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/0162/2022

Weerappa Sidren alias Suren

High Court of Colombo
Case No: HC/329/2017

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

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

COUNSEL : **Punarji Karunasekara, for theAppellant.**
Madhava Tennakoon, DSG for the Respondent.

ARGUED ON : **28/05/2024**

DECIDED ON : **27/08/2024**

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JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted in the High Court of Colombo under Section 296 of the Penal Code for committing the murder of Sathasivam Sri Priya on or about 31st July 2015.

The trial commenced before the High Court Judge of Colombo as the Appellant had opted for a non-jury trial. After the conclusion of the prosecution case, the learned High Court Judge had called for the defence and the Appellant had made a dock statement. After considering the evidence presented by both parties, the learned High Court Judge had convicted the Appellant as charged and sentenced him to death on 06/09/2022.

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

The Learned Counsel for the Appellants informed this court that the Appellants have given consent to argue this matter in his absence. Also, at the time of argument the Appellant was connected via Zoom platform from prison.

Background of the Case.

According to PW1, Sathyasri is the daughter of the deceased. She was around 7 years old when she witnessed the gruesome incident. On the date of incident, in the morning PW1 and her deceased mother had gone to a nearby Hindu temple to engage in religious activities. After completing such activities, both had gone to a nearby hotel to have something to eat. After having food, they had returned home, gone upstairs, and relaxed by playing video games. PW1 had then left the house to play with neighboring children. As she was leaving the house she had seen PW3, a person who was boarding in the deceased's house sleeping on the floor. When PW1 went out a neighbor had called her to bring a jug to take some 'Payasam' which is a desert prepared in Tamil homes. When she returned home to get a jug, she had noticed that the door of the house was open and that the Appellant was standing on the staircase calling the deceased to come downstairs. When the deceased obliged and came down, the Appellant had slapped the deceased and making the deceased to fall on the ground. The Appellant had then gone out of the house, brought a knife and had dealt several blows on the legs, hands, abdomen and chest of the deceased mercilessly. The deceased called her mother three times before going silent. The Appellant had then kept his hand near the nose of the deceased and checked whether the deceased was breathing. Although PW1 hid behind a curtain near the sink of the house out of fear, she could see the entire episode very clearly. Then PW1 had managed to run to the nearby boutique and informed the incident to her grandmother PW2. When she came back with PW2, they had seen the

deceased lying on the ground in a pool of blood. When PW1 ran out, she had seen the Appellant running out of the deceased's house.

PW2, Krishnaveni had taken the deceased to the Colombo General Hospital with the assistance of the neighbors and the police but the deceased had succumbed to her injuries around 6.00pm. PW3, Bairavi had also witnessed the Appellant stabbing the deceased using a knife.

The Appellant had surrendered to police on 02.08.2015 through a lawyer. A blood-stained knife was recovered upon the statement of the Appellant. The recovery of the knife was witnessed by a person called Ariyaratne. The deceased had suffered 20 stab injuries and 19 cut injuries on the upper and lower limbs and the chest. According to PW10, the JMO the death was caused due to multiple stab injuries to the chest and abdomen.

Being satisfied that the prosecution had made out a prima facie case against the Appellant, the Learned Trial Judge had called for the defence. The Appellant had made a statement from the dock and closed his case. The learned High Court Judge had sentenced the Appellant to death on 06/09/2022.

The Appellant had filed the following grounds of appeal.

1. The learned trial Judge has failed to properly analyze the contradiction of whether PW1 was observing the murder incident while she was staying under the sink or while standing away from the sink.
2. The learned trial Judge has failed to analyze that the crucial parts of PW1's testimony are not independent and *ex mero motu* given evidence as the same have been suggested by the prosecution unnecessarily.
3. The learned trial judge has erroneously analyzed that it has been proven that there was a dispute as the deceased had made a tip off/

information against a family member of the Appellant which had ultimately resulted as a motive for this offence committed.

4. The learned trial Judge has failed to analyze that all the witnesses have failed to identify the knife that was marked as P1 and it is not correct to mark the same via PW1 since she had stated she was unable to witness the same properly at the time of the incident.

Considering the grounds of appeal raised by the Appellant, it is apparent that grounds are inter related to each other. Hence, I decided to consider all the grounds jointly hereinafter.

In this case PW1 was 07 years old when he witnessed the gruesome incident. When he gave evidence in the High Court, he was 10 years old.

In **Ranjeet Kumar Ram v. State of Bihar** [2015] SCC Online SC 500 the court held that:

> *"Evidence of the child witness and its credibility would depend upon the circumstances of each case. Only precaution which the court has to bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one".*

In this case PW1 and PW3 are eye witnesses. Hence, admissibility of the evidence of an eye witness needs to be discussed very clearly.

Eyewitness testimony is one of the most important kinds of criminal evidence. In criminal cases, the judges regularly face the difficult but crucial task of evaluating eyewitness testimony. This sometimes means checking whether the witness's story fits with other established facts of the case. However, the veracity of such a story cannot always be verified or falsified directly. In such cases judges will have to look at whether the statement comes from a reliable source.

Further, an eyewitness's testimony is probably the most persuasive form of evidence presented in court, but in many cases, its accuracy is dubious. There is also precedent that erroneous eyewitness evidence can lead to wrongful convictions sending people to prison for years or decades, even to death row, for crimes they did not commit.

When considering the evidence of an eye witness, the Court should look at the demeanour of the witness, the inherent probability of the account, any internal inconsistencies in the account, whether the account is consistent with previous statements by the witness, whether the witness has any bias against the accused or any family or group to which the accused belongs, whether the evidence at the crime scene supports the account, and whether the witness's testimony is supported by the testimony of other witnesses. These factors are very important as the burden of proof is on the prosecution in all criminal cases.

In **The Queen v K.A. Santin Sangho 65 NLR 447** the court held that:

"*It is fundamental that the burden is on the prosecution. Whether the evidence the prosecution relies on is direct or circumstantial, the burden is the same. This burden is not altered by the failure of the appellant to give evidence and explain the circumstances.*

The credibility of the witness does not stand impeached merely by proving contradictions on record. It is required for the defence side to show that prosecution witnesses may deliberately depose change or improve their original statement in order to cause prejudice to the accused. Similarly, minor omission or discrepancy in evidence is not enough to hold the accused not guilty.

The learned High Court Judge had very extensively analysed the evidence of PW1 and PW3 and considered the contradictions and omission and decided to accept their evidence as true in this case. The relevant portion of the judgment is re-produced below:

Pages 269-270 of the breief.

මුලින්ම සිද්ධිය සම්බන්ධයෙන් මෙම නඩුවේ පැ. සා. 01 සාක්ෂියට කැඳවා ඇති අතර ඇය සාක්ෂි දෙමින් මෙම සිද්ධියෙන් මිය ගියේ තම මව වන බවත් සිද්ධිය සිදු වූ දින සවස් කාලයේ සවස 3 ට පමණ තමා සහ තම මව නිවසේ සිටිය දී චූදිත පැමිණා තම නිවසේ පඩිපෙළේ උඩම තට්ටුවේ සිටි බවත් තමා ඔහු මින් පෙර සිට හඳුනන බවත් එසේ හඳුනනුයේ චූදිතගේ පවුලේ අය කුඩු විකිණීම සම්බන්ධයෙන් තම මිය ගිය මව සී. අයි. ඩී. එකට අල්ලලා දුන්න හින්දා වන බවත් චූදිතගේ අයියා ඒ අනුව මාස 3 ක් හිරේ සිටි බවත් ඔහු හිරේ සිට පැමිණා තම ආච්චිට තර්ජනය කර බව ආච්චි නිවසට පැමිණා පැවසූ බවත් චූදිත පැමිණා තම මවට උස් හඬින් කතා කළ බවත් ඊට තමා බිය වී නිවසේ කුස්සියේ සින්ක් එක යට සැඟවුණු බවත් ටික වෙලාවකින් තම මියගිය මව පඩිපෙළෙන් පහළට පැමිණි විට චූදිත ඇයගේ කනට ගහගෙන ගහගෙන යනු තමා දුටු බවත් ඉන් පසුව චූදිත අතේ තිබුණු පිහියෙන් මිය ගිය තම මවට ඇන ගෙන ඇන ගෙන ගිය බවත් එම පිහි පහරවල් ඇයගේ පපුවට, බඩට, කකුලට හැමතැනටම ඇන්න බවත් මව කෑගැසූ බවත් ඒ වන විට මව බිම වැටී සිටි බවත් චූදිත පහත් වී මවගේ නහය අසලට අත තියා බැලූ බවත් තමා චූදිත ශබ්දය ඇසේවි යැයි සිතා තම පාදසලන් ද ගලවා දැමූ බවත් ඉන් පසු නිවසේ දොරෙන් පිට වී ආච්චි සිටි කඩයට ගිය බවත් ආච්චිගේ කඩයට ආසන්නයට ගොස් තම නිවස දෙස බලන විට චූදිත තම ගෙවල් පැත්තේ සිට දුවනවා දුටු බවත් ආච්චි සමඟ නිවසට එනවිට මව බිම වැටී සිටි බවත් ඉන් පසු ආච්චි පොලීසියට ගොස් පැමිණිලි කර ඇති බවත් අවට සිටි අය එකතුව ත්‍රීරෝද රථයකින් තම මව රෝහලට රැගෙන ගිය බවත් පවසා සිටියි.

Pages 272-273 of the brief.

ඉන් පසු පැ.සා. 3 සාක්ෂියට කැඳවා ඇති අතර ඇය සාක්ෂි දෙමින් තම මිය ගිය ඇයගේ නිවසේ පවත්වා ගෙන ගිය බෝඩිමේ තමා නැවතී සිටි බවත් සිද්ධිය වූ දින මියගිය අයගේ දියණිය මිය ගිය අය හා තමා එම සිද්ධිය වූ නිවසේ සිටි බවත් සිද්ධිය වන විට තමා නිදා ගෙන සිටි බවත් තමා උඩ තට්ටුවේ නිදා ගෙන සිටි විට කිසියම් කෙනෙකු උඩ තට්ටුවට පැමිණා මිය ගිය අයට කතා

කර පහළට එක්කාගෙන ගිය බවත් ටික වෙලාවකින් මිය ගිය අය කතා කරමින් සිට කෙඳිරි ගාන හඬක් ඇසුන බවත් ඒ අනුව තමා පල්ලෙහාට ගොස් බලන විට එම උඩ තට්ටුවට පැමිණි කෙනා මිය ගිය කෙනාට පිහියෙන් අනිනවා දුටු බවත් ඔහු ගොඩක් සැරයක් පිහියෙන් ඇන්න බවත් ඉන් පසු ඔහු එළියට පැන දිව්ව බවත් මිය ගිය අයට පිහියෙන් ඇන්නේ චූදිත බව තමා හඳුනා ගැනීමේ පෙරට්ටුවකදී තමා විසින් හඳුනා ගත් බවත් සිද්ධිය දැන ගැනීමෙන් පසුව නිවසට පැමිණි අය චූදිතගේ නම සුරේන් බව පැවසූ බවත් පවසා සිටී.

Pages 278 of the brief.

පැ.සා. 01 හා පැ.සා. 03 ගේ සාක්ෂිවල සුළු පරස්පරතාවයන් විත්තිය විසින් හරස් ප්‍රශ්න නැඟීමේ දී මතු කර ඇති අතර, විශේෂයෙන් පැ.සා. 01 එම අවස්ථාවේ සිටි ස්ථානය පිළිබඳව හරස් ප්‍රශ්න නඟා සැකයක් ඇති කිරීමට උත්සහ ගෙන ඇති බව පෙනේ. මෙහිදී පැ.සා. 01 සත්‍යා යන අය විසින් ඇය කුස්සියේ සින්ක් එක යට ඉඳ ගෙන සිටි බවට පොලිස් ස්ථානයට දී ඇති ප්‍රකාශය වැරදි බව පිළිගෙන ඇත. එසේම අදාළ අවස්ථාවේදී පාසායම් නම් දෙයක් ගැනීම සඳහා ගිය බව පොලිස් ස්ථානයට ප්‍රකාශ කර නොතිබීම ඇය පාදසළඹ ගැල වූ අවස්ථාවේ දී සිටි ස්ථානය පිළිබඳව වූ ගැටළුවද විත්තිය හරස් ප්‍රශ්න මඟින් අවධානයට යොමු කර ඇත. නමුත් එම ගැටළු පැවතියද ඇගේ සාක්ෂිය විත්තියේ හරස් ප්‍රශ්න මඟින් බිඳ වැටී නොමැති බව පැ. සා. 01 හා 03 ගේ සාක්ෂි සමස්ථයක් ලෙස සළකා බැලීමේදී තහවුරු වේ.

Although motive is not necessary to be proved in a criminal trial, existence of a motive would strengthen the prosecution case. In this case the evidence revealed that the deceased had given information about a drug business carried out by a family member of the Appellant. This was revealed from the evidence of PW1 and PW2.

The defence had marked contradictions and omissions on the evidence of PW1. As those contradictions are not forceful enough to create a doubt on the prosecution case, the rejection of those contradictions has not caused any prejudice to the Appellants. Further, none of the witnesses are expected give 100% accurate evidence in a trial.

In State of **Uttar Pradesh v. M. K. Anthony** [AIR 1985 SC 48] the court held that:

> *"While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. …Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer."*

Further the evidence given by PW1 and PW3 is well corroborated by each other regarding inflicting injuries to the deceased. Both had seen the Appellant dealing a number of blows with a knife before he left the place. PW1 went on to further say that the Appellant had kept his hand close to her mother's nose to ensure whether the deceased was breathing. The injuries sustained by the deceased and the conduct of the Appellant had clearly

established that the Appellant had only intended to kill the deceased as she was an obstacle for their smooth running of drug business.
The evidence given by the lay witnesses had very well tallied with the medical evidence pertaining to the injuries inflicted on the deceased.

The learned High Court Judge had considered and analyzed the evidence accurately even though he did not have the advantage of seeing the demeanour and deportment of the eye witnesses.

As the prosecution had presented overwhelming evidence against the Appellant, it is not correct to say that the prosecution had not proved the case against the Appellant beyond reasonable grounds.

In this case a knife had been recovered upon the statement of the Appellant under Section 27(1) of the Evidence Ordinance.

Ordinarily, a statement made by an accused person is inadmissible against him. As exception to this rule is the admissibility of statement under Section 27(1) of the Evidence Ordinance where a portion of a statement made to a police officer and which leads to the discovery of a fact can be led in evidence.

In this case, after receiving information a team of police officers had conducted investigations, arrested the Appellant, and recovered a knife based upon his statement under Section 27(1) of the Evidence Ordinance. PW1 in her evidence stated that the Appellant used a similar knife to inflict injuries to her mother.

Upon recovery of the knife, it was sent to the Government Analyst for DNA testing. According to PW11, the Government Analyst, deceased's blood had been identified on the knife which had been marked as P1 in the trial.
Given the reasons above, I conclude that leading investigation evidence and marking recovery done under Section 27(1) of Evidence Ordinance through

PW1 is not improper and has not occasioned any prejudice to the Appellant in this case.

The prosecution had led firm evidence that the Appellant had come there armed with a knife. This evidence was not contradicted in the trial. Even though PW1 was not certain about the identity of the knife, it is not capable of creating a doubt on the overwhelming evidence presented by the prosecution. Hence acceptance of prosecution evidence has not occasioned a failure of justice in this case.

The single most important criterion in evaluating the fairness of a trial is the observance of the principle of equality of arms between the defence and the prosecution. Equality of arms, which must be observed throughout the trial, means that both parties are treated in a manner ensuring their procedurally equal position during the course of the trial.

In this case the learned High Court Judge had considered the evidence presented by both parties to arrive at his decision. He has properly analyzed the evidence given by both sides in his judgment. As the evidence adduced by the Appellant failed to create a doubt over the prosecution case, the conclusion reached by the learned High Court Judge in this case cannot be faulted. Therefore, I reject the grounds of appeal urged by the Appellant in this case.

As discussed under the grounds of appeal advanced by the Appellant, the prosecution had adduced strong and incriminating evidence against the Appellant. The learned High Court Judge had accurately analyzed all the evidence presented by all the parties and come to a precise finding that the Appellant is guilty of committing the murder of the deceased in this case.

Therefore, I affirm the conviction and dismiss the Appeal of the Appellant.

The Registrar is directed to send this judgement to the High Court of Colombo along with the original case record.

JUDGE OF THE COURT OF APPEAL

Sampath B. Abayakoon, J.

I agree

JUDGE OF THE COURT OF APPEAL