

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

Democratic Socialist Republic of Sri Lanka.

Complainant

CA Appeal No: CA/HCC/276/2023

HC of Vavuniya Case No:

Vs.

HCV/2952/2020

Sivanathan Premanath alias Nedumaran

Accused

AND NOW BETWEEN

Sivanathan Premanath alias Nedumaran

Presently at

Bogambara Prison, Palkekele, Kandy

Accused-Appellant

Vs.

Hon. Attorney General

Attorney General's Department

Colombo 12

Respondent

Before : **B. Sasi Mahendran, J.**
 Amal Ranaraja, J

Counsel: Anil Silva PC with Isuru Jayawardena and S. Wadugedara Accused-
 Appellant
 Azard Navavi SDSG for the Respondents

Written

Submissions: 18.07.2024(by the Accused-Appellant)

On :

Argued On : 21.03.2025

Judgment On: 20.05.2025

JUDGMENT

B. Sasi Mahendran, J.

The Accused- Appellant (hereinafter referred to as the Accused) along with three others who are unknown to the prosecution was indicted before the High Court of Vavuniya on the charge of committing the offence of murder of one Mohamed Siltan Meera Mohaideen on 20.04.2009 punishable under Section 296 of the Penal Code as amended.

On 06.07.2020, the Accused opted to have a trial without a Jury. The Prosecution led the evidence through twelve witnesses and marking productions from P1 to P8 and thereafter closed its case. The Accused in his defence made a dock statement. At the conclusion of the trial, the Learned High Court Judge by judgment dated 08.06.2023 found the Accused guilty of murder and imposed the death sentence.

Being aggrieved by the afore-mentioned conviction and the sentence, the Accused has preferred this appeal to this Court.

The following are the grounds of appeal as pleaded by the Accused;

1. It was unfair for the Accused to proceed with this case without a jury.
2. The High Court failed to consider the contradictions in the prosecution's case.
3. The Court has failed to take due consideration that there was no eye witnesses and that the Accused made a statement that the pistol was not in his possession.

We are mindful that there are no eye witnesses to this case and the case is based solely on circumstantial evidence. Thus, it is pertinent to consider the rules governing the cases of circumstantial evidence.

E.R.S.R. Coomaraswamy, *The Law of Evidence*, Page 25:

“In Sri Lanka, the rule that in order to justify the inference of guilt from purely circumstantial evidence, the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation on any other reasonable hypothesis than that of his guilt, has been repeatedly emphasized and applied by our courts. Thus, in a case based entirely on circumstantial evidence, the fact that the deceased was last seen alive in the company of the deceased would not of itself justify a conviction, where the exact time of death is not established, nor would the fact that the accused subsequently attempted to dispose of a weapon which might have caused the injuries on the deceased. Again, where the only evidence against two accused, indicted for murder, was that they had the opportunity of committing the offence either jointly or individually and that after the discovery of the body, they absconded and were not apprehended for three years, the verdict of guilty was held to be unreasonable.”

In B.R.R.A. Jagath Pramawansha v. The Attorney General, CA Appeal No. 173/2005, decided on 19.03.2009, His Lordship Justice Sisira de Abrew held that;

“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 the 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.”

Having regard to the principles laid down in the above judicial decisions, I hold that in a case of circumstantial evidence, if an inference of guilt is to be drawn, such an inference must be the one and only irresistible and inescapably conclusion that the accused committed the offence. When the evidence adduced at the trial is considered, the one and only irresistible and inescapable conclusion that can be arrived at is that the accused committed the murder of Prema Jayawardwene.”

His Lordship Justice Aluwihare, PC, in *Junaideen Mohamed Haaris v. Attorney General*, SC Appeal 118/17, Decided on 09.11.2018 held that:

“Before I consider the facts of the case and the legal issues raised in this appeal, it should be borne in mind that the prosecution relied entirely on circumstantial evidence to establish the charges, for the reason that there were no eyewitnesses to substantiate any of the charges against the Accused-Appellant. Thus, it was incumbent on the prosecution to establish that the ‘circumstances’ the prosecution relied on, are consistent only with the guilt of the accused appellant and not with any other hypothesis.

Regard should be had to a set of principles and rules of prudence, developed in a series of English decisions, which are now regarded as settled law by our courts. The two basic principles are-

- i. The inference sought to be drawn must be consistent with all the proved facts, if it is not, then the inference cannot be drawn.
- ii. The proved facts should be such that they exclude every reasonable inference from them, save the one to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct (per Watermeyer J. in *R vs. Blom* 1939 A.D. 188)”

In light of the above judicial pronouncements, what I understand is that the available evidence should be reliable and the said evidence and the circumstances so proved must form a chain of events from which the only irresistible and inescapable inference that the Court can arrive at is about the guilt of the accused that can be said to be drawn and no other hypothesis against the guilt is possible. The Court must satisfy itself that various circumstances in the chain of events must be such as to rule out reasonable likelihood of the innocence of the Accused. We are also mindful that there is always a duty cast on the Prosecution to prove the case beyond reasonable doubt. That means, in the words of Lord Denning in Miller vs. Minister of Pensions, 1947 All England Law Reports, p. 372, “Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The Law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice.”

By doing so, the Court will be mindful not to allow the suspicious circumstances which may allow the Prosecution to strengthen their case. Having this dictum in our mind, we now consider what are the evidence available against the Accused to form a chain of events from which the only irresistible and inescapable inference that the Court can arrive at is the guilt of the accused.

The deceased, who was a medical practitioner, on the day in question which was 20.04.2009 had come to the Abisha Hospital to see the patients. After attending to

the patients, when he was leaving the hospital, he was shot by an unknown person and succumbed to his injuries. No one has seen the incident.

The SOCO officers who visited the scene recovered 4 cartridges and handed them over to the Sub Inspector Jayantha Rajapaksha. These empty cartridges were later sent to the Government Analyst.

According to PW19, the retired Army Officer, Milton, on 01.05.2009, they received information that some members of a plot had taken things from the government store. When he and other Officers went to the scene, they had recovered two pistols, one from the Accused and another from one called Sivarasa. According to this witness, both pistols had different numbers and the number indicated in the pistol recovered from one Sivarasa was 22045632 and the number indicated in the Accused had a distinctive number 1100 engraved in the pistol. Thereafter, he handed over them to one senior officer.

It should be noted that when he gave evidence, the number 1100 engraved was not there and he could not identify the pistol. The Government Analyst, Madawala, when he gave evidence stated that when he received both pistols, he had identified that only one pistol had a number.

According to the Government Analyst, the four cartridges that were found at the crime scene would have been fired from the pistol that was recovered from the one that had no number allegedly recovered from the Accused. But the particular pistol did not have a number.

The Learned High Court Judge had convicted the Accused on the basis that the weapon recovered from the Accused tally with the four empty cartridges found at the scene.

It should be noted that there is no concrete evidence to show that PW19 made any entry with regard to the pistol recovered from the persons.

We are also mindful that the incident happened on 20.04.2009 and the Accused was arrested on 01.05.2009. There is no evidence to show that no other weapon was recovered during this time. We further note that, when PW19 gave evidence,

he indicated that the said weapons were rusted and not properly maintained. The prosecution has failed to establish that the Accused had exclusive possession of the said weapon from the day of the incident till the time of the arrest. The Prosecution has failed to prove that PW19 had properly handed over the weapons indicating the details of the weapons.

We are mindful that when PW19 went to the scene, both weapons were handed over to him simultaneously. He had not indicated to the Court as to when he did identify the numbers and how he had identified which one belonged to whom.

Another question arises that, when the Government Analyst received the production, he could not identify the numbers that were identified by PW19. According to him, the pistol identified as P3's number was damaged. PW19 states that he had identified the weapon by the number. The question then arises whether the Government Analyst had in fact received the weapon that was alleged to be recovered from the Accused. From this evidence, there is a doubt created. The entire reliance was placed by the Prosecution on the stance that four empty cartridges recovered from the scene had been fired from the pistol which was recovered from the Accused. Nevertheless, the Prosecution failed to prove such through evidence.

I would like to reproduce the sentiments expressed by Soertsz J in King v. Abeywicrama 44 NLR 254;

“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.”

I am of the view that if the Court is going to make a decision that the Accused is guilty of an offence, such a decision must be the one and only irresistible and inescapable conclusion that the accused committed the offence. In the instant case, there is a doubt created by the Prosecution witness with regard to the identity of the pistol.

I am of the opinion that if the learned Trial Judge had treated these unsatisfactory features in the evidence led in the case in his correct perspective, he would never have found the Accused guilty of the charge leveled against him.

For the reasons stated above, I set aside the conviction and the sentence imposed on the Accused Appellant and acquit the Accused Appellant.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL