

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

*In the matter of an Appeal under and in  
terms of Section 331 of the Code of Criminal  
Procedure Act No. 15 of 1979.*

**Court of Appeal No:**

CA/HCC/0008/2019

Democratic Socialist Republic of Sri  
Lanka.

**COMPLAINANT**

**Vs.**

**High Court of Anuradhapura**

**Case No:** HC/105/2010

Iguruwaththa Gedara Senarathne  
Ranathunga *alias* Gamini

**ACCUSED**

**AND NOW BETWEEN**

Iguruwaththa Gedara Senarathne  
Ranathunga *alias* Gamini

**ACCUSED-APPELLANT**

**Vs.**

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

**COMPLAINANT-RESPONDENT**

Before : Sampath B. Abayakoon, J.  
: P. Kumararatnam, J.  
Counsel : Rizwan Uwais for the Accused-Appellant  
: Lishan Ratnayake, S.C. for the Respondent  
Argued on : 03-06-2024  
Written Submissions : 30-09-2019 (By the Accused-Appellant)  
: 21-06-2022 (By the Respondent)  
Decided on : 07-08-2024

**Sampath B. Abayakoon, J.**

The accused-appellant (hereinafter referred to as the appellant) was indicted before the High Court of Anuradhapura for causing the death of one Sandunika Upeksha Lakmali at a place called Sampathgama, Sudharshanagama within the jurisdiction of the High Court of Anuradhapura on or about 21-06-2005, 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 Anuradhapura of his judgment dated 06-02-2019, found the appellant guilty as charged, and accordingly, sentenced him to death.

On the basis of being aggrieved by the said conviction and the sentence, the appellant preferred this appeal.

**Facts in Brief**

The evidence led at the trial shows that the deceased had been a 3-year-old minor girl child when she faced this unfortunate death. The evidence also reveals that the deceased child had been handed over to the appellant and his wife to be cared for by the grandmother of the child, who was the person who had the custody of her before she was handed over to the appellant and his wife.

The evidence given by several fellow villagers shows that the child had been ill-treated and subjected to assault and various other forms of cruelty while being under the care of the appellant and his wife. The evidence also reveals that the appellant and his wife had been attempting to hand over the child to an institution as they could not afford to care for the child. The evidence given by the Grama Niladhari of the area and the Child Welfare Officer reveals that fact.

According to the evidence of PW-07 Sumanawathi, who was the sister of the appellant's wife, on the day of the incident, the appellant has come to her house which was situated near the house of the appellant around 12.30 – 1.00 in the afternoon, while carrying the deceased child. She has observed the child's neck tilted to one side and the child was unconscious.

When questioned, the appellant has replied that while coming towards their house both of them fell. Thereafter, on her advice, the appellant has taken the child to be admitted to the hospital. She has come to know later that the child has passed away.

According to the evidence of PW-10, while he was going to the boutique to purchase some provisions, he has seen a person walking with a small child while the child being repeatedly assaulted using a stick. The child has been crying which has alerted the witness to observe what was happening. He has seen this incident about 50 meters away from the place where he was, and has thought that he would have been the father of the child. He has identified the appellant at the trial as the person who was assaulting the child at that time.

According to the evidence of PW-11, the Judicial Medical Officer (JMO) who conducted the post-mortem of the deceased child, marked as X-1 during the trial, has observed 13 external injuries and 3 internal injuries on her body. The main injury observed, namely the injury number 01, had been to the left side of the forehead which was an oval shaped contusion. While giving evidence, the JMO has explained in detail the injury number 01 and opined that it has been caused by using force on the child's head and was of the opinion that it was the

injury that had caused the death. The injury number 02 and 03 had also been contusions near the right-side ear and the eye of the child. The 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> injuries identified had been 27 finger nail abrasions on the cheeks and the chin of the child. He has opined that such fingernail abrasions can occur when someone attempts to cover the face of the child and when the child resists such attempts. The injury number 07 was also a group of abrasions over the right side of the chest just below the armpit. The injury number 08 had been a group of similar injuries on the left side of the chest just below the left armpit. The JMO has opined that such injuries can occur when someone holds a child of this tender age from the two armpits and violently shakes or violently lifts such child. The injury number 09, 10 and 11 has been scars of an injury that had occurred previously, and the JMO has described them as burn injuries. The injury number 12 and 13 had been described as scars observed on the two knee joints, which may be a result of a fall.

The internal injury number 14 has been identified as a tear of the upper lip of the child. The JMO has opined that this kind of injury cannot occur as a result of a fall without causing corresponding injuries to the face, and has opined that this injury has been caused by an intentional assault. The injury number 15 was a subdural haemorrhage to the head, which has caused internal bleeding. The JMO has opined that such an injury can occur due to an assault or applying force onto the head, and he has also opined that such an injury can happen as a result of a motor traffic accident or even due to a fall or an accident.

The injury number 16 has also been an internal injury caused to the frontal lobe of the brain. The JMO has opined that the said injury was an injury caused as a result of the injury number 01 observed by him.

Giving evidence, the JMO has clearly opined that the injuries which caused the death of the child cannot occur as a result of a fall, and has given a detailed reasoning for his opinion.

After leading the evidence of police witnesses who had conducted investigations into the matter, the prosecution has closed its case. Accordingly, the learned High Court Judge has decided to call for a defence of the appellant.

The appellant has decided to make a dock statement. He has admitted that the deceased child was given to him and his wife to be looked after, and has claimed that since they could not afford to look after her, he took the child on the day of the incident in order to hand over the child to her grandmother. Since he could not handover as no one was at the house of the grandmother, he has claimed that he returned to Nochchiyaagama along with the child, and while walking towards his house, the child ran in front of him on the bank of the bridge they were passing.

Although he shouted at her not to run and also assaulted her with a small stick, she has continued to run and had fallen off the bank and rolled over. He has claimed that when he ran towards her to check, but the child was unconscious, and believing that she has suffered a blockage of phlegm, he held her cheeks tight, opened her mouth and attempted to remove the phlegm, but failed. Thereafter, he has claimed that he took the child to his house and after obtaining some money, brought the child to the hospital. He has claimed innocence and stated that he did not commit a crime.

### **The Grounds of Appeal**

At the hearing of this appeal, although the learned Counsel for the appellant has formulated several other grounds of appeal in his written submissions, the following grounds of appeal were urged before the Court.

1. There was no direct evidence against the appellant, but the conviction was based on circumstantial evidence. The learned High Court Judge failed to appreciate suspicious circumstances when analyzing the evidence.
2. The learned High Court Judge has compartmentalized the evidence.

3. The learned High Court Judge has wrongly applied the provisions of section 105 of the Evidence Ordinance to the facts of this case.
4. The learned High Court Judge has relied entirely on the expert evidence in order to convict the appellant.

### **Consideration of The Grounds of Appeal**

As the grounds of appeal urged are interrelated, I will now proceed to consider the said grounds of appeal together.

There had been no eyewitnesses to the incident where the deceased child had suffered injuries that led to her death. Therefore, there cannot be any argument that the prosecution has relied on circumstantial evidence to prove its case.

Before considering the evidence led before the trial Court to come to a conclusion whether the prosecution has placed sufficient circumstantial evidence to prove the charge beyond reasonable doubt against the appellant, I find it appropriate to discuss the legal principles that has to be considered in a case where the prosecution has relied 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.*

In the first ground of appeal, the learned Counsel submitted that the learned High Court Judge, in the process of considering the circumstantial evidence against the appellant, has failed to consider that those circumstantial evidence only provides for suspicious circumstances against the appellant.

However, it is trite law that in a case where only circumstantial evidence is available, one piece of evidence, although it may provide only suspicious circumstances to connect an accused person to the crime, that in itself cannot be viewed as a reason to dismiss such a piece of evidence.

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.”*

Circumstantial evidence has to be viewed as that of a rope composed of several chords. One strand of the rope might be insufficient to sustain the weight, but several strands together may be quite sufficient in strength.

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 brock, the chain would fall. It is more like of a rope composed of several cords. One strand of the rope might be insufficient to sustain the weight, but three 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.”*

Although the learned Counsel for the appellant argued that the learned High Court Judge has failed to consider suspicious circumstances that favours the appellant, I find no basis to come to such a conclusion. It is clear from the judgment that the learned High Court Judge was well aware as to the manner in which circumstantial evidence should be considered and has evaluated the relevant pieces of evidence in its correct perspective.



I am also unable to agree with the contention that the learned High Court Judge has compartmentalized the evidence. On the contrary, it is quite apparent that the learned High Court Judge has considered the totality of the evidence in coming to his findings. The learned High Court Judge has considered the fact that the deceased was under the care of the appellant, her living conditions while being taken care, and the evidence of fellow villagers in that regard. He has well considered the evidence of the prosecution as well as the position taken up by the appellant in his defence to consider whether a reasonable doubt has been created or a reasonable explanation has been provided against the evidence led before the trial Court.

I do not find a basis to consider that the learned High Court Judge has heavily relied on the expert evidence to convict the appellant.

No doubt that the learned High Court Judge has considered the evidence of the JMO in detail, it is clear that the JMO's evidence has only been considered as a part of the circumstantial evidence available before the Court.

In the dock statement, the position taken up by the appellant had been to the effect that the child while running away from him, fell over a bank, and was unconscious when he reached her. The JMO has found a contusion on the child's forehead which has caused her death. It is clear from the version of events as narrated by the appellant in his dock statement, he has made an attempt to explain the injury and also the nail marks found on the child's face and also near her armpits to show that he made an attempt to revive her. The learned High Court Judge has considered the medical evidence in that context, and not only relying on such evidence to convict the appellant.

It appears that since the explanation by the appellant was to suggest that the death of the child was a result of an accident, the learned High Court Judge has considered it as an attempt by the appellant to show that the incident comes within the general exceptions as stated in the Penal Code. It has been determined

that the burden of proving the existence of such exceptions should be on the appellant.

I find that this was not a case where the appellant has claimed that his actions fall within the general exceptions of the Penal Code. Besides that, for a person to claim an accident as a reason for the death of the child, that claim has to be within the permitted parameters as stipulated under the general exceptions of the Penal Code. As I find that no such exception has really been taken up by the appellant as his defence, considering the provisions of section 105 of Evidence Ordinance would not have had any application to this case and the determinations made by the learned High Court Judge on that basis are misdirections as to the relevant law.

However, such a misdirection has to be a misdirection that has caused a prejudice towards the appellant or occasioned a failure of justice so that a conviction based on such a misdirection should have a vitiating effect.

The proviso of Article 138 of The Constitution which gives appellate jurisdiction to the Court of Appeal reads as follows.

**Provided that no judgment, decree or order of any Court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.**

The circumstantial evidence led in this action clearly shows that the injuries suffered by the deceased have been caused within few hours of her death. Evidence of PW-10 establishes the fact that just before the child received the fatal injuries, the appellant was with her and assaulting the child with a stick. Although PW-10 has only identified the appellant while giving evidence before the trial Court, the appellant in his dock statement has admitted that while walking with her, and just before she fell as stated by him, he hit her with a stick.

The evidence of the JMO has established beyond reasonable doubt that the injuries suffered by the child was not a result of a fall or the nail marks found in her body was not a result of attempting to revive the child. The evidence of the JMO also shows the previous evidence of torture that the child has suffered, which clearly corroborates the evidence of fellow villagers as to the sufferings of the child under the care of the appellant. The injuries on the body of the deceased have clearly established the violence lashed out at the child just before she suffered the fatal injuries, which evidently shows that the appellant has acted intentionally towards the victim child.

The circumstantial evidence led at the trial has only pointed towards the culpability of the appellant and no one else.

For the reasons considered as above, I find that the learned High Court Judge has evaluated the evidence placed before the Court and has come to a correct finding as to the guilt of the appellant to the charge preferred against him.

Accordingly, the appeal is dismissed for want of merit. The conviction and the sentence dated 06-02-2019 affirmed.

Judge of the Court of Appeal

**P. Kumararatnam, J.**

I agree.

Judge of the Court of Appeal