IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF 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.

Court of Appeal No:

CA/HCC/0212/18

High Court of Monaragala

Case No: HC 19/2017

Democratic Socialist Republic of Sri Lanka

COMPLAINANT

Vs.

Wanasinghe Mudiyanselage Wimalasena

ACCUSED

AND NOW BETWEEN

Wanasinghe Mudiyanselage Wimalasena

ACCUSED-APPELLANT

Vs.

The Hon. Attorney General,

Attorney General's Department,

Colombo 12.

COMPLAINANT-RESPONDENT

Before	: Sampath B. Abayakoon, J.
	: P. Kumararatnam, J.
Counsel	: Niroshan Mihindukulasuriya for the Accused-Appellant
	: Lishan Ratnayake, S.C. for the Respondent
Argued on	: 04-07-2024
Written Submissions	: 02-07-2019 (By the Accused-Appellant)
	: 02-07-2021 (By the Respondent)
Decided on	: 27-09-2024

Sampath B. Abayakoon, J.

The accused-appellant ((hereinafter referred as the appellant)) was indicted before the High Court of Monaragala for causing the death of one Rajapaksha Dewelage Piyadasa, on or about 06-08-2015, at a place called Gonaganaara within the jurisdiction of the High Court of Monaragala, and thereby committing the offence of murder punishable in terms of section 296 of the Penal Code.

After trial without a jury, the learned High Court Judge of Monaragala found the appellant guilty as charged of her judgment dated 30-07-2018, and accordingly, he was sentenced to death.

Being aggrieved by the said conviction and the sentence, the appellant preferred this appeal.

At the hearing of the appeal, the learned Counsel for the appellant, although he has taken up several other grounds of appeal in his written submissions, submitted the following grounds of appeal for the consideration of Court.

1. The learned High Court Judge failed to consider the credibility of the main investigator, namely PW-09.

2. Did the learned High Court Judge fail to consider that the prosecution has failed to prove the inward journey of productions beyond reasonable doubt?
3. Did the learned High Court Judge fail to consider the credibility of PW-03?
4. Did the learned High Court Judge misdirected herself in considering the fact that it was the accused and no one else who had the opportunity to commit the crime?

With the above grounds of appeal in mind, I will now proceed to summarize the facts elicited before the High Court.

Facts in Brief

At the very outset, it needs to be noted that this is a case where the prosecution has relied entirely on circumstantial evidence to prove the charge against the appellant.

On the morning of 07-08-2015, the villagers of Gonaganaara have discovered a dead body on a land in their village with grievous cut injuries. The body had been found naked, and near the body, they have found a foot bicycle and several other items.

According to the evidence of the daughter of the deceased, namely Inoka Priyadarshani, her father Rajapaksha Dewelage Piyadasa has gone to the nearby boutique belonging to one Wasantha in the evening of 06-08-2015. When the father was away, the person whom she referred to as Wimalasena Mama (the appellant) has come to their house and had inquired about her father. After being informed that he went to the boutique, Wimalasena has gone towards the boutique, which was situated about 200 feet away from their house.

Her father has returned home at around 6.00 p.m. The owner of the boutique, namely Wasantha, has also come to their home around 7.00 p.m., and has had some liquor with her father, and had returned round 7.30 returned to his

boutique. After some time, the father has informed her that he will go to a nearby place (මම මේ ලඟට ගිහිල්ලා එන්නම්) and for her to close the door of the house. Priyadarshani has gone to sleep at around 9.30 p.m. in the early hours of the following day, she has found that her father has not returned home. She has given a call to his mobile phone. Although it rang, there was no answer. In the morning, she has gone to the earlier mentioned Wasantha's boutique to inquire about her father. Wasantha has told her that Wimalasena invited her father to come and have liquor with him in the afternoon, and he may have gone there.

Later, she has come to know about the discovery of a dead body and had identified the dead person as her father. His body has been discovered on a land near the house of the earlier mentioned Wimalasena.

When she was cross-examined at the trial, it has been brought to the notice of the Court that she has failed to mention in her police statement that the appellant came in the afternoon and inquired about her father from her.

The earlier mentioned Wasantha has also given evidence at the trial. Both the deceased and the appellant are persons well known to him and frequent visitors to his boutique. The deceased Piyadasa has come to his boutique around 2.30 – 3.00 in the afternoon of 06-08-2015. While he was there, the appellant has also come and the witness has seen both of them chatting for a while seated on a bench near his boutique. The deceased Piyadasa has returned to his boutique at around 5.30 in the evening and had invited him to have some liquor with him at his house. The witness Wasantha has gone to Piyadasa's house around 6.00 p.m. After consuming some liquor with Piyadasa, has returned to his boutique around 7.30 p.m. On the following morning, the daughter of Piyadasa has come and inquired about her father saying that he did not return home. He has informed the daughter that he may have gone to Manike aunt's place, as Piyadasa informed him while they were consuming liquor, that he intends to go there. The mentioned Manike aunt is a relative of Piyadasa, as Piyadasa's younger sister was married to Manike's elder brother.

PW-06 Premaratna was the elder brother of the female mentioned as Manike, whose real name is Baby Nona. He has confirmed that the appellant and Manike was living as husband and wife during the time relevant to this incident, although they were not legally married. Both of them had previous marriages and children out of the said marriages as well.

He has stated in his evidence that the appellant used to suspect his sister for having illicit affairs, especially with the deceased, and they used to quarrel over this regularly. He has also stated in his evidence that he was instrumental in getting a knife belonging to the appellant repaired through a fellow co-worker of his place of work by inserting an animal horn as the handle of the knife. He has identified that knife at a later stage of this trial, which has been marked as P-06.

PW-11 has confirmed that on 07-08-2015, he took the appellant in his three-wheeler to the Buttala Hospital because he was complaining of a stomach ailment and admitted him to the hospital.

The police officers who conducted the investigations have also given evidence in this matter. PW-13, PS18018 Karunadasa has assisted the Officer-In-Charge (OIC) of Gonaganaara Police in conducting investigations into the incident and had assisted in recording observations at the scene of crime and at the inquest. He has forwarded a shirt and a sarong found at the scene of crime under PR No. 185/15 and 186/15 to the Production Officer of the police station. He has also handed over a blood sample taken from the dead person under PR No. 187/15.

While conducting further investigations, on 11-08-2015, a police message has been received from Sirigala Hospital to the effect that a person called Wanasingle Mudiyanselage Wimalasena, who had been receiving treatment at ward 9 under bedhead ticket No. 351/82/15, has escaped from the hospital ward without permission. He has been instructed by the OIC to look into that information as well. The mentioned Wimalasena is the appellant in this matter, who was the

suspect by then of the crime. He has conducted investigations in that regard and has recorded several statements in the process.

When he was subjected to cross-examination, the position taken up on behalf of the appellant had been that the OIC of the station and the witness came to the hospital where the appellant was receiving treatments, forcibly took him away on the pretext of recording a statement and took him in a three-wheeler to an abandoned quarry. It was the position taken on behalf of the appellant that he was severely assaulted and forced him to sign several documents. The witness has denied the allegation.

In this matter, several other officers who conducted investigations and had the productions under their charge while at the police station had also given evidence.

PW-09 Sub-Inspector Nandana Samansiri was the OIC of the Gonaganaara Police Station when this incident occurred. After receiving the information around 10.00 a.m. on 07-08-2015 of the discovery of a body of a person, , he and a team of police officers had gone to the place of the incident and had conducted investigations. He has found the naked body with a serious cut injury to the neck among other cut injuries. He has also found that the deceased person's penis has been severed and put in his mouth. He has also taken steps to hold the inquest and call for other relevant investigators in relation to the crime.

PW-09 has arrested the appellant as the suspect of this crime on 12-08-2015 at 17.15 hours on a by-road near Gonaganaara temple. After his arrest, he has recorded a short statement from him at the place of arrest and based on the statement, and as shown by the appellant, has travelled to the house of the appellant situated at No. 21 Post, Diyakiriththa, Gonaganaara. From the house, he has recovered the knife marked P-06 behind a cupboard of the old house situated there.

As shown by the appellant, he has also taken under his charge, a brown-coloured sarong with blood like stains from a flower fence situated towards the South of the house. The witness has identified the sarong recovered by him and has marked it as P-08 at the trial. At the same place, he has found a baniyan as well, which was identified and marked as P-09 at the trial.

After coming to the station, he has entered the knife he recovered under PR No.188/2015 and the sarong under PR No. 189/2015. The witness has marked the relevant portion of the statement, which led to the recovery of the earlier-mentioned items in terms of section 27 of the Evidence Ordinance as P-07ඒ and P-07ඓ.

After keeping the said productions under the custody of the Production Officer of the police station, he has taken steps to produce them before the Magistrate's Court and had requested the learned Magistrate to send the knife, and the sarong found as a result of the appellant's statement, together with the blood sample taken from the deceased to the Government Analyst in order to find out whether the blood like stains found in the sarong matches the blood of the deceased, and also to find whether any blood can be found in the knife, and if so, whether it matches with the blood of the deceased.

In his evidence, while under cross-examination, he has stated that other than the earlier mentioned sarong he recovered, when the learned Magistrate visited the scene of the crime, he took charge of another sarong, which was in a basin poured with water, found behind the house of the appellant as a production.

He has also spoken of the information he received from Sirigala Government Hospital to the effect that the appellant, who was receiving treatment there, has escaped. The witness has denied the same suggestion made to him that he and his team of police officers came to the hospital, forcibly took the appellant away, assaulted him and forced him to sign documents.

The suggestion made to the witness in relation to the recoveries made by him in terms of section 27 Evidence Ordinance had been to the effect that he recovered the knife from the appellant's wife. It has also been suggested to him that the brown-coloured sarong and the baniyan was taken from a clothesline near the water tap situated in his house (page 201 of the appeal brief).

According to the evidence of the Judicial Medical Officer (JMO) who conducted the post-mortem, he has found nine cut injuries on the body of the deceased. The first one has been to the neck, which has caused serious injuries to the deceased and had been the injury that has caused his death. The JMO has expressed the opinion that such injuries can be caused by using the knife marked as P-06. He has also expressed the opinion that the death could have been within minutes of receiving the injury.

The person who is said to have repaired the knife marked P-06 using an animal horn has also given evidence and had identified the knife marked P-06 as the one repaired by him.

The evidence of Government Analyst reveals that the Government Analyst has received 5 separate parcels as productions relating to this case with the following identification marks; P-8 blood sample, P-9 knife, P-10 sarong, P-13 cotton bud (පිස්නයක්), P-14 another cotton bud (පිස්නයක්).

The Government Analyst has described the things found inside those parcels in detail. She has given evidence as to the steps taken to identify the blood found on the sarong as well as the samples sent to the Department using DNA technology, and has found that, the blood found on the sarong and the sample blood sent belongs to one and the same person.

At the conclusion of the prosecution evidence, the learned High Court Judge has decided to call for a defence from the appellant, and the appellant has chosen to make a statement from the dock. While denying the charge against him, he has

stated that he was admitted to Buttala Hospital on 07-08-2015 and was transferred to Sirigala Hospital. While receiving treatment at Sirigala Hospital, the OIC of Gonaganaara police, namely Nandana Samansiri, has visited the hospital on 10-08-2015. After informing that he needs to take a statement from him, he has been taken out of the hospital, and put into a three-wheeler. Thereafter, he has been taken to an abandoned quarry, assaulted and put into a police jeep and taken inside Yala National Park and assaulted further. He has claimed that on 13-08-2015, he was forced to sign some documents and was produced before the Wellawaya Magistrate.

In relation to the items that had been recovered by the police based on his statement, it had been his position that the police took the knife from his wife and the two sarongs were taken from a clothesline near his house, and has claimed that there were no blood marks on the sarong, and he heard the OIC telling the other officer to apply blood on the sarong. He has also claimed that the two sarongs were washed and kept on the clothesline because he was suffering from diarrhoea before he was admitted to the hospital. It had been his position that the OIC of the police station implicated him to an offence which he did not commit.

On behalf of the defence, the OIC of Gonaganaara police has been summoned to give evidence. He was not the OIC of the police station at the time relevant to this incident. It appears from his evidence that he has been mainly questioned about the item of production received by the police station under PR No. 187/2015 along with other productions relating to this case. The line of examination appears to be to show that the production officers, who held the relevant productions under police custody until it was handed over to the Magistrate's Court, have failed to mention the said productions on several occasions when production custody was handed over from one officer to another. The production produced under PR No. 187/2015 had been the blood sample taken by the police from the deceased person, which was the sample that has been used by the Government Analyst for DNA comparison.

The Consideration of the Grounds of Appeal

The 1st and the 3rd Ground of Appeal

As the above two grounds of appeal have been formulated on the basis that the evidence of PW-09 and that of PW-03 lacks credibility, and the learned High Court Judge has failed to consider their evidence in the correct perspective, I will now proceed to consider the said grounds of appeal together.

PW-09 had been the OIC of the Gonaganaara police station, who has been the main investigating officer in relation to the incident. PW-03 was the owner of the boutique situated near the house of the deceased. Although the learned Counsel who represented the appellant at the High Court trial has questioned PW-09 about being warned by the learned High Court Judge in relation to another case where an application for bail relating to a person accused of possessing Cannabis was considered, I am unable to accept that the OIC's credibility in relation to conducting investigations in this case has been dented in any manner as the earlier case has nothing to do with the facts relating to the appeal under consideration.

The appellant had been functioning as a civil defence force personal during the time relevant to this incident, which means that he was also a person who had been familiar with police work and other security related matters. The appellant has admitted that he was receiving treatment at the hospital on 10-08-2015. Although he has claimed that the OIC came and forcibly took him away from the hospital, the evidence led in this case clearly establishes that the police have received a complaint from the hospital to the effect that the appellant, who was receiving treatment at the hospital, has left the hospital without being discharged. The evidence of PW-13, the police officer who conducted investigations in relation to the appellant's escape from the hospital reveals that fact beyond reasonable doubt.

According to the evidence of PW-09, the appellant has been arrested on 12-08-2015 at 17.00 hours. The appellant does not deny that the OIC recovered a knife from his house, and a sarong and a baniyan from a clothesline near a water tap of his house. The only difference being his claim that the knife was taken from his wife and the things recovered from the clothesline had no blood on them, and the denial that the clothes were recovered while being hidden under a flower fence.

It needs to be noted that when PW-09, the OIC who conducted the investigations was subjected to cross-examination on behalf of the defence, contradictory positions had been taken in relation to the discovery of the productions. It has been suggested to him that the sarong and the baniyan were recovered from a basin near the water tap (page 187 of the appeal brief). Again, at page 201 of the appeal brief, it has been suggested to the witness that the brown-coloured sarong and the baniyan were taken by him from a clothesline near the water tap. In the dock statement, the appellant has taken up the position that the OIC instructed another police officer to apply a little from the bottle and prepare it to be taken to the Government Analyst, which is suggestive of attempting to apply the blood of the deceased on the sarong recovered to implicate the appellant.

However, the best person to answer such an allegation would have been the PW-09, against whom the allegation was made. It appears that no such suggestion had been made to him when he was giving evidence, which shows that the said allegation was an afterthought in order to counter the evidence in that regard, and that of the Government Analyst who has found DNA evidence matching the blood of the deceased to the blood found on the sarong.

In **Sarwan Singh Vs State of Punjab 2002 AIR Supreme Court iii 3652 at 36755,3656,** it was observed;

> *"It is a rule of essential justice that whenever the opponent has declined to avail himself of the opportunity to put his case in cross examination it must*

follow that the evidence tendered on that issue ought to be accepted." This case was cited with approval in the case of **Boby Mathew Vs State of Karnataka 2004 3 Cri. L. J.3003**

Another matter that needs consideration in relation to the evidence is whether there was any possibility for the investigating officers to introduce blood onto the sarong after its discovery. According to the evidence led in this action, the post-mortem of the deceased had been concluded on the 10th and the body has been released to the deceased's relatives. PW-13 has taken a blood sample of the deceased at the time where the post-mortem was held, which has been produced at the police station under PR No. 187/15 on the same day. The arrest of the appellant and the recovery of the sarong as a production has been on the 12th, which shows that the funeral of the deceased as well as the post-mortem had been over by that time, and there would have been no possibility of introducing blood to the sarong recovered.

I am unable to agree with the contention that there is a credibility issue as to the evidence of PW-03, namely Wasantha Gunathilake. I am of the view that his evidence has to be considered in conjunction with that of PW-02, the daughter of the deceased. The deceased, his family members and the appellant are persons well known to PW-03 and persons who had frequented his boutique, which was situated near the house of the deceased. According to his evidence, the deceased has told him while they were having liquor in the evening, that he is going to visit Manike's place. The mentioned Manike is the female who lived with the appellant as husband and wife, although they were not legally married. The said Manike is also a relative of the deceased as the deceased's sister is married to Manike's brother. When the daughter of the deceased came and inquired about her father on the following day, he has informed her of that fact.

The evidence of the daughter had been to the effect that she was informed by PW-03 that her father informed him that Wimalasena (the appellant) invited him to have some liquor and he may have gone there.

The evidence of PW-02 and 03 when taken in its totality shows what both of them were telling nothing but the truth. The PW-03 may have forgotten the exact details of what he told the daughter of the deceased, but it is clear from the evidence of both the witnesses that the daughter has come to know of the fact of her father going to meet the appellant to his house because Manike mentioned by PW-03 is the person with whom the appellant had been living at that time.

For the reasons considered as above, I find no merit in the 1st and the 3rd ground of appeal urged.

The 2nd Ground of Appeal

It was contended that the prosecution has failed to prove the chain of custody of the productions based on certain omissions by the police reserve officers, who held the custody of PR No. 187/2015 before it was handed over to the Court for the purpose of obtaining a Government Analyst Report.

It is clear from the evidence led before the Court that several reserve police officers have had the custody of the productions relating to this case after they were handed over to the police reserve on 10-08-2015 and on 12-08-2015. It is clear that when the productions were handed over from one officer to another, in some instances, the production numbers have not been recorded properly or not recorded as required.

However, what is clear without a doubt is that the said production has never been taken out of the production room of the police station until it was taken to the Magistrate's Court. There is nothing to show that the said production has been tampered with when it has been taken to the Government Analyst or when opened by the Government Analyst for the purposes of analysis.

I find that the learned High Court Judge in her judgment has well considered whether there was any possibility of tampering with the productions which were under the police custody and has considered the evidence in that regard to come

to a firm finding that no such tampering has taken place and the productions had been correctly handed over to the Wellawaya Magistrate's Court.

Accordingly, I find no basis in the 2nd ground of appeal urged on behalf of the appellant as well.

The 4th Ground of Appeal

Although it has not been formulated in such a manner, it is clear that the ground of appeal relates to the circumstantial evidence led before the Court on the basis that there was no such evidence to conclude that it was only the appellant and no one else who would have committed the crime.

Therefore, before considering the said ground of appeal, I think it proper to consider the requirements of proving a case based on circumstantial evidence.

In the case of **The King Vs. Abeywickrama 44 NLR 254** it was held:

> Per **Soertsz, J.**,
>
> *"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 hypotheses of his innocence."*

In the case of **Don Sunny Vs. The Attorney General (1998) 2 SLR 01**, it was held:

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

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

3) *If upon consideration of the proved items of circumstantial evidence the only inference that can be drawn is that the accused committed the offence, then they can be found guilty. The prosecution must prove that no one else other than the accused had the opportunity of committing the offence. The accused can be found guilty only if the proved items of circumstantial evidence is consistent with their guilt and inconsistent with their innocence.*

However, when considering the circumstantial evidence, what has to be considered is the totality of the circumstantial evidence before coming to a firm finding as to the guilt of an accused, although each piece of circumstantial evidence when taken separately, may only be suspicious in nature.

In the case of **King Vs. Gunaratne 47 NLR 145**, it was held:

> *"In a case of circumstantial evidence, the facts given in evidence may, taken cumulatively, be sufficient to rebut the presumption of innocence, although each fact, when taken separately, may be a circumstance only of suspicion.*
>
> *The jury is entitled to draw inferences unfavourable to an accused where he is not called to establish an innocent explanation of evidence given by the prosecution, which, without such explanation, tells for his guilt."*

In the case of **Regina Vs. Exall (176 English Reports, Nisi Prius at page 853)**, Pollock, C.B. considering the aspect of circumstantial evidence remarked;

> *"It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in a chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like of a rope composed of several codes. One strand of the rope might be insufficient to sustain the weight, but stranded together may be quite of sufficient strength."*

It was observed in the case of **Karunaratne Vs. Attorney-General (2005) 2 SLR 233,**

Per **Jagath Balapatabendi, J.,**

"*The primary advantage of circumstantial evidence is that the risk of perjury is minimized since it, unlike direct evidence, does not emanate from the testimony of a single witness. It is therefore more difficult to fabricate circumstantial evidence, than it is to resort to falsehood in the course of giving direct evidence.*

There is no principle of the law of evidence which precludes a conviction in a criminal case based entirely on circumstantial evidence. There are no uniform rules for the purpose of determining the probative value of circumstantial evidence. This depends on the facts of each case."

It is quite apparent from the judgment that, the learned High Court Judge was well conversant with the legal requirements in proving a case based on circumstantial evidence. The learned High Court Judge has well considered the legal texts and case law, which provides guidance to a trial Judge in that regard.

Having considered the evidence led before the Court, the learned High Court Judge has listed the following circumstantial evidence she has considered in order to determine whether the said circumstantial evidence has established the fact that it was the appellant and no one else who has committed the crime.

I. මරණකරුගේ මරණාසන්න ප්‍රකාශය අනුව මිය යෑමට පැය කිහිපයකට පෙර මරණකරු විත්තිකරු මුණ ගැසීමට ගොස් ඇති බව.
II. මරණකරුගේ මෘත දේහය විත්තිකරුගේ නිවසට ඉනා ආසන්නයේ තිබී හමු වීම.
III. මරණකරුගේ ලේ විත්තිකරුගේ "පැ-8" දරන සරමේ තිබීම.
IV. එම සරම සාක්ෂි ආඥා පනතේ 27(1) වගන්තිය අනුව සටහන් කරන ලද චුදිතගේ ප්‍රකාශය මත සොයා ගෙන තිබීම.
V. ඒ අනුව මරණකරුගේ ලේ සහිත විත්තිකරු සතු සරම තිබූ ස්ථානය සම්බන්ධයෙන් විත්තිකරුට දැනුමක් තිබීම.

VI. "පැ-6" දරන පිහිය සාක්ෂි ආඥා පනතේ 27(1) වගන්තිය යටතේ වාර්තා කරන ලද විත්තිකරුගේ ප්‍රකාශය මත සොයා ගෙන තිබීම.

VII. මරණකරුට සිදුවී ඇති තුවාල සියල්ල "පැ-6" දරන පිහිය වැනි පිහියකින් සිදුවී ඇති බවට වෛද්‍යවරයා මතයක් ප්‍රකාශකොට තිබීම.

VIII. "පැ-6" දරන පිහිය තිබූ ස්ථානය සම්බන්ධයෙන් විත්තිකරුට දැනීමක් තිබීම.

I am in agreement with the learned High Court Judge's observations except for the first conclusion, which refers to a dying declaration made by the deceased. The learned High Court Judge has considered what the deceased has told to PW-03 (the boutique owner) that he is going to visit Manike's house, as a dying declaration in terms of section 32(1) of the Evidence Ordinance. The relevant section 32(1) reads as follows.

> **32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases : -**
>
> > **1. When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.**
>
> **Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceedings in which the cause of death of his death comes into question.**

Although the statement made to PW-03 by the deceased can be considered under "any of the circumstances of the transaction which resulted in his death" as stated in section 32(1), in my view, what the deceased has told PW-03 cannot be considered as a dying declaration in its strict sense. What the deceased has told

PW-03 had been that he is going to visit Manike's house. As the appellant and Manike had been living as husband and wife at that time, it can only be presumed that he has gone to the house of the appellant. In my view, more than a dying declaration, the evidence of PW-03 and that of PW-02 when taken together, provides consistency as to their evidence in relation to where the deceased may have gone before he met with his death.

According to the evidence of PW-02, the daughter of the deceased, the appellant has come in the afternoon to their house and had inquired about her father. After being informed that he went to the nearby boutique, which is a reference to the boutique belonging to PW-03, he has walked towards that boutique. PW-03, the boutique owner had seen the deceased and the appellant chatting while seated on a bench situated in front of his boutique. When PW-03 and the deceased were consuming liquor in the evening, the deceased has told him that he is going to visit Manike's house.

In his evidence before the trial Court, he has not stated that the deceased told him that he is going to consume liquor with the appellant, the evidence of PW-02 had been to the effect that she came to know that fact from PW-03. Although the PW-02 has not mentioned the fact of the appellant coming to their house in the afternoon of the day of the incident when she gave evidence at the post-mortem, that omission has not created any doubt as to the truthfulness of the evidence of PW-02. Therefore, I am of the view that more than a dying declaration, the earlier considered pieces of evidence provide a consistent connection to the fact that the deceased has gone to the house of the appellant.

The fact of the deceased's body has been found at a place near the appellant's house is a fact that should be considered as circumstantial in relation to the above facts.

The strongest circumstantial evidence against the appellant had been the blood found on the sarong recovered by the investigating officer from the clothesline of his house. The blood found has matched the DNA profile of the blood belonging

to the deceased. As I have considered previously, there would have been no possibility of introducing blood to the sarong admittedly belonging to the appellant.

There was no doubt that the knife marked P-06 belongs to the appellant, which has also been recovered from his house.

Although the appellant has attempted to show that he was illegally arrested, severely tortured, and his signature was taken forcibly, I find no basis to agree with such a contention in view of the cogent evidence led at this trial in relation to the circumstances under which the appellant had been arrested.

Under the circumstances, I find that the learned High Court Judge has considered the circumstantial evidence against the appellant in its correct perspective and has come to a correct conclusion in that regard.

Apart from the circumstantial evidence considered by the learned High Court Judge, I find that the evidence led before the trial Court also provides a motive for the crime, although motive is not a thing that should be established in a criminal case.

According to the evidence of PW-06, the brother of the mentioned Manike, whose real name is Baby Nona, the appellant has suspected the deceased for having an illicit relationship with her. Although the appellant and Baby Nona were not legally married, they had been living together as husband and wife for some time before this incident occurred.

The brother of Baby Nona has also come to know that there had been an incident over the deceased coming to the appellant's house previously to collect empty bottles, which had been his trade where he collected empty bottles from various houses in order to sell them to a collector in the town.

For the reasons as considered above, I am of the view that the learned High Court Judge has correctly considered the circumstantial evidence and had come to a correct determination that the prosecution has proved the case beyond

reasonable doubt against the appellant. Accordingly, I find no basis for the 4th ground of appeal considered.

The appeal is dismissed for want of merit. The conviction and the sentence dated 30-07-2018 affirmed.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal