

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

In the matter of an appeal
in terms of Section 331 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.

The Democratic Socialist
Republic of Sri Lanka

Court of Appeal Case No.

HCC/209/2018

High Court of Balapitiya

Case No. HCB 1265/2009

Complainant

Vs.

Ambalangoda Liyanage Sujeewa
Vishwajith.

Accused

AND NOW

Ambalangoda Liyanage Sujeewa
Vishwajith.

Accused –Appellant

Vs.

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

Respondent

BEFORE : **MENAKA WIJESUNDERA, J**
WICKUM A. KALUARACHCHI, J

COUNSEL : Anuja Premaratna, P.C. with Imasha Senadeera and
Ramith Dunusinghe for the Accused-Appellant.
Suharshi Herath, D.S.G. for the Respondent.

ARGUED ON : 21.03.2024

DECIDED ON : 30.04.2024

WICKUM A. KALUARACHCHI, J.

The accused-appellant was indicted in the High Court of Balapitiya for committing the murder of his wife Pahuru Thotage Nirosha Sanjeewani Abeywickrama on or about 23rd April 2005, an offence punishable under Section 296 of the Penal Code. After trial, the learned High Court Judge convicted the accused-appellant for the offence of murder and imposed the death sentence on him. This appeal is preferred by the accused-appellant against the said conviction and sentence.

Prior to the hearing, written submissions were filed on behalf of both parties. At the hearing of the appeal, the learned President's Counsel for the appellant and the learned Deputy Solicitor General for the respondent made oral submissions.

In brief, the prosecution case is as follows:

At the time of this incident, the deceased Nirosha Sanjeewani had been living with the accused-appellant and her grandmother; the mother of PW-1 in Meetiyagoda, Ranasinghewatte. The deceased was the daughter of PW-1's sister. PW-1 also lived in Ransainghewatte, few houses away from the house of the deceased. According to PW-1, the accused and the deceased got married in 2004.07.21 and the deceased was pregnant at the time of the incident. On the day of the incident

around 11.30 a.m, PW-1 had gone to the house of the deceased with her mother who came to ask PW-1 to have lunch with them. When they arrived at the house where the accused, deceased and PW-2 (mother of PW-1) lived, PW-1 has witnessed accused having a quarrel with the deceased. The accused chased the deceased shouting at her in filth and threatening that he is going to kill her. when PW-1 and her mother arrived at home, the accused scolded them in filth asking PW-1 as to why she came. At this moment, the deceased asked PW-2, her grandmother (to whom the deceased used to address as mother) to go to the police saying that there is no escape this time. Accordingly, PW-2 went to the police. PW-1 also left the place because the accused chased her away throwing stones at her. However, after going halfway to her house, PW-1 returned running to the deceased's house, as she was worried about the deceased, who was pregnant. When PW-1 was returning to the house of the deceased, PW-1 has seen the accused-appellant putting the deceased into the well situated in front of the house of the deceased and then the appellant running away. Thereafter, PW-1 had screamed for help and the neighbours have got the deceased out of the well. The deceased was admitted to the hospital and found dead.

The following grounds of appeal have been stated in the written submissions filed on behalf of the accused-appellant.

- i. The learned High Court Judge has failed to consider the improbability of the prosecution case.
- ii. The learned High Court Judge has failed to consider the medical evidence which explains the absence of injuries caused by resistance which should have been considered in favour of the accused-appellant.
- iii. The learned High Court Judge has failed to consider the evidence of the police officers who inspected the scene of crime and testified that there were no signs of fight or resistance

which should have been considered in favour of the accused-appellant.

- iv. The learned High Court Judge has failed to consider and properly evaluate the vital *inter-se* contradictions.
- v. The learned High Court Judge has failed to consider and evaluate the inconsistencies in the testimony of the sole eye witness.
- vi. The learned High Court Judge has failed to consider the interestedness in the witnesses.
- vii. Grave prejudice has been caused to the accused due to the failure of the High Court Judge to notify the accused-appellant of his rights in presenting his defence before the Court.

However, when this matter was taken up for hearing, the learned President's Counsel for the appellant confined his arguments to the following three grounds:

- I. Improbability of the prosecution case.
- II. Failure to consider the absence of injuries (signs of fights or resistance) on the body of the deceased.
- III. Not considering the inconsistencies in the testimony of the eye witness, PW-1.

All these grounds could be considered together because the aforesaid all three grounds rely on the ground of improbability of the prosecution story narrated by PW-1.

The accused-appellant's position was that the deceased committed suicide by jumping into the well. The said position has been suggested to PW-1 and PW-2. When the learned Trial Judge called for the defence, two witnesses were called on behalf of the appellant. However, the accused-appellant had not even made a dock statement and stated that the deceased committed suicide by jumping into the well especially, when there was evidence that the accused-appellant chased the

deceased shouting at her in filth and threatening that he is going to kill her. Also, there is evidence that the appellant ran away after putting the deceased into the well.

What the learned President's Counsel for the appellant pointed out was that according to PW-1, the appellant lifted the deceased and dropped her into the well and the deceased and the appellant were facing each other when the deceased was put into the well by the appellant. The learned President's Counsel contended that no human being could put another person into a well in this manner by raising the deceased by her waist. In substantiating his argument, the learned President's Counsel pointed out that according to the evidence of the police officer who inspected the scene of the crime, there were no signs of a fight or resistance and according to the medical evidence, there were no injuries on the body of the deceased in resistance.

The learned Deputy Solicitor General for the respondent contended that the eyewitness PW-1 precisely described how she witnessed the incident, that there is no ambiguity in the chain of incidents that she described, that she is a credible witness, and that the incident that she narrated is entirely plausible. In addition, the learned DSG submitted that not only PW-1 stated in her evidence that the deceased never had intention to suicide (Page 117 of the Appeal Brief) but also PW-1 stated that the deceased requested her to inform the police saying that there is no escape this time (Page 72 of the Appeal Brief).

The following facts are not in dispute:

- i. At the time of the death, the deceased was pregnant and expecting delivery in seven days.
- ii. The well relating to the incident of this case is about 4.5 feet in diameter and about 17 feet in deep. The well is surrounded by a wall of about 2 feet.

- iii. The first information regarding the incident was given by the accused-appellant and the appellant was a police officer.

Citing the Judgments of CA – HCC – 0289/ 2014, ***Kosgoda Durayalage Premachandra V. The Honourable Attorney General***, Decided on 26.07.2022; CA - HCC 44/2015, ***Don Chandana Priyantha Rupasinghe V. Hon. Attorney General***, Decided on 26.11.2019; ***King V. Seneviratne*** reported in 38 NLR 208; the learned President's Counsel for the appellant contended that in a case of this nature, the possibility of committing the suicide must be excluded by the prosecution. It is correct that in the instant action, the prosecution must prove beyond a reasonable doubt that the death of the deceased was not a suicide but a murder. Therefore, the issue to be decided in this case was whether the deceased jumped into the well and committed suicide or the appellant pushed or dropped her into the well.

The witness Anoja Darshani has been called to give evidence on behalf of the appellant. She stated that the appellant had a quarrel with PW-1, Hemakanthi. PW-1 has also stated in her evidence that the appellant scolded in filth asking PW-1 as to why she came and chased her away throwing stones at her. Corroborating these items of evidence the aforesaid defence witness also stated that the appellant threw stones at her. Apart from that, this defence witness stated that the appellant told her that the deceased jumped into the well. However, the defence witness has admitted in cross-examination that she did not state to the police when making a statement that the accused-appellant, Sujeewa told her that the deceased jumped into the well. Hence, it is clear that the story of the appellant that the deceased jumped into the well is an afterthought and the learned Trial Judge is correct in not accepting the said defence version. Accordingly, defence evidence does not create a reasonable doubt whether the deceased jumped into the well and committed suicide.

In careful perusal of the evidence of this case, it is apparent that there was no impossibility in putting the deceased into the well by holding her waist while facing the appellant. It is also clear that it is very difficult for the deceased, who was in her last stage of pregnancy to resist the appellant in a situation where he held by her waist and lower part of her body was hanging down in the well. It is also important to note that when explaining the incident, PW-1 has never stated that the deceased did any act to resist. Therefore, her evidence is consistent with the medical evidence that there were no external injuries on the body of the deceased.

The only other matter to be considered is whether the absence of injuries on the deceased's body implies that she jumped into the well. The doctor who conducted the Post-Mortem Examination stated in his evidence that it is common sense that if someone is held firmly and then released, there may not be injuries (Page 155 of the Appeal Brief). The doctor was of the clear opinion that if somebody puts a person into a well, there would not necessarily be injuries. Therefore, there is no improbability in the evidence of PW-1 as well as the prosecution case. No reasonable doubt arises as to whether the deceased jumped into the well. I regret that I am unable to agree with any of the grounds of appeal raised by the learned President's Counsel for the appellant for the reasons stated above.

As it is proved beyond a reasonable doubt that the accused-appellant put the deceased into the well with the murderous intention, the conclusion of the learned High Court Judge that the accused-appellant has committed the offence of murder is correct.

For the reasons stated above, I find no reason to interfere with the Judgment of the learned High Court Judge. Accordingly, the Judgment dated 21.09.2018, the conviction and the death sentence passed on the accused-appellant are affirmed.

The appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera, J

I agree.

JUDGE OF THE COURT OF APPEAL