

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

In the matter of an Appeal in terms of 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.

CA/HCC/174/24

The Democratic Socialist Republic of Sri Lanka

HC Colombo Case No: 8375/16

Complainant

V.

Mohamed Saleem Mohamed Safreen

Accused

And Now between

Mohamed Saleem Mohamed Safreen

Accused-appellant

Vs.

The Attorney General

Attorney General's Department

Colombo 12.

Complainant -Respondent

Before : B. Sasi Mahendran, J.

Amal Ranaraja, J

Counsel: Neranjana Jayasinghe with Randuna Heellage and Imangsi Senarath
for the Accused- Appellant
Shanaka Wijesinghe, PC, ASG for the Respondent

Written

Submissions On: 01.10.2024 (by the Accused-Appellant)
11.07.2025 (by the Respondent)

Argued On: 17.07.2025

Judgment On: 27.08.2025

B. Sasi Mahendran, J.

JUDGEMENT

The Accused Appellant (hereinafter referred to as ‘the Accused’) was indicted before the High Court of Colombo on the count of committing the offence of murder of one Hussain Rummy Mohamed Farhan, punishable under Section 296 of the Penal Code. After the trial, the learned High Court Judge found the accused guilty, and the death sentence was imposed.

The prosecution led the evidence through 7 witnesses, and marked productions from P1 to P17 and thereafter closed its case. After the conclusion of the prosecution's case, the accused, in his defence, made a dock statement.

Being aggrieved by the said conviction and sentence, the Accused had preferred an appeal to this court and submitted the following grounds of appeal:

1. The Learned High Court Judge had come to an erroneous finding that the items of circumstantial evidence placed by the prosecution are sufficient to arrive at the one and only inference that the Accused Appellant had committed the offence.
2. Learned High Court Judge had rejected the dock statement of the Accused-Appellant on unreasonable grounds.

The prosecution mainly relied on the dying declaration of the deceased, made to the grandmother of the deceased, which was heard by PW 01, who is the father of the deceased and the evidence provided by the accused under Section 27 of the Evidence Ordinance, which led to the recovery of the knife.

Before we analyse the evidence placed before the trial Court with regard to dying declarations, it is pertinent to consider how our Courts have considered dying declarations to be accepted as a piece of evidence.

We are mindful of the opinion expressed by His Lordship H.N.G. Fernando S.P.J regarding dying declarations in Queen vs. Anthonypillai 69 NLR 34 on 38 (also reported in 68 CLW 57)

“Apart from the medical evidence, the second important factor was the statement made to the Police by the deceased woman. With regard to this statement the learned Judge gave the following directions:-

" This statement is evidence. The law permits you to take into consideration this piece of evidence. Usually a witness's evidence is tested by cross-examination and in this case the deponent is dead. In spite of the fact that there is no cross-examination because she is dead, still the law permits you to examine that evidence. It is in the nature of a dying declaration. Examine that evidence and if you are satisfied beyond reasonable doubt, accept what has been stated there. Do not forget that there was no other witness to the incident and the deponent herself is not before you, the law regards her statement as evidence in regard to the cause of death, and the circumstances which led to her death. "

In our opinion this direction only instructed the Jury that they could act upon the deceased's statement. But there was no caution as to the risk of acting upon the statement of a person who is not a witness at the trial, and as to the need to

consider with special care the question whether the statement could be accepted as true and accurate.”

This dictum was considered by His Lordship Sisira de Abrew J in Gamini Mahaarachchi vs. The Attorney General, CA 106/2002, Decided On 22.08.2007, held that:

“When a dying declaration is sought to be produced as an item of evidence against an accused person in a criminal trial, the Trial Judge or the jury as a case may be, must bear in mind on the following weakness;

1. Statement of the deceased person was not made under oath.
2. Statement of the deceased person has not been tested by cross-examination vide King vs. Asirivadan Nadar 51 NLR 322 and Justin Pala vs. Queen 66 NLR 409/
3. That the person who made the dying declaration is not a witness at the trial.

As there are inherent weaknesses in a dying declaration, which I have stated above, the trial Judge or the jury, as the case may be, must be satisfied beyond a reasonable doubt on the following matters;

- a. Whether the deceased in fact made such a statement
- b. Whether the statement made by the deceased was true and accurate
- c. Whether the statement made by the deceased person could be accepted beyond reasonable doubt.
- d. Whether the evidence of the witness who testifies about the dying declaration can be accepted beyond reasonable doubt.
- e. Whether the witness is telling the truth.
- f. Whether the deceased was able to speak at the time the alleged declaration was made.
- g. Whether the deceased was able to identify the assailant.”

Similar legal principles related to dying declarations were considered by His Lordship Sisira De Abrew in Ranasinghe v Attorney-General [2007], 1 S.L.R 218

His Lordship Ranjith Silva, J in Sigera Vs. Attorney General, 2011 (1) SLR 201 at 214 held that,

“First of all this court has to decide whether the dying declaration in question was a true and accurate one. It is only then the learned High Court Judge could be justified in treating the dying declaration as substantive evidence against the Appellant, which is an exception to the hearsay Rule.”

Further held that;

“Therefore it is seen that first and foremost a judge must apply his mind and decide whether the dying declaration is a true and accurate statement.”

Further held that,

“In view of the inherent weaknesses in the dying declaration, enumerated above, the trial judge or the jury as the case may be must be satisfied beyond reasonable doubt on the following matters; whether the deceased in fact made such a statement, whether the deceased was able to speak at the time the alleged statement was made, whether the deceased was able to identify the assailant, whether the statement made by the deceased was true and accurate, whether the statement made by the deceased person could be accepted beyond reasonable doubt, whether the evidence of the witness who testifies about the dying declaration can be accepted as credible.”

Applying the principles in the above judicial decisions, the Court has to consider whether the dying declaration was true and accurate.

PW 01, Mohamed Uvais Hussain Roomy, the father of the deceased, testified that the deceased had been close friends with the Accused, Mohamed Saleem Mohamed Safreen, since childhood. On or around 13.08.2014, at approximately 9:30 to 10:00 p.m., at their residence in Grandpass, the deceased knocked on the door and cried out, “Ummamma Safreen, brother stabbed me,” in the presence of PW 01’s mother-in-law. The household immediately rushed outside in a state of panic, including PW 01, who came down from upstairs. They found the deceased bleeding near the doorway. Neighbours from the area quickly intervened and transported him to the hospital.

Following the incident, PW 01 and his father-in-law exited the house and attempted to locate the Accused. However, they were unable to find him and subsequently returned home. By that time, neighbours had already taken the deceased to the hospital. PW 01 and his wife then proceeded to the hospital. PW 01 further testified that approximately one week before the incident, the Accused and the deceased had been involved in a fight, and the dispute was resolved with the intervention of PW 01. During cross-examination, the Learned counsel for the Accused questioned PW 01 as to why he did not personally take his son to the hospital. In response, PW 01 explained that the family was in a state of panic at the time and that he had been focused on locating the Accused and understanding the motive behind the stabbing.

PW 01 further testified that blood stains were visible near the doorstep of the residence.

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එනකොට ලේ බේරෙනවා මෙහෙම අතින් අල්ලාගෙන.

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උ : පුතා ඒ කියන්නේ අපි උද ඉඳලා එනකොටම ස්වාමිනි නැන්දම්මා විතරයි දැකලා තියෙන්නේ. එනකොටම අපි පල්ලෙනට එනවා. එනකොට ලේ බේරාගෙන එනවා. එනකොට අපි පොඩ්ඩක් ලාවට වගේ දැක්කේ. මම කලබලයෙන් මමයි මාමයි කලබලයෙන් දිව්වා එලියට මෙයාව හොයන්න.

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ප්‍ර : එනකොට පුතා සිද්ධිය වච්ච දේ ගැන මොනවද කිව්වේ ඒ වෙලාවේ?

උ : සර්ටින් අයියා පිහියෙන් ඇන්නා කියලා.

ප්‍ර : පුතාගේ ලේ වැස්සෙනවා කියලා ඔබ කිව්වා?

උ : ඔව්.

ප්‍ර : කොහෙන්ද ලේ ආවේ?

උ : මේ සයිඩ් එකෙන්.

However police have not found any blood stains near the door. According to the PW01 deceased was wearing denim and the t shirt.

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ප්‍ර : සාක්ෂිකරු ප්‍රකාශ පිතියෙන් ඇත්ත සිද්ධිය සිද්ධ වෙව්ව වෙලාවේ මොනවද ඇදගෙන තිටියේ?

උ : ජීම් එකට යන බැනියමක් හර්සියක් එයින් එකක් ඇදගෙන තිටියේ කහ පාට

ප්‍ර : යටට මොනවාද?

උ : ඩෙනිම් කලිසමක්.

The doctor who conducted the postmortem examination stated that the deceased was dressed in a brown batik sarong at the time of death. It is important to note that the deceased had not received any medical treatment prior to his death.

According to the PW 02, Haron Rafeed, resides near the home of the deceased, near both the deceased's and the Accused's residences. On the day of the incident, after dining at a nearby shop, the witness observed the Accused with a bleeding wound, accompanied by another child. He has not seen any relations accompanying the deceased. This witness took immediate action and transported the Accused to the hospital using the three-wheeler belonging to an individual named Ramesh.

The witness stated that no family member accompanied the deceased to the hospital. This evidence cut across the evidence of PW01.

Upon examining the testimony of PW01 the sole witness in this case, his account casts doubt on whether the deceased actually visited his residence and made the alleged dying declaration.

No bloodstains were found near the door, and PW01 the deceased's father did not accompany him to the hospital. Furthermore, his conflicting statements regarding the clothes worn by the deceased have cast further doubt on his testimony.

This case rests on the circumstantial evidence.

B.R.R.A. Jagath Pramawansha v. The Attorney General CA Appeal No. 173/2005, decided on 19.03.2009 by Sisira de Abrew J.

I shall now consider the third ground urged by learned counsel which is as follows.

“There was no judicial evaluation of the items of circumstantial evidence as required by law.” Although there was judicial evaluation of evidence, learned trial judge, on the evidence led at the trial, could not have arrived at any other conclusion other than the conclusion reached by him.

The case for the prosecution depended on circumstantial evidence. Therefore it is necessary to consider the principles governing cases of circumstantial evidence. In *king v. Abeywicrama* 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 this innocence.”

In *King v. Appuhamy* 46 NLR 128 Kueneman 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.”

In *Podisingho v. King* 53 NLR 49, Dias J remarked thus: “That in a case of circumstantial evidence 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.”

Upon examining the evidence presented at trial, there remains uncertainty as to whether PW01's account that the deceased arrived and made a dying declaration is credible.

As previously noted, PW01's account is not supported by any other evidence presented by the prosecution.

With regard to section 27 of recovery, according to the evidence of PW 08 a knife has been recovered from the hardware shop of PW 12, one Rizwan. Police have failed to connect the place of recovery with the accused.

I hold that there is no evidential value with regard to the said recovery.

About Section 27 of the recovery, the testimony of PW-08 indicates that a knife was recovered from the hardware shop belonging to PW-12, identified as Rizwan. However,

the prosecution has failed to establish any link between the place of recovery and the accused. Accordingly, I find that the said recovery holds no evidentiary value.

We find that the prosecution has not established its case beyond a reasonable doubt. Accordingly, for the reasons stated above, the appeal is allowed, and both the conviction and sentence are hereby quashed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J

I AGREE

JUDGE OF THE COURT OF APPEAL