.P [1952] AIR SC 343; 1953 Cri LJ 129** have laid down the following conditions which must be fulfilled before a case against an accused based on circumstantial evidence can be said to be fully established;

"(i) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, that should not be explainable on any other hypothesis except that the accused is guilty;

(iii) The circumstances should be conclusive;

(iv) They should exclude every possible hypothesis except the one to be proved.

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

I am of the view that these conditions are fulfilled in the present case which is solely dependent on circumstantial evidence. The Prosecution has proved its case according to the aforesaid measurements which are used on a case based on circumstantial evidence. When considering the cumulative effect of the evidence led in the present case, such as; the witness PW1's testimony of how the 2nd Accused Appellant Appellant and the 1st Accused Appellant Respondent had disposed of the body of the deceased which indicates that the 2nd Accused Appellant Appellant played a participatory role, PW2 witnessed her mother removing some earth with some red powder-like substance from the footpath and the testimony of the PW14 where he discovered a stone with human-like hair attached to it are all strands of evidence when considered together are sufficient to ascertain guilt on part of the both the Accused as all of these actions amount to the concealment of the crime that they are accused of committing.

Now I will proceed to answer the third question of law, namely that "The Learned High Court Judge and the Hon. Judges of the Court of Appeal failed to evaluate the evidence led against each accused in this case, separately, in arriving at a decision against each such accused."

In terms of evidence led against each accused, the evidence that is most significant is the testimony of Thilakarathna PW1. The evidence given by PW2 the 1st Accused Appellant Respondents daughter corroborates certain aspects of the testimony provided by Thilakarathna. Further based on the statement provided by the 2nd Accused Appellant Appellant to the investigating Police Officer (PW14) a stone had been discovered with hair similar to human hair attached to it, however, no expert evidence regarding this stone uncovered by such statement had been led in the trial. Therefore, the relevancy of its contents cannot be given any evidentiary value.

Thus, as reiterated above the main evidence against each accused is the testimony of the two witnesses PW1 and PW2. It can be contended however that the testimony provided by PW2 does not imply guilt on part of the 2nd Accused

Appellant Appellant as she claimed that she only saw her mother (the 1st Accused Appellant Respondent) clearing what looked like a red earth-like substance from the pathway approaching the house. Therefore the main evidence inferring the involvement of the 2nd Accused Appellant Appellant of crime is the testimony of PW1.

It is important to note that even though witness PW1 had been arrested on suspicion he had never been charged with the commission of the offence and hence was never on the footing of an accomplice. This position has been reiterated in the testimony of the investigating Police Officer (PW9). Therefore the testimony of witness PW1 does not fall within the footing of section 133 of the Evidence Ordinance of Sri Lanka.

It has been raised by the Learned Counsel for the 2nd Accused Appellant Appellant that the witness PW1 was first arrested as a suspect but later named as a witness for the prosecution and that 4 contradictions have been marked in the testimony of the witness during the cross-examination on the witness and that the learned Trial Judge had failed to properly evaluate those contradictions. The Learned High Court Judge in her Judgement states that the accused was arrested as an accomplice and upon receiving a pardon has become a witness for the state. This contradicts the evidence provided by the Ruwanwella OIC Jayalath Ralalage Senivartane (PW9) in which he stated that the witness was arrested on suspicion but never named as an accused.

With regard to the contradictions marked in the testimony of the witness PW1, the Learned High Court Judge in her judgement stated that when a witness is giving evidence about an occurrence that took place in the year 1999 in 2013 there will be discrepancies as a witness is not expected to have a photographic memory. Even though there were contradictions and lacunas in the testimony of witness PW1 those contradictions are not material because his stance remained unchanged throughout the cross-examination process. Therefore, the Learned Judge of the High Court was of the opinion that there was no reasonable doubt raised on testimony provided by the witness. I am in agreement with the stance of the Learned High Court Judge.

In **C.D. Fields Law Relating to Witnesses 2nd Edition, on page 208** the Author observes as follows "*There is nothing in law to justify the proposition that evidence of a witness, who happens to be cognizant of a crime, or who made no attempt to prevent it, or who did not disclose its commission, should only be*

relied on to the same extent as an accomplice. The real question in such a case was the degree of credit to be attached to the testimony of such a witness and that depends on all the facts and circumstances of the particular case".

In the case of **Karunartne v Attorney General [2005] 2 Sri L R. 236,** Justice Jagath Balapatabendi observed that "*Where evidence is generally reliable, much importance should not be attached to the minor discrepancies and technical errors"*. Such as the contradictions that were drawn from PW1 testimony which can be expected when a long period of time has elapsed since the incident and giving evidence in court.

It was also raised that the statement from the witness was belated. When questioned as to his delay in reporting to the Police the witness stated that he was repeatedly threatened by the 1st Accused Appellant Respondent and 2nd Accused Appellant Appellant to remain quiet and not to disclose what he saw to anyone. He has given a reasonable explanation for making a belated statement. In the case of **Gamage Prabhath Janaka Nayana Priyantha Perera v Attorney General [CA/107/2012] decided on 27.05.2016 at page 6,** Justice A.H.M.D Nawaz of the Court of Appeal observed that "*Why the witness did not reveal a dastardly act or otherwise is a fact for him or her to explain and in fact if the explanation is plausible and credible the Court must act on the testimony albeit belated. If the explanation offered for the delayed statement is plausible and acceptable and the Court accepts the same as plausible, there is no reason to interfere with the conclusion made by the trial court for accepting the belated testimony"*.

The witness avowed that he had no relationship with the deceased. The witness claimed that he was acquainted with the 1st Accused Appellant Respondent as he would visit her premises to consume Kasippu. The witness claimed he was acquainted with the 2nd Accused Appellant Appellant whom he had met a few times at the house of the Accused Appellant Respondent when he called over to consume illicit alcohol (Kasippu). The Investigating Police Officer (PW9) avowed that the witness PW1 was never arrested on suspicion and was never named as an accomplice. In the absence of ill will towards the Accused Appellants or affection with the deceased the nature of the witness's statement albeit belated, I find that the reason given by the witness for belatedness plausible and acceptable.

The 2nd Accused Appellant Appellant in his defence at the trial made a dock statement saying "නිලකරත්න කිව්වේ අමුලික බොරුවක්. මම නිර්දෝෂියි". In

the case of **Rex v Cochrane and Others [1814] Gurney's Report 479**, the court held that "*No person accused of a crime is bound to offer any explanation of his conduct or of circumstances of suspicion which attach to him; but, nevertheless if he refuses to do so where a strong prima facie case has been made out, and when it is in his own power to offer evidence, if such exists, in explanation of such suspicious circumstances which would show them to be fallacious and explicable consistently with his innocence, it is a reasonable and justifiable conclusion that he refrains from doing so only from the conviction that the evidence so suppressed or not adduced would operate adversely to his interest.*"

In **Krishantha de Silva v The Attorney-General [2003] 1 Sri LR 162**, it was held that"…*a prima facie case was made against the accused. It is noted that even though the accused made a statement from the dock he was silent as to what happened after the deceased was placed on the bed. I am of the view that the statement of the accused that he did not know anything about the incident cannot be accepted. An accused person is entitled to remain silent but when the prosecution has established strong and incriminating evidence against him he is required to offer an explanation of the highly incriminating circumstances established against him*. "Accordingly, the court tends to apply Ellenborough dictum in such situations.

In The **King v Wickremasinghe [1941] 42 NLR 313**, it was held that "*in the absence of an explanation, the court was entitled to form the opinion that the accused was directly responsible*". There is a strong and prima facie case against the 2nd Accused Appellant Appellant in the present case. Nevertheless, the 2nd Accused Appellant Appellant has failed to adduce any evidence or to call any witnesses to prove his innocence. The only evidence adduced by the 2nd Accused Appellant Appellant is the dock statement claiming his innocence however, not provided any explanation nor evidence thereafter.

Thus, in my opinion, the evidence available against the 2nd Accused Appellant Appellant is strong and incriminating; incompatible and inconsistent with the innocence of the 2nd Accused Appellant Appellant and consistent with his guilt. There is consistent and cogent evidence against the 2nd Accused Appellant Appellant. The Honourable Judges of the Court of Appeal stated that there is no reason to doubt the evidence of PW1 as there is no inconsistency nor lack of credibility regarding the evidence. The cumulative effect of all the circumstantial evidence led at the trial is the guilt of the 1st Accused Appellant Respondent and the 2nd Accused Appellant Appellant. Therefore, it is evident that the 2nd

Accused Appellant Appellant voluntarily participated in the disposal of the dead body of the deceased and played a participatory role as it is most unlikely for an innocent person to partake in the disposal of a dead body to which he has no connection whatsoever. Accordingly, the only conclusion that could be arrived at on such evidence is that the 2nd Accused Appellant Appellant is guilty of the offence charged.

Therefore, considering all of the above factors in this appeal of the 2nd Accused Appellant Appellant, I am of the view that the Learned High Court Judge and the Honourable Judges of the Court of Appeal had arrived at a correct conclusion that the prosecution had proved the case against the 1st Accused Appellant Respondent and the 2nd Accused Appellant Appellant beyond a reasonable doubt.

Accordingly, I answer the 1st, 2nd, and 3rd questions of law on which special leave to appeal has been granted in the negative. For these reasons, the Judgment of the Court of Appeal and that of the High Court of Kegalle are affirmed. The Appeal of the 2nd Accused Appellant Appellant is hereby dismissed.

Judge of the Supreme Court

MURDU N.B. FERNANDO, P.C., J.

I agree.

Judge of the Supreme Court

MAHINDA SAMAYAWARDHENA, J.

I agree.

Judge of the Supreme Court