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

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

Court of Appeal No:
CA/HCC/ 0365/2017

High Court of Vavuniya
Case No. HCV/2703/2017

Selladurai Thilakeswaram alias Sugun alias Karan alias Sudan

ACCUSED-APPELLANT

vs.

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

COMPLAINANT-RESPONDENT

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

COUNSEL : **I.B.S. Harshana for the Appellant.**
Janaka Bandara, DSG for the Respondent.

ARGUED ON : **06/11/2023**

DECIDED ON : **15/12/2023**

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JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General for committing the offences as mentioned below.

1. On or about the 24th of December 2010 at Vavuniya within in the jurisdiction of the High Court of Vavuniya the Accused by being in possession of a T56 automatic gun without a permit committed an offence punishable under Section 22(3) of the Firearms Ordinance read together with the Section 22(1) of the same as amended by the Act No.22 of 1996.
2. Within the aforementioned day place and the course of same transaction the accused by being in possession of 15 live ammunition committed ah offence punishable under Section 9(2) of the Explosive Ordinance of No. 21 of 1956 as amended by the Acts No.33 of 1969 and 18 of 2005.

The trial commenced before the High Court Judge of Vavuniya. The prosecution had led 04 witnesses and marked production P1-6 and closed the case. The Learned High Court Judge having satisfied that evidence presented by the prosecution warranted a case to answer, called for the

defence and explained the rights of the accused. The Appellant offered evidence from the witness box and closed his case.

After considering the evidence presented by both parties, the learned High Court Judge had convicted the Appellant as charged and sentenced him to life imprisonment on first count and imposed one-year rigorous imprisonment to the second count. No fine was imposed on the second charge.

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

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

The Appellant had raised following appeal grounds:

1. The statement received in terms of Section 27(1) of the Evidence Ordnance cannot be used against him.
2. The infirmities in the judgment of the Learned High Court Judge.

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

The Appellant was arrested on 23.12.2010 at Vaddukotai Jaffna by PW1 SI/Thakshitha along with other police officers mentioned in the indictment. PW1 was directed to conduct investigation by the Senior Superintendent of Police Vavuniya upon an information received by the police. The Appellant was suspected to be involved in a murder and a robbery committed in the Vavuniya area.

The Appellant was brought to Vavuniya Police Station on 24.12.202 and a statement was recorded. Upon information provided by the Appellant, a T56

gun had been recovered by the police from a place called Pattaikadu. The investigation further revealed that the gun had been robbed from an Army officer at the Moondrumurippu Army camp.

The production had been properly handed over to the reserve officer and was taken to Government Analyst Department subsequently.

According to the Government Analyst the gun sent for analysis falls under the category of automatic firearm.

It is trite law that the burden of proof is on the prosecution in all criminal cases.

In **The Queen v. K.A. Santin Singho 65 NLR 447** the court held that:

> *"It is fundamental that the burden is on the prosecution. Whether the evidence the prosecution relies on is direct or circumstantial, the burden is the same. This burden is not altered by the failure of the appellant to give evidence and explain the circumstances.*

In this case no direct evidence is available but the case rests on the recovery of a gun under Section 27(1) of the Evidence Ordinance.

It is pertinent to note that for admissibility under section 27(1), of the Evidence Ordinance, the fact discovered must be a direct consequence of information provided by an accused who is in police custody. In this case a gun was recovered upon the statement made by the Appellant.

Under Section 27(1) of Evidence Ordinance the relevant portion of the statement need to be marked in the trial in order prove the recovery. For this purpose, the statement of the accused may be edited by eliminating things which are part of the evidence but which it is thought to be better that the

Court should not know, to avoid prejudicing him. This part may be the parts which refer to the culpability of the accused.

In this case the prosecution used the portion of the statement of the Appellant which led to the discovery of a gun by the police. After editing the State Counsel had sought permission of the Court to mark the following portion of the Appellant's statement to the police. The relevant portion is re-produced below:

Page 39 of the translated brief.

Q. Can you read out to Court, the section of the statement where there is mention of the production?

A. (Read out in Sinhala Language) **'Aeya Pattakadu vala agalak yata sanghavala thiyanava, ema sthanaya mata polisiyata soya denna puluwan'**.[Emphasis added]

In Sinhala it reads ' එය පට්ටකාඩු වල අගලක් යට සගවලා තියෙනවා, එම ස්ථානය මට පොලිසියට සොයා දෙන්න පුළුවන්.'

The above portion of the statement of the Appellant was marked as P1 by the prosecution which shows only the knowledge of the Appellant as there is no any other evidence available to connect the Appellant with the crime. Further the portion marked above does not speak about a gun and ammunition. Hence, I conclude that this not a proper marking as expected under Section 27(1) of the Evidence Ordinance.

In the second ground of appeal, the Learned Counsel contends that the Learned High Court Judge had not properly evaluated the evidence given by the Appellant from witness box. The Counsel further argued that the impugned judgment is a mere re-production of the evidence sans any analysis and no reasoning for the conclusion.

The judgment delivered in this case contained only three pages. It only contains the narrative of the facts of the case without giving any reason for

the conclusion. The Learned High Court Judge without giving a single reason stated "based on the facts stated above, I find the accused guilty of both charges". Referring this, the Counsel for the Appellant contends that the said judgment is not a judgment in terms of Section 283(1) of the Code of Criminal Procedure Act No.15 of 1979. As its sans any analysis of the case and reasons for the decision.

283. The following provisions shall apply to the judgments of courts other than the Supreme Court or Court of Appeal: -

(1) The judgment shall be written by the Judge who heard the case and shall be dated and signed by him in open court at the time of pronouncing it, and in case where appeal lies shall contain the point or points for determination, the decision thereon, and the reasons for the decision,

The Judgment is the end product of the Court proceedings. It is the statement given by the Judge, on the grounds of the trial. The writing of a judgment is one of the most important and time-consuming tasks performed by a Judge. Further, writing of a judgment varies from Judge to Judge and reflects the characteristic of a Judge. Every Judge, of every rank has his/her own distinct style of writing.

Justice Sunil Ambwani, in his article titled **'The Art of Writing Judgment'** states:

"Before writing a judgment, a Judge must remember that he is performing a public act of communicating his opinion on the issues brought before him and after the trial by observing fair procedures. He is required to tell the parties of the decision, on the facts brought before him, with application of sound principles of law, his decision, and what the parties are supposed to do as necessary consequent to the judgment or to appeal against it. It is basically a communication to the parties coming before him for a decision.

A judgment must begin with clear recital of facts of the case, cause of action and the manner in which the case has been brought to the Court. A Judge must have essential facts in mind, and its narration should be without any mistake. The facts must come from the record and not from the abstract and briefs without any partisanship or colour to its narration. The importance of first paragraph of the judgment cannot be overemphasized. It must answer the question as to how, when, where, what and why, which is an advice given to judicial cubs. The readability of the opinion improves if the opening paragraph answers three questions namely what kind of case is this, what roles plaintiffs and defendants had in the trial, and what are the issues, which the Court has to decide and answer, giving sufficient information to the reader to proceed with reading the judgment.

The soul of a judgment are the reasons for arriving at the findings. These are also called 'the opinion' of a Judge. There is no rigid rule, as to how a finding may be recorded. The Judge, however, should give his reasons. It is not sufficient to say that he believes the evidence or agrees with the argument. The Judge must give his reasons for such belief and agreement. An elaborate argument does not always require elaborate answer".

In **Moses v The State** [1993] 3 SLR 401 the Court held that:

"A duty is cast upon the Judges to give reasons for their decisions as their decisions are subject to review by Superior Courts".

In **Ibrahim v Inspector of Police Ratnapura** 59 NLR 235 the court held that:

"*A mere recital of facts is not sufficient compliance with the provisions of Section 306(1) of the Criminal Procedure Code".*

In this case the Learned High Court Judge had merely narrated the evidence of the prosecution witnesses without giving any reason and acceptance of evidence of the prosecution witnesses. Hence, the said judgment cannot be considered as a valid judgment. As there is no proper judgment passed in this case, I therefore, set aside the conviction and sentence imposed on the Appellant.

Now, I consider whether this an appropriate case to send for a re-trial.

In this case the only evidence available against the Appellant is the purported statement of Section 27(1) of the Evidence Ordinance. There is no any other evidence led by the prosecution. Under these circumstances sending this case for re-trial will not serve any purpose.

Therefore, I acquit the Appellant from the charges levelled against him.

The Appeal is, therefore allowed.

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

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL