

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

*In the matter of an Appeal under and in
terms of Article 128 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.*

SC Appeal No:

23/2016

The Democratic Socialist Republic of Sri
Lanka.

COMPLAINANT

SC/SPL/LA Application No:

245/2014

Vs.

Malwenna Hewavitharanage Samantha

Court of Appeal Case No:

87/2010

Pushpakumara,

No. 19, Godawela, Kivula,

Matale.

HC Anuradhapura Case No:

343/2005

ACCUSED

AND BETWEEN

Malwenna Hewavitharanage Samantha

Pushpakumara,

No. 19, Godawela, Kivula,

Matale.

ACCUSED-APPELLANT

Vs.

The Hon. Attorney General,
Attorney General Department,
Colombo 12.

COMPLAINANT-RESPONDENT

AND NOW BETWEEN

Malwenna Hewavitharanage Samantha
Pushpakumara,
No. 19, Godawela, Kivula,
Matale.

ACCUSED-APPELLANT-APPELLANT

Vs.

The Hon. Attorney General,
Attorney General Department,
Colombo 12.

**COMPLAINANT-RESPONDENT-
RESPONDENT**

Before

: A.H.M.D. Nawaz, J.

: Arjuna Obeyesekere, J.

: Sampath B. Abayakoon, J.

Counsel : Saliya Pieris, P.C. with Susil Wanigapura,
Jagadeesha Ranasinghe and Ishan Jayasundara
instructed by Manjula Balasooriya for the Accused-
Appellant-Appellant.
: Anoop de silva DSG for Complainant-Respondent-
Respondent

Argued on : 04-05-2026

Written Submissions : 02-06-2026 (By the Complainant-Respondent-
Respondent)
: 17-02-2016 (By the Complainant-Respondent-
Respondent)
: 25-05-2026 (By the Accused-Appellant-Appellant)

Decided on : 15-09-2026

Sampath B. Abayakoon, J.

The accused-appellant-appellant (hereinafter referred to as the accused) preferred this appeal by being aggrieved of the appellate judgment dated 31-10-2014 pronounced by the Court of Appeal.

From the said judgment, the Court of Appeal dismissed the appeal preferred by him challenging his conviction and sentence by the High Court of Anuradhapura for the charges preferred against him.

When this matter was considered on 03-02-2016 for the consideration of granting leave to appeal from the impugned judgment, this Court granted leave on the questions of law as set out in sub-paragraphs (a) to (f) of paragraph 8 of the petition dated 11-12-2014.

The said questions of law read as follows -

1. Whether the evidence led by the prosecution failed to prove the charge of murder against the Accused-Appellant-Appellant which the High Court and the Court of Appeal failed to take cognizance of?
2. Whether their Lordships in the Court of Appeal and the learned High Court Judges have failed to consider that the medical evidence is not conclusive and is inadequate to establish beyond reasonable doubt the nexus between the injured and the weapon produced in evidence?
3. Whether their Lordships in the Court of Appeal and the learned High Court Judges have failed to consider that the version elicited by the prosecution witness No. 01 is highly improbable and is not worthy of credit?
4. Whether their Lordships in the Court of Appeal and the learned High Court Judges have failed to consider that no irresistible inference can be drawn in respect of the guilt of the Petitioner in respect of the charges against the Petitioner?
5. Whether there was a failure of the prosecution to unfold the narrative, especially in the failure to call the witness Rankirage Jayasinghe and whether such failure ought to vitiate the conviction of the Petitioner on the count of murder?
6. Whether in all the circumstances of the case the verdict and the sentence imposed on the Petitioner by the High Court of Anuradhapura should be allowed to stand?

At the hearing of this appeal, this Court heard the submissions of the learned President's Counsel who represented the accused as well as the submissions of the learned Deputy Solicitor General (DSG) who represented the complainant- respondent-respondent, the Hon. Attorney General.

This Court also had the benefit of considering the pre-argument as well as post-argument written submissions tendered by the parties for the purpose of determining this appeal.

By the indictment dated 09-09-2005, the Hon. Attorney General has initiated proceedings against the accused before the High Court of Anuradhapura.

The charges preferred against him are as follows -

1. That he on or about 28-05-2000 at a place called Namalpura caused the death of one Velage Rankira, and thereby committed the offence of murder punishable in terms of section 296 of the Penal Code.
2. At the same time and at the same transaction, caused grievous hurt to Rankirage Jayawickreme, and thereby committed an offence punishable in terms of section 317 of the Penal Code.

When the indictment was read out to the accused, he has pleaded not guilty to both the charges preferred, and the trial has proceeded without a jury.

After the conclusion of the prosecution case and when the accused was called upon for his defence, he has decided not to give evidence or call witnesses on his behalf. Accordingly, he has made a dock statement and has closed his case.

After listening to the submissions made by the prosecuting State Counsel as well as the defence Counsel, the learned High Court Judge of the Provincial High Court of North Central Province holden in Anuradhapura, pronouncing her judgment on 04-08-2010, has convicted the accused for both the charges preferred against him for the reasons as set out in the judgment.

After having convicted, the learned High Court Judge as she should have, has proceeded to record the allocutus of the accused in terms of section 280 of the Code of Criminal Procedure Act.

In his allocutus, the accused has stated the following -

“මම යුද හමුදාවේ සේවයේ යෙදී සිටියේ. මම මිනී මැරීමක් සිදු කළේ නැහැ. මරණ චේතනාවක් තිබුනේ නැහැ. මග රැකලා මට පහර දීමක් කල නිසා තමයි ජීවිත ආරක්ෂාවට එම ස්ථානයට ගියේ. එපමණයි.”

Accordingly, the learned trial Judge has sentenced the accused for death in relation to the 1st count. He has also been sentenced to a term of 5 years rigorous imprisonment in relation to the 2nd count preferred against him. In addition, he has been ordered to pay a fine of Rs. 5000/- with a default sentence of 18 months imprisonment.

After hearing the appeal preferred by the accused to the Court of Appeal challenging his conviction and the sentence, the Court of Appeal has found no reasons to interfere with the judgment of the learned High Court Judge. Accordingly, the appeal has been dismissed while affirming the conviction and the sentence.

The Facts

The evidence as revealed before the High Court, which led to the conviction and the sentence for the indictment preferred against the accused can be summarized in the following manner.

The only eye-witness to the incident had been Rankirage Jayawickreme (PW-01) who was also the injured person in relation to the 2nd count preferred against the accused. He is the son of the deceased Velage Rankira.

On the day of the incident, namely 28-05-2000, he had been sleeping at his house after having consumed some liquor. Around 7.00 - 7.30 in the night, he has heard a loud noise and a commotion. When he went out of the house to inquire, he has seen the accused in front of his house, and his daughter who was outside of the house has informed him that his wife went to the neighbouring house belonging to his elder brother. The wife who returned in a while has informed him that she is scared to be at home and has suggested that all of them should go to his mother's house to spend the night. Accordingly, he and his family members have gone to the house where his father and mother lived, which was about a quarter mile away.

According to his evidence, the accused was a person known to him, although he did not know his name. He has stated that he used to visit a place called

Wawpitiya around 5.00 - 5.30 in the evenings after completing his day's work, in order to consume liquor. The accused was a person who used to frequent the place where liquor was sold. As a result, the witness has come to know that he is a person working in the army. It has been his evidence that although he saw the accused in front of his house after coming out to inquire into the noise, he did not speak with him.

After reaching his parents' home, his wife has informed him that they left their house door open and the door should be secured, which has resulted in him leaving his parents' house to get back to his house. After hearing the incident, his father has also accompanied him. When they reached the village school while walking towards his house, they have met the accused. The accused has then inquired from his father where they were going. When his father replied, he had told him that he had a card which allows him to take out any man or woman from a house, and had attempted to take out something from his pocket. His father has replied stating that he cannot see anything at this time of the day and had asked the witness to bring a torch. This has resulted in PW-01 moving away from the place where the deceased and the accused were in order to go to his elder's brother's house, which was nearby.

It has been his evidence that after he walked a few steps away from them, the accused came running towards him and attacked him from behind with a kathi knife. Although he has stated that he heard the footsteps of the accused after he walked a very short distance, he has shown a distance of about 100-125 feet when asked to show the distance. He has testified that, the moment he was attacked, he fell unconscious, and after he regained consciousness, he went to his elder brother's house and informed the incident to the members of the house. He has been specific that he did not see his father being attacked, or he did not look for him when he went to his brother's house. At his brother's house, he has again fallen unconscious and had regained consciousness two days thereafter at the Anuradhapura Hospital.

When he inquired about his father, his brother-in-law has informed him that he was killed. Subsequently, he has identified the accused at an identification parade held in that regard. He has stated that he is not in a position to identify the kathi knife used by the accused to attack him.

Under cross-examination, he has been specific that he did not see the accused attacking his father, and he has also stated that he did not see the accused causing damages to his house door, but it was told to him by his daughter and wife. He has admitted that his brother is Rankirage Jayasinghe.

At the trial, the prosecution has called the Judicial Medical Officer (JMO) who examined PW-01 after he was admitted to the hospital and the doctor who conducted the post-mortem regarding the deceased person. The Medico-Legal Report in relation to PW-01 has been marked as P-02, while the Post-Mortem Report has been marked as P-04.

The Medico-Legal Report marked P-02 reveals that most of the injuries suffered by PW-01 had been deep cut wounds that can be caused by a sharp cutting weapon. The evidence of the JMO reveals that they are grievous injuries in nature, which fall within the provisions of section 317 of the Penal Code. When the JMO gave evidence, he has expressed an opinion that the kathi knife shown to him can be made use to cause such injuries. The prosecution has marked the kathi knife so produced as P-03. It needs to be noted that the JMO has observed PW-01 as a person smelling of liquor.

According to the evidence of the doctor who conducted the post-mortem, she has also observed several deep cut injuries on the body of the deceased and has determined that his death was due to the injuries suffered by him. She too has expressed the opinion that such injuries can be caused by using the kathi knife marked P-03. It has been her opinion that the death would have been instantaneous as a result of the injuries suffered by the deceased.

Apart from the said medical evidence, the prosecution has called an army officer who worked with the accused on the day of the incident. He and the accused, with several other army soldiers, were staying at a place near the

village where this incident occurred in order to collect sand from a nearby stream to be taken to their camp. On the day of the incident, the accused had left the place where they were staying stating that he was going to the camp, which was at Saliyapura, but had not returned. When he inquired from the Saliyapura camp, he was informed that the accused had not come there. Subsequently, he has come to know from another officer that the accused had been arrested by the police.

The police officers who conducted investigations into this incident have given evidence at the trial, and the relevant portion of the statement made to the police by the accused upon which the kathi knife was recovered has been marked as evidence in terms of section 27(1) of the Evidence Ordinance.

At the closure of the prosecution case, when called for his defence, the accused has chosen to only make the following dock statement -

“ස්වාමීනි මෙම මිනී මැරීම සම්බන්ධයෙන් මං කිසිම දෙයක් දන්නේ නැහැ කියලා කියන්නේ.
මට කීමට ඇත්තේ එපමණයි”.

The learned High Court Judge, pronouncing her judgment, has determined that there were no material contradictions or omissions in relation to the evidence placed before the Court. Having considered the medical evidence and the evidence of eye witnesses of the incident, and also the last seen theory where it has been determined that there was uncontradicted evidence to the effect that at the time the deceased was attacked, only the accused had been with him and no one else, the learned High Court Judge has proceeded to convict the accused for both the charges and to sentence him accordingly.

When the matter was considered before the Court of Appeal, the Court of Appeal too has concluded that the evidence led before the trial Court has not been discredited or materially challenged. It has also been held that the identity of the accused was also not a thing disputed at the trial.

However, the Court of Appeal has determined that the accused was found guilty for the charge of murder purely on circumstantial evidence. This

appears to be a reference to the fact that the only eye witness to the incident, PW-01, has not seen the actual attack of the deceased by the accused. Having considered the evidence placed before the Court as circumstantial in that regard, the Court of Appeal has concluded that the prosecution has proved the case beyond reasonable doubt against the accused, and hence, the conviction and the sentences of him by the High Court need not be disturbed, while affirming the conviction and the sentence.

The Consideration of the Questions of Law

The learned President's Counsel relied heavily on the argument that the prosecution failed to call Rankirage Jayasinghe, the listed PW-02 in the indictment, who is the brother of Rankirage Jayawickreme (PW-01), on the basis that the evidence of PW-01 reveals that he was also an eye witness. It appears that the learned President's Counsel has relied on the evidence where PW-01 says that after he regained consciousness at the hospital, it was Jayasinghe who told him that their father was killed.

However, when taken as a whole, it is abundantly clear to me that the said Jayasinghe was not at all an eye witness to the incident. The PW-01 has been very clear in his evidence that at the time of the incident, it was only him, his father the deceased, and the accused who was there, and no one else. The PW-01 has been very categorical that soon after he was attacked by the accused, he became unconscious and only after he regained consciousness, he went to his brother's house to inform the incident.

Although it may have been better if the prosecution decided to call PW-02 only to establish the fact that PW-01 came to his house with bleeding injuries and informed him what happened, it is my considered view that such a lapse on the part of the prosecution has not created any reasonable doubt as to the truthfulness of the evidence of PW-01.

Although several pieces of evidence by PW-01 at the trial were cited as inconsistencies in evidence, I am unable to find any such inconsistencies.

It was argued that the time of the death was uncertain when considering the evidence of PW-01 and the doctor who conducted the post-mortem. The evidence of PW-01 clearly states that this incident occurred around 8.30 p.m., which can be very much true if one considers the sequence of events that have taken place before the incident. The doctor who conducted the post-mortem has stated that she was informed that the death had occurred around 6.00 p.m. on the previous day, which is clearly something she has heard from someone. What is material is that the deceased has succumbed to his injuries on the previous day at the place of attack. What the doctor has stated based on hearsay cannot be considered as a major contradiction as to the time of death.

When considering whether PW-01 was a truthful witness, the manner in which he has given evidence is very much material. If he was uttering falsehood knowing very well that there were no other eye witnesses to the incident, he could have easily implicated the accused directly to the damage caused to the main door of his house and also attacking his father. He has consistently maintained the position that he did not see the accused causing damages to the door, but only saw him in front of his house when he went out after hearing the screams of his daughter.

As to the time of the attack by the accused on him, he has clearly stated that he did not see the accused attacking his father. If he was lying, he could have easily said that either the accused attacked his father first and thereafter attacked him, or else the accused attacked him first and went and attacked his father thereafter.

His evidence taken in its totality clearly establishes the fact that when he said in his evidence that “කාක්කට කොටා ඉවර වෙලා මම ඇවිල්ලා කෙටුවා”, was not an attempt to show that he saw the father being attacked, but something he had assumed afterwards given the facts and the circumstances and based on what he heard from others. What is certain is that at the time of the attack, it was the deceased and PW-01 who was present other than the accused, and it was

the accused who has come and attacked the PW-01 causing the injuries he suffered.

In the case of **James Silva Vs. The Republic of Sri Lanka (1980) 2 SLR 167 at 176**, it was held;

“A satisfactory way to arrive at a verdict of guilt or innocence is to consider all the matters before the Court adduced whether by the prosecution or by the defence in its totality without compartmentalising and, ask himself whether a prudent man, in the circumstances in the particular case, he believes the accused guilty of the charge or not guilty.”

For the reasons as considered above, I do not find any acceptable basis to doubt the credibility of PW-01 as to the events that occurred on that night.

It is settled law that even in a case where there is only one witness, if the evidence of such a witness is credible and trustworthy that can be relied upon, and a trial Court need not look for more corroboration, the Court can act upon such evidence.

The relevant section 134 of the Evidence Ordinance reads as follows:

134. No particular number of witnesses shall in any case be required for the proof of any fact.

In the Indian Supreme Court case of **Mulluwa Vs. The State of Madhya Pradesh 1976 AIR 989**, it was stated that:

“Testimony must always be valued and not counted.”

After considering the relevant principles as to the credibility of a witness **Jayasuriya, J.**, in the case of **Sumanasena Vs. Attorney General (1999) 3 SLR 137** expressed the following view:

“The Court could have acted on the evidence of solitary witness Nandasena, provided the trial Judge was convinced that he was giving

cogent, inspiring and truthful testimony in Court. The learned trial Judge has come to such a favourable finding in favour of witness Nandasena as regards to his testimonial trustworthiness and credibility.”

It was argued that the medical evidence presented to the trial Court was not conclusive and was inadequate to establish the nexus between the injuries and the weapon produced in evidence. The evidence of the police officer who conducted the investigation (PW-16) only reveals that a broken pole was recovered near the deceased. According to the evidence of both the doctors, all major injuries suffered by the deceased as well as the PW-01 have been cut injuries. Injury number 01 observed on the body of the deceased was a deep cut injury. The doctor has expressed an opinion that grave force should be used to inflict such a deep cut injury.

It was argued that the accused being a disabled soldier could not have caused such a deep cut injury. It was also argued that the doctor had failed to identify with certainty that the injuries had been caused using the kathi knife produced as evidence.

In my view, no medical doctor can say with certainty that a weapon produced as evidence was the actual weapon that has been used to commit the crime as he would not be an eye witness to an incident. A medical witness can only express an opinion as to a weapon produced before the witness based on the injuries that was observed on the body of the deceased or the injured person. Clearly, the medical evidence has established the cause of death beyond reasonable doubt. Therefore, I find no inconsistencies in the medical evidence as alleged.

It is well settled law that whether the case before a trial Court is a criminal case or a civil case, where the mode of proof is different from each other, the Court has to consider the evidence as a whole and not on a piecemeal basis. In a criminal case, a trial Judge has to consider the evidence to find whether such evidence proves beyond reasonable doubt that it was the accused who committed the crime. If the evidence creates a reasonable doubt as to the guilt

of the accused, the benefit of that doubt should be given to the accused and he should be acquitted of the charges.

In the case of **Queen Vs. Sumanasena 66 NLR 350**, it was stated that:

“In a criminal case suspicious circumstances do not establish guilt. Nor does the proof of any number of suspicious circumstances relieve the prosecution of its burden of proving the case against the accused beyond reasonable doubt and compel the accused to give or call evidence.”

It was also held in the case of **Pantis Vs. The Attorney General (1998) 2 SLR 148**, that:

“As the burden of proof is always on the prosecution, to prove its case beyond reasonable doubt and no such duty is cast on the accused and it is sufficient for the accused to give an explanation which satisfies Court or at least is sufficient to create a reasonable doubt as to his guilt.”

In evaluating evidence, a trial Judge should always be mindful that a witness who gives evidence as to an incident that may have occurred several years previously cannot be expected to possess a photographic memory of the events that took place relating to an incident.

At this juncture, I find it appropriate to refer to the Indian Supreme Court case judgment in **Bhoginbhai Hirijibhai Vs. State of Gujarat (AIR 1983 SC 753 at page 756-758)** where it was held:

- 1) *“By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.*
- 2) *Ordinarily, so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.*

- 3) *The powers of observation differ from person to person. What one may notice, the other may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.*
- 4) *By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purpose of the conversation. It is unrealistic to expect a witness to be a human tape recorder.*
- 5) *In regard to exact time of an incident, or the time duration of an occurrence, usually people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates of such matters. Again, it depends on the time-sense of individuals which varies from person to person.*
- 6) *Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused or mixed up when interrogated later on."*

I find that although the evidence-in-chief of PW-01 has been partly led before another Judge, the conclusion of his evidence-in-chief and the cross-examination as well as the rest of the evidence has been led and concluded before the same learned High Court Judge who pronounced the judgment.

It is well settled law that an appellate forum will be reluctant to disturb the findings of fact by a trial Judge unless the said findings are manifestly wrong and not in accordance with evidence.

In the case of **Dharmasiri Vs. Republic of Sri Lanka (2010) 2 SLR 241**, it was held:

"Credibility of a witness is mainly a matter for the trial Judge. Court of Appeal will not lightly disturb the findings of the trial Judge with regards to the credibility of a witness unless such findings are manifestly wrong. This is because the trial Judge has the advantage of seeing the demeanor and deportment of the witness."

I find that when this matter was considered by the Court of Appeal, the learned Judges of the Court of Appeal have looked at the evidence placed before the trial Court on the basis that this was a case where the prosecution has relied entirely on circumstantial evidence, which in fact I find is a misdirection as to the evidence placed before the Court.

It is abundantly clear that this was a case where the prosecution has relied mainly on an eye witness account. The prosecution has relied on circumstantial evidence only in order to establish the nexus between the accused and the incident where PW-01 suffered cut injuries and his father was killed. The evidence of PW-01 clearly provides that within few seconds after he left the place where his father and the accused were, he had been attacked by the accused from behind. The medical evidence placed before the Court clearly establishes the probability of injuries being caused to PW-01 and his father in a single incident where the time gap between the two attacks is negligible. It is under those circumstances that the circumstantial evidence becomes relevant only in that regard.

The learned trial Judge has clearly considered the fact that there was no possibility for anyone else other than the accused to cause the injuries to the deceased, which resulted in his death because he was the only person with the deceased at the time of the attack, which is commonly known as the last seen theory.

The principle of last seen theory was considered by the Supreme Court of India in the judgment of **State of Uttar Pradesh Vs. Satish (2005) 3 SCC 144**, in the following manner;

“The last seen theory comes into play where the time-gap between the point of time when the accused 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 accused being the author of the crime becomes impossible.”

In the recent judgment of the Indian Supreme Court in **Surajdeo Mahto Vs. The State of Bihar (Cr A 1677 of 2011 decided on 04th August 2021 – Indian SC) (Citation: LL 2021 SC 351) Surya Kant J. (as he was then) with Chief Justice N. V. Ramana and Aniruddha Bose, J.** observed that,

“Briefly put, the last seen theory is applied where the time interval between the point of when the accused and the deceased were last seen together, and when the victim is found dead, is so small that the possibility of any other person other than the accused being the perpetrator of crime becomes impossible ...”

Although there exists a misdirection by the Court of Appeal in the way it considered the evidence on the basis of circumstantial evidence, I find that it has not prejudiced the substantial rights of the parties or occasioned a failure of justice in terms of the proviso of Article 138 (1) of the Constitution.

It is clear that the final conclusion of the Court of Appeal has been reached after having considered the evidence placed before the trial Court in its totality with a view of determining whether the prosecution has proved the case against the accused beyond reasonable doubt.

Having considered the facts and the circumstances relating to the matter under appeal, especially the time of the attack and the medical evidence where it has been mentioned that the death of the deceased was instantaneous, I find no basis to disagree with the learned High Court Judges’ finding that the last seen theory should be made applicable in relation to the evidence placed before the trial Court as this was a clear case where such a concept can be considered as relevant.

Another matter that needs consideration in this appeal is the allocutus made by the accused after he was found guilty to the charges preferred against him and before he was sentenced.

In the case of **Periyambalam Vs. The Queen 74 NLR 515**, it was held by **Siva Supramaniam, J.;**

“But the 1st appellant, in answer to the allocutus at the conclusion of the trial stated as follows: “I state that I committed culpable homicide not amounting to murder”. Whatever may be the history of the origin of the allocutus at criminal trials, we are satisfied in this case that the statement of the 1st appellant was an unequivocal and unqualified admission to the Court that the injuries on the deceased which resulted in his death were inflicted by him. It was submitted by learned counsel for the appellants that the statement made by the 1st appellant is not part of the evidence in the case and this Court will not therefore be justified in acting upon it. We are unable to agree.

In the case of Martin Appu Vs. The King (52 N.L.R. 119) it was held that the Court of Criminal Appeal may take into consideration statements made by the appellant in his notice of appeal although such statements refer to matters outside the evidence given at the trial. In considering the 1st appellant’s appeal, therefore, this Court cannot ignore the effect of the aforesaid admission.”

It is my considered view that although an allocutus has no place before a trial Court, what an accused states in his allocutus becomes relevant in an appeal preferred by the accused.

It appears that when the relevant witnesses were giving evidence, the accused has not taken any particular line of defence challenging the evidence of PW-01, which has implicated him to the crime other than posing general questions to the witness. As I have reproduced earlier, at the closure of the prosecution case and when the accused was called upon for his defence, the position taken up by him had been a total denial.

However, in his allocutus he has made a clear statement confirming his presence and his involvement in the crime. He has stated something to the

effect that he acted in self-defence, which was never a position taken in the trial.

For the reasons as considered in this judgment, I find no merit in the appeal preferred by the accused.

Accordingly, I answer the questions of law no. 1, 2, 3, 4, and 5 in the negative while answering the 6th question of law in the affirmative.

The appeal is dismissed for want of merit.

Hence, I affirm the trial Court judgment dated 04-08-2010 and the appellate judgment of the Court of Appeal dated 31-10-2014.

Judge of the Supreme Court

A.H.M.D. Nawaz, J.

I agree.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court