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.

The Democratic Socialist Republic of

Sri Lanka.

COMPLAINANT

Vs.

Court of Appeal No:

CA/HCC/417/18

High Court of Colombo

Case No.HC 2608/2005

Watawalage Don Mangala

No.65, Janaranjagama,

Waidya Road

Dehiwala.

ACCUSED

AND NOW BETWEEN

Watawalage Don Mangala
No. 65, Janarajagama,
Waidya Road,
Dehiwala

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

BEFORE	:	**Sampath B. Abayakoon, J.** **P. Kumararatnam, J.**
COUNSEL	:	**Teny Fernando for the Appellant.** **Sudharshana De Silva, DSG for the Respondent.**
ARGUED ON	:	**02/11/2023**
DECIDED ON	:	**14/03/2024**

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JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General for committing the offence as mentioned below.

On or about the 07th of June 2003, at Dehiwala, by causing death of Muththirigala Kankanamlage Seeman Singho committed an offence punishable under Section 296 of the Penal Code.

The trial commenced before the High Court Judge of Colombo as the Appellant opted for a non-jury trial. The prosecution had led 07 witnesses and marked production P1-12 and closed the case.

The Learned High Court Judge having satisfied that evidence presented by the prosecution warranted a case to answer, called for the defence and explained the rights of the accused. The Appellant had made dock statements and closed his case.

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 04/12/2018.

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

The Learned Counsel for the Appellant informed this court that the Appellant had given his consent to argue this matter in his absence due to the Covid 19 pandemic. At the hearing, the Appellant was connected via Zoom platform from prison.

The background of the case *albeit* **briefly is as follows:**

PW1, Roshini Kumari, is the only eye witness to the incident in which the deceased was allegedly killed by the Appellant. The deceased was boarded in the house of PW1's mother and the deceased was called as 'Mahattaya' by the people. On the day of the incident, i.e. 07.06.2003, in the night between 9.00 pm to 9.45 pm, she heard two people shouting that the deceased is being stabbed. When she went there, she had seen the Appellant trying to take a knife out from the abdomen area of the deceased. The deceased was seen struggling with the Appellant at that time. She immediately intervened to separate them. Then the deceased had run to his house followed by the Appellant. The Appellant had prevented her from entering the deceased's house. Additionally, the Appellant had prevented or rather delayed the deceased being taken to the hospital. PW1 had taken the deceased to the hospital. At that time the deceased had told her that the Appellant had stabbed him when he refused to give money asked by the Appellant.

PW10, ASP Nihal Ranaweera, was the OIC Crimes at the Dehiwala Police Station at the time of the incident. He had gone to the place of incident immediately after receiving the information. The incident happened at Malwatta Road and there was enough light at the crime scene. He had notice blood marks at the scene. The house of PW1 is about 20 meters away from the scene of crime. There was a blood mark inside the house where the deceased was boarded. According to PW10, the Appellant was absconding after the incident.

According to PW11, IP Punchi Banda, the Appellant had surrendered to him on the following day morning. A statement was recorded and upon his statement a knife, a trouser and a T-shirt were recovered.

The productions recovered upon the statement of the Appellant under Section 27 of the Evidence Ordinance were sent to the Government Analyst and a report was obtained. According to the PW13, Government Analyst

human blood had been identified on the knife P2, and the T-shirt which was marked as P4.

PW8 Gunaratna, the JMO who held the post mortem of the deceased had stated that three stab injuries to abdominal cavity and resulting haemorrhage and blood loss was the cause of death. According to the JMO, the injuries were fatal if not treated immediately in a hospital. The JMO also noticed few injuries on the right hand which could be defence injuries. He had expressed an opinion that the injuries could have been inflicted by the knife which had been marked as P2.

Finally, the Learned High Court Judge had concluded that the evidence given by PW1 is convincing and acted upon the said evidence under Section 134 of the Evidence Ordinance to convict the Appellant.

The Appellant had raised following grounds of appeal.

1. The Learned High Court Judge failed to scrutinize testimony of sole eye witness according to principles established in law and failed to evaluate the creditworthiness of the said witness.
2. The Learned High Court Judge has anticipated certain evidence be led on behalf of the defence and thereby shifted the burden on certain material issue.
3. The Learned High Court Judge misdirected himself by failing to properly evaluate the discrepancies, inter se contradictions on material points.

The Learned High Court Judge in his judgment had come to the conclusion that the evidence of PW1 is convincing and proved the charge beyond reasonable doubt.

In **The Queen v. K.A. Santin Singho 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.*

In the first ground of appeal, the Counsel for the Appellant contended that the Learned High Court Judge failed to scrutinize testimony of sole eye witness according to principles established in law and failed to evaluate the creditworthiness of the said witness.

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 evidence that mistaken eyewitness evidence can lead to wrongful conviction—sending people to prison for years or decades, even to death row, for crimes they did not commit.

In 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.

The Learned High Court Judge very correctly and clearly discussed the evidence given by PW1 by quoting the relevant portion of her evidence in his judgment. When PW1 went to the place of incident she had seen the Appellant and the deceased were facing to face and the Appellant stabbing and the deceased try to prevent further stabbing by on the blade of the knife. This was very well corroborated by the evidence given by the PW8 JMO who held the post mortem. The doctor after having seen the injuries on the palm of the right hand and expressed an opinion that the injuries noted on the palm could be defence injuries.

When PW1 saw the incident there was enough light available at that time. Hence, identity of the Appellant is not in a question as PW10 who went to the crime scene immediately had noted a street light was burning and the place was properly lit at that time.

The conduct of the Appellant was also highly incriminated against him. PW1 in her evidence said that when the deceased ran to his house where he was boarded, the Appellant prevented PW1 entering the house and delayed the deceased being taken to the hospital. After that he had absconded and had surrendered to police only in the morning on the following day.

The court has to take into account most seriously both the previous and subsequent conduct of the accused before drawing any conclusion regarding the guilt or innocence of the accused and very rightly so. It is by analysing carefully the conduct of the accused both previous and subsequent that the court draws its own logical inference. Therefore, the role of conduct and importance of its evidentiary value can never be overlooked or underestimated by any court in determining the conviction or acquittal of the accused.

In **Basanti v State of UP**, AIR 1987 SC 1572, the conduct of the accused women in telling the villagers including her brother-in-law that the deceased, whose dead body was recovered from a place of concealment, had left the village and had not returned was held by the Supreme Court to be relevant at her trial for murder.

In this regard, Section 8 (1) and (2) of the Evidence Ordinance is very relevant to this case.

The Learned High Judge in his judgment also considered the utterance made by the deceased to PW1 when he was taken to the hospital. The deceased had told that he was stabbed by the Appellant as when he did not give money to the Appellant.

The deceased after receiving the injuries was able to run to his house. According to the JMO expressed an opinion that if the deceased was treated immediately, his life could have been saved. In view of these portions of evidence of PW1 and PW8, considering the utterance made by the deceased in the judgment has not caused any prejudice to the Appellant.

Further, identifying human blood on the knife and the T-shirt of the Appellant strengthens the evidence given by the eye witness PW1.

In **Sumansena v Attorney General** [1999] 3 Sri L.R. at 137 Justice Jayasuriya observed that;

> *"In our law of evidence, the salutary principle is enunciated that evidence must not be counted but weighed and the evidence of a single solitary witness if cogent and impressive could be acted upon by a court of law. Section 134 of the Evidence Ordinance sets out that no particular number of witnesses shall, in any case, be required for the proof of any fact".*

His Lordship in the above judgement is of the view that a person may be convicted even on the evidence of one witness.

In this case Learned High Court Judge adequately and sufficiently analysed and scrutinized the evidence given by PW1 and correctly held that PW1 is a credible witness. Hence, this ground has no merit.

In the second ground of appeal, the Learned Counsel argued that the Learned High Court Judge has anticipated certain evidence be led on behalf of the defence and thereby shifted the burden on certain material issue.

The use of the reversed burden of proof is controversial, as it can be seen as violating the presumption of innocence and the right to a fair trial. However, in some cases, it is seen as a necessary measure to protect public interests and ensure that those who cause harm are held accountable.

In this case when PW11, the investigating officer gave evidence the defense suggested that the murder weapon, the knife was handed over to the police by the mother of the Appellant. The Learned High Court Judge in his judgment commented that this position of the defense was not proved by calling the mother of the Appellant by the defense.

Although this is a clear misdirection, but the evidence of PW1 and PW11 was not contradicted by the defense at any material point. This misdirection does not affect the root of the case as the prosecution had led cogent and incriminating evidence against the Appellant that he is the person who committed the murder of the deceased. Hence, this ground also has no merit.

In the third ground of appeal, the Appellant contends that the the Learned High Court Judge misdirected himself by failing to properly evaluate the discrepancies, inter se contradictions on material points.

In this case the defence could not mark any contradiction over the evidenced given by PW1 and other witnesses. But the defence brought to the notice of three omissions on the evidence given by PW1.

The first omission is that PW1 had failed to mention in her statement to police that she was talking to a neighbour when the incident occurred.

The second omission is that PW1 had failed to mention the place where the deceased told her the reason for stabbing.

The third omission is that PW1 had failed to mention that she dragged out the Appellant from his waist area.

In this case PW1 had given evidence in the High Court after about 15 years of the incident. A photographic memory connot be expected from her as PW1 also an ordinary human being.

The legal provisions and various judicial precedents have made it clear that that omission is one of the ways to shake the credit of a witness. Not all omissions form a contradiction. Only those omissions which are significant and relevant in the context of the case are contradictions. It is a question of fact decided upon by the courts.

In **The Attorney General v.Sandanam Pitchai Mary Theresa** [2011] 2 SLR 292 the court 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 judgment on the nature of the inconsistency or contradiction and whether they are true material to the facts in issue".*

In this case the omissions highlighted are not material and are minor discrepancies which certainly are not going to affect credibility and the root of the case. The High Court Judge had correctly disregarded when he considered the evidence in total to arrive at his decision. Therefore, this ground also has no merit.

In this regard the Learned High Court Judge in his judgment had adequately analysed and satisfied that the prosecution had proved the chain of production beyond reasonable doubt. Hence, this ground also has no merit.

In this case PW1 is a key witness. Her evidence is clear, cogent and unambiguous. The court considering all other evidence presented by the prosecution, without any hesitation relied on that evidence and convicted the Appellant.

As the prosecution had proven this case beyond reasonable doubt, I affirm the conviction and the sentence imposed by the Learned High Court Judge of Colombo dated 04/12/2018 on the Appellant. Therefore, his appeal is dismissed.

The Registrar of this Court is directed to send this judgment 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