
**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/0100/2022
High Court of Balapitiya
Case No: HC/1102/2007

Devagiri Christy Gayan de Soyza

ACCUSED-APPELLANT

vs.

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

COMPLAINANT-RESPONDENT

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

COUNSEL : **Nagitha Wijesekera for the Appellant.**
Shanaka Wijesinghe, P.C, ASG for the
Respondent.

ARGUED ON : **10/03/2023**

DECIDED ON : **12/05/2023**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted in the High Court of Balapitiya under Section 296 and 316 of the Penal Code for committing the murder of Nigamuni Lalitha Mendis and causing grievous hurt to Thommadura Nadun Buddhika Mendis respectively on or about 29th March 2003.

As the Appellant absconded the Court, the trial commenced in absentia of him. The Appellant was represented by a Counsel during the trial. After considering the evidence presented, the learned High Court Judge had convicted the Appellant and sentenced him as follows on 26/07/2021:

- For the 1st Count the Appellant was sentenced to death.
- For the 2nd Count the Appellant was sentenced 02 years rigorous imprisonment and imposed a fine of Rs.5000/-. In default 03 months simple imprisonment imposed. In addition, the Appellant had been ordered to pay a compensation of Rs.200000/- to the injured PW3, Buddhika Mendis. In default 12 months simple imprisonment.

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

Background of the Case

According to PW1, the deceased had returned from abroad few days prior to her death. PW1, the deceased and her son, the Appellant, and sister of the Appellant and her two children were living in the house where the incident had taken place. The Appellant's sister had got married to one of the brothers of the deceased.

On the day of the incident, between 11pm-12 midnight hearing the cries of the deceased “අපේ ම මරණවේ” the witness had come out from his room and switched on the passage light and had seen the Appellant coming towards him brandishing a sword. The witness had escaped from the scene through the rear door of the house fearing that the Appellant might harm him and has hidden himself in a thicket close to the house. After sometime, PW1 had seen the Appellant leaving the house through the main door with his sister and her two children. After that he had gone into the house and found the deceased lying on the bed in her room with bleeding injuries. When he looked for PW3 (the son of the deceased) in his room he was not in at that time. Thereafter, he had gone to PW4, Saliya's house and informed the incident to him. Later he had discovered that PW3 also had sustained injuries and was rushed to the hospital.

Upon receiving information from PW1, PW4 who is another son of the deceased, had gone to the house and seen the deceased lying on the bed with bleeding injuries. She had murmured “ච්ඡේ, ච්ඡේ” at that time. Immediately the deceased was taken to the Balapitiya Hospital. But the deceased had succumbed her injuries on admission to the Balapitiya Hospital. PW4 had come to know that his brother (PW3) too had been injured on that day. Prompt complaint was made to the Ahungalle Police Station by witnesses PW1 and PW4.

According to PW3, Buddhika Mendis, his father had passed away when he was very young. The Appellant had lived in their house with his sister who

had married one of the brothers of his mother. His mother had gone abroad and returned few days prior to her untimely death. PW3 had occupied a separate room. On the day of the incident, between 10.00-11.00pm, the Appellant had woke him up and asked whether he had any enemies. The witness had noticed that the Appellant was under the influence of liquor and possessed a sword which was belonging to his brother. The Appellant called the witness to go in the direction of the rail track to check whether anybody had come there. According to PW3, at that time his deceased mother was sleeping in the house. When he stopped to answer a call of nature, suddenly the Appellant had dealt a blow on his head. As he ran towards the railway track the Appellant had dealt another blow which he had covered by his hand. As he ran fast the Appellant could not reach him. PW3 had gone to a friend's house but fell unconscious thereafter. As he had been hospitalized for about 12 days, he could not attend his mother's funeral.

PW7, IP/Silva had conducted the investigations upon receiving the 1st complaint from PW4. He had visited the crime scenes and commenced further investigations to arrest the Appellant.

PW12, the JMO who held the post-mortem of the deceased stated that the death was caused due to severe brain damage due to homicidal cut injuries over the head. He has further opined that five cut injuries without defending injuries, or any other injuries, indicates that the victim was assaulted while she was asleep.

PW13, the JMO who checked PW3 had noted five cut injuries on his body. According to him injuries No.1,3 and 4 were grievous in nature and all injuries were inflicted by a sharp cutting instrument.

The Learned Counsel has raised following grounds of appeal on behalf of the Appellant:

1. The conviction is contrary to the weight of the evidence adduced in the case.
2. The Learned Trial judge has reached a wrong conclusion that the evidence of PW1 is credible when there are material omissions and discrepancies quite apparent upon his evidence.
3. The Learned Trial Judge has reached a wrong conclusion that the evidence of PW3 is credible when there are material omissions and discrepancies quite apartment upon his evidence.
4. The Learned Trial Judge has failed to appreciate that there that there are no strong direct and circumstantial evidence to link the accused-appellant to the charge of murder.
5. The Learned Trial Judge has disregarded the absence of corroborative evidence to establish both charges.
6. The Learned Trial Judge has wrongly come to a finding that the prosecution has establish their case beyond reasonable doubt.
7. The Learned Trial Judge has failed to properly and lawfully evaluate omissions and contradictions highlighted and marked on behalf of the accused-appellant.

As the appeal grounds advanced by the Counsel for the Appellant are interconnected, all appeal grounds will be considered together hereafter.

This case rests on both direct and circumstantial evidence. The happening of deceased's death rests on strong circumstances evidence. According to PW1, he had clearly seen the Appellant coming out of the room of deceased with a sword. He had witnessed this with the aid of the lights of the house which he switched on when he came out of his room upon hearing the cries of the deceased. Also, he had seen the Appellant leaving the house with his sister Ayoma and her two children immediately after he saw the Appellant with a sword. Further, he had seen the deceased with bleeding injuries on

her bed after the Appellant came out of her room. He had identified the sword during the trial.

PW3 who was severely injured stated that the Appellant woke him up calling him through the window of his room which was situated outside the main house. He was then taken by the Appellant near the railway track and then cut by the sword that he was carrying. He had identified the sword which was used to cut him at the time of the incident.

In this case the Learned High Court Judge had very correctly analyzed, accepted, and concluded that the evidence given by the witnesses PW1 and PW3 is convincing and trustworthy.

In **Kumara De Silva and 2 others v. Attorney General** [2010] 2 SLR 169 the court held that:

“Credibility is a question of fact, not of law..... The acceptance or rejection of evidence of witnesses is therefore a question of fact for the trial judge....”.

Further, the Counsel argued that the Learned High Court Judge had disregarded the absence of corroborative evidence to establish both charges. The Learned ASG very correctly submitted that the evidence of PW1 had been corroborated by the evidence of PW4. In fact, there is ample corroboration as to the weapon used for the crime from the evidence of PW1 and PW3. Both these witnesses had identified the murder weapon without any difficulty. According to PW12, the JMO who held the post-mortem expressed his opinion that the injuries inflicted on the deceased could be caused by the weapon produced in the trial. PW13, the JMO who had examined PW3 also expressed his opinion that the injuries found on PW3 could have been caused with the sword which had been marked as P1. Further, PW3's evidence had been corroborated by PW7 the investigating officer with regard to the place where PW3 was cut by the Appellant.

As the prosecution had led strong corroborative evidence during the trial, it is incorrect to argue that the prosecution had failed to lead corroborative evidence.

The Counsel for the Appellant further contended that the Learned High Court Judge had reached a wrong conclusion with regard to the evidence of PW1 and PW3 stating that it is credible when there are material omissions and discrepancies in their evidence.

In the case of **The Attorney General v. Sandanam Pitchi Mary Theresa (2011) 2 Sri L.R. 292** held that,

“Whilst internal contradictions or discrepancies would ordinarily affect the trustworthiness of the witness statement, it is well established that the Court must exercise its judgement on the nature of the inconsistency or contradiction and whether they are material to the facts in issue. Discrepancies which do not go to the root of the matter and assail the basic version of the witness cannot be given too much importance.

Witnesses should not be disbelieved on account of trifling discrepancies and omissions. When contradictions are marked, the Judge should direct his attention to whether they are material or not and the witness should be given an opportunity of explaining the matter.”

The Learned High Court Judge had properly analyzed and evaluated the evidence given by PW1 and PW3. He had also analyzed and evaluated each and all omissions and contradictions of these witnesses in his judgment. After considering the omissions and contradictions extensively, the Learned High Court Judge had very correctly held that the omissions and the

contradictions highlighted are not vital and material and do not go to the root of the case. It is especially important to note that the witnesses had given evidence before the High Court after about 13 years of the incident.

Finally, the Counsel for the Appellant contended that the Learned Trial Judge has failed to appreciate that there are no strong direct and circumstantial evidence to link the accused-appellant to the charge of murder.

In **Podisingho v. The King 53 NLR 49** the Court held that:

“In the 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 be consistent with his guilt”.

In this case the evidence led had well established that the Appellant had committed the offences for which he had been indicted. The Learned High Court Judge had very correctly held that the Appellant was the person who committed the murder of the deceased and caused the injuries to PW3.

Further, the Learned High Court Judge very correctly had given his reasons as to why he accepts the evidence of PW01, PW03 and others as unbiased witnesses. PW1 and PW3 had given evidence based on what they had seen on the date of the incident. If PW3 is an interested witness he could have easily said that he too had seen the Appellant inflicting injuries to his mother.

With reference to above cited judicial decisions, it is abundantly clear that the trial court had scrutinized and considered the evidence presented by the prosecution very carefully and accepted the same as truthful and impressive to come to a correct finding.

In this case the learned High Court Judge had not only considered the evidence of PW1 and PW3, but also considered other corroborating evidence in his judgment and come to a correct decision.

Considering the appeal grounds advanced by the Appellant in this case, I conclude those are totally devoid of merit.

Hence, I am of the view that there are no reasons to interfere with the judgment of the learned High Court Judge of Balapitiya. For the reasons stated above, I affirm the conviction and the sentence imposed on the Appellant.

Therefore, the Appeal is dismissed.

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

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL