

**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 Attorney General  
Attorney General's Department  
Colombo-12

**COMPLAINANT**

**Court of Appeal Case No:  
CA/HCC /0334/2019**

Liyanage Susil Prematilaka alias  
Thilaka

**High Court of Gampaha  
Case No. HC/49/2008**

**ACCUSED**

**AND NOW BETWEEN**

Liyanage Susil Prematilaka alias  
Thilaka

**ACCUSED-APPELLANT**

**Vs.**

The Attorney General  
Attorney General's Department  
Colombo-12

**COMPLAINANT-RESPONDENT**

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

**COUNSEL** : **Nihara Randeniya for the Appellant.**  
**Dilan Ratnayake, ASG for the Respondent.**

**ARGUED ON** : **03/05/2024**

**DECIDED ON** : **02/08/2024**

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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 Gampaha under Section 296 of the Penal Code for committing the murder of Adikari Arachchige Ariya Nandani Perera on or about 21<sup>st</sup> February 2005.

The trial commenced before the High Court Judge of Gampaha 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 made a dock statement and closed his case. After considering the evidence presented by both parties, the learned High Court Judge had convicted the Appellant under Section 296 of Penal Code and sentenced him to death on 04/10/2019.

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

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

**Following appeal grounds were advanced by the Appellant.**

1. That the Learned High Court Judge failed to consider the well settled principle of law relating to a case entirely based on circumstantial evidence.
2. That the Learned trial judge convicted the Appellant based only on the fingerprint found on the handle of the almirah.
3. That the Learned trial judge made use of the weakness of the defense evidence to strengthen the case for the prosecution.
4. That the Learned trial judge failed to analyze the defense evidence in the correct perspective and rejected the same on wrong premise.

**Background of the case is *albeit* as follows:**

The deceased was an elderly woman who lived alone in her residence. Her children lived separately after marriage, but often visited, and spent time with her. Her death was discovered upon inquiry by one of her daughters as the deceased failed to answer telephone calls continually.

When PW4 went to the deceased's house to look for her, he had seen her lying fallen near a Budha statue in the house.

PW2, who stayed at the deceased's house on the previous night had gone for his employment. He had come back home after his sister informed him about the tragedy.

The police had visited the scene of crime after receiving first information at about 10.15 am. As the house had been ransacked, the police had called the finger print experts to the crime scene for further investigation. The finger prints officers arrived the crime scene at 11.15 am and their investigation was carried out for about three hours.

JMO who had conducted the post mortem of the deceased had given very comprehensive evidence regarding the findings mentioned in his report. The JMO had noted six stab wounds, three cut wounds and two contusions on the body of the deceased. Two stabs to the side of the chest and two stab injuries to the neck had been classified as injuries fatal in the ordinary course of nature. According to the JMO, the cause of death has been given as shock and hemorrhage due to deep penetrating wounds to the liver and main artery.

In the first ground of appeal, the Counsel for the Appellant contended that the Learned High Court Judge failed to consider the well settled principle of law relating to a case entirely based on circumstantial evidence.

In this case, to find the Appellant guilty of the charge, all the circumstances must point at him that he is the one who committed the murder of the deceased and not anybody else. It is the incumbent duty of the prosecution to prove the same beyond reasonable doubt.

Although the Learned High Court Judge had not expressly mentioned that he had applied the principles governing the evaluation of circumstantial evidence, he had considered all the circumstances to come to his conclusion. This is clearly reflected in the plain reading of the judgment.

Further, the Learned High Court Judge had correctly narrated all the witnesses who gave evidence in his judgment. PW4, Wijeratne who had gone

to the deceased's house after he was informed that the deceased was not answering the phone, he had first discovered the deceased who was lying fallen on a pool of blood near the Buddha statue. Upon passing this information, all children of the deceased had come there and found that all cupboards and almirahs were pulled out and the contents were thrown out.

The Appellant was arrested on the same day of the incident and a knife was recovered from the deceased's kitchen. Further, fingerprints were uplifted at the crime scene by PW15. Sample fingerprints of the Appellant were taken at the Sapugaskanda Police Station by PW17 and sent to the Registrar of Fingerprints for analysis. This had been recorded as an admission under Section 420 of the Code of Criminal Procedure Act No. 15 of 1979. Fingerprint photo uplifted from the almirah handle of the deceased, which was marked as P4 was compared positively with the fingerprint sample of the Appellant. Taking sample fingerprints were contented even in the cross-examination.

Further, Report of the Registrar of Fingerprint which had been marked as P5 was marked an admission under the CPC. In that report the Registrar of Fingerprint confirmed that the fingerprint found on the deceased's almirah handle is a match with the fingerprint taken by the Sapugaskanda Police.

In the case of **C.Chenga Reddy and others v. State of A.P.(1996) 10 SCC 193** the court held that:

*“In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of guilt of the accused and totally inconsistent with his innocence”.*

In the case of **McGreevy v. Director of Public Prosecution [1973] 1 W.L.R.276** the court held that:

*“There is no requirement, in cases in which the prosecution’s case is based on circumstantial evidence that the judge direct the jury to acquit unless they are sure of the facts proved are not only consistent with guilt but also inconsistent with any other reasonable conclusion. The question for the jury is whether the facts as they find them to be drive them to the conclusion, so that they are sure, that the defendant is guilty”.*

In the case of **Attorney General v. Potta Naufer & others [2007] 2 SLR 144** the court held that:

*“When relying on circumstantial evidence to establish the charge of conspiracy to commit murder and the charge of murder, the proved items of circumstantial evidence when taken together must irresistibly point towards the only inference that the accused committed the offence”.*

In the case of **Kusumadasa v. State [2011] 1 SLR 240** the court held that:

*“The prosecution must prove that no one else other than the accused had the opportunity of committing the offence. The accused can be found guilty and only if the proved items of circumstantial evidence is consistent with their guilt and inconsistent with their innocence”.*

In **Premawansha v. Attorney General [2009] 2 SLR 205** the court held that:

*“In circumstantial evidence if an inference of guilt is to be drawn, such an inference must be the one and only irresistible and inescapable conclusion that the accused committed the offence”.*

Guided by the aforementioned judgments, I conclude that the circumstantial evidence presented in this trial is sufficient to determine that the Appellant had committed the murder of the deceased. Therefore, the first ground lacks merit.

In the second ground of appeal the Appellant contends that the Learned trial judge convicted the Appellant based only on the fingerprint found on the handle of the almirah.

Section 45 of the Evidence Ordinance states:

“When the court has to form an opinion as to foreign law, or of science, or art, or as to identity or genuineness of handwriting or finger impressions, palm impressions or foot impressions, the opinions upon that point of persons specially skilled in such foreign law, science, or art, or in questions as to identity or genuineness of handwriting or finger impressions, palm impressions or foot impressions, are relevant facts. Such persons are called experts”.

In The **Queen v. Wijehamy** 62 NLR 425 the Court of Appeal held that:

*“Under Section 45 of the Evidence Ordinance it is for the court to form an opinion as to the identity of finger and palm impressions, assisted by the opinion of an expert”.*

In the **King v. Jayasena** [1933] 2 CLW the court held that:

*“A conviction can be based on finger print evidence alone, in the absence of a satisfactory explanation from the accused”.*

According to PW15, he had gone to the scene of crime at 11.15 hours and remained there till 14.30 hours. When he went to the crime scene it was fully secured by the police officers who were assigned to secure the place.

According to PW10, the chief investigating officer, the Appellant was arrested at 16.00 hours upon an information. Hence, it was quite clear that the Appellant was arrested by the police after the upliftment of the fingerprint from the handle of the almirah in the house of the deceased.

Although, the Counsel for the Appellant suggested to the police witnesses that he was taken to the crime scene after his arrest, it was not suggested to prosecution witnesses that his fingerprint was forcibly placed on the handle of the almirah. Further, taking sample of the Appellant's fingerprints at Sapugaskanda was admitted by the defense.

Furthermore, although the Appellant made a dock statement, he did not provide any explanation for how his fingerprint was found on the handle of the almirah inside the deceased's house. The Learned High Court Judge had very correctly considered the fingerprint evidence and went on to conclude that there is no doubt that the fingerprint found on the almirah handle as it was identical to the fingerprint of the Appellant obtained by the Sapugaskanda Police.

Considering the evidence presented pertaining to the fingerprint impression of the Appellant, Appellant's failure to give explanation and being guided by the above-mentioned judgments, the acceptance of fingerprint evidence has not caused any prejudice in this case. As such this ground also devoid of any merit.

As the 3<sup>rd</sup> and 4<sup>th</sup> grounds of appeal are interconnected, the Counsel for the Appellant dealt the same together in his argument. In the 3<sup>rd</sup> and 4<sup>th</sup> grounds of appeal the Appellant contended that the Learned trial judge made use of



the weakness of the defense evidence to strengthen the case for the prosecution and failed to analyze the defense evidence in the correct perspective and rejected the same on wrong premise.

Nowhere in his judgment the Learned High Court Judge had used or relied on the weak defense evidence to strengthen the prosecution case. The evidence led by the defense fails to challenge the strong prosecution case.

The Learned High Court Judge had very correctly rejected the recovery of the knife under Section 27(1) of the Evidence Ordinance. At pages 196-197 the Learned High Court Judge had very correctly considered the defense's case and had given his reasons as to why he rejects the same. As most damaging evidence against the Appellant is the fingerprint evidence which was not explained at all by the Appellant.

In **King v Logus** 34 NLR 255 the court held that:

*“That, in the absence of any explanation by the accused as to how his finger prints came to appear on the glass plane, the Court was justified in concluding that the accused was one of the burglars;”*

In **Singo Appu v The King** 46 NLR 49 the court held that:

Where on an indictment for housebreaking and theft, the only evidence against the accused was that of a foot-print which was found on a table at the scene of the offence and which was identified as that of the accused by an expert who gave adequate reasons for his opinion.

*Held, that the Court could convict the accused on the evidence of the foot-print though it was the sole ground of identification.*

The Learned High Court Judge had considered the evidence adduced by the Appellant in his judgment. But the evidence adduced by the prosecution is overwhelming and the evidence given by the Appellant will not be able to create

any doubt over the prosecution case. Hence, these grounds of appeal also have no merit.

As discussed under appeal grounds, the prosecution had adduced strong and incriminating circumstantial evidence against the Appellant. The Learned High Court Judge had very correctly analyzed all the evidence presented by both parties and concluded that the Appellant is guilty to the charge of murder.

As the Learned High Court Judge had rightly convicted the Appellant for the charge of murder, I affirm the conviction and dismiss the Appeal of the Appellant.

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

**JUDGE OF THE COURT OF APPEAL**

**SAMPATH B. ABAYAKOON, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**