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

In the matter of an appeal from the High Court in terms of section 331 of the Code of Criminal Procedure Act

The Democratic Socialist Republic of Sri Lanka.

Complainant

CA/HCC/0041-042-16
High Court of Kandy
Case No: HC/120/2008

VS

1. Sinnathambi Balasubramaniam
2. Ramasami Palanimuththu *alias* Palani

Accused

And now between

1. Sinnathambi Balasubramaniam
2. Ramasami Palanimuththu *alias* Palani

Accused– Appellants

VS

The Honorable Attorney General,
Attorney General's Department,
Colombo 12

Complainant -Respondent

BEFORE : N. Bandula Karunarathna, J.

: R. Gurusinghe, J.

COUNSEL : Sachindra De Zoysa, AAL

for the 1st Accused-Appellant

Indica Mallawaratchy

for the 2nd Accused-Appellant

Dilan Ratnayake, SDSG

for the Respondent

ARGUED ON : 06/10/2022

DECIDED ON : 29/11/2022

R. Gurusinghe, J.

The accused-appellants were indicted in the High Court of Kandy for having committed the murder of Ramiah Selvanayagam, an offence punishable in terms of section 296 read with section 32 of the Penal Code.

After the trial, the learned High Court Judge of Kandy found the appellants guilty as charged and sentenced them to death. Being aggrieved by the said conviction and the sentence, the appellant appealed to this court.

The grounds of appeal relied on by the first appellant are as follows:

1. Whether the learned Trial Judge was correct in his estimation with regard to the credibility of the eyewitness.

2. Whether the learned High Court Judge failed to evaluate common intention principles.

3. Whether the learned High Court Judge has failed to consider the implication of section 27 statement in law.

The grounds of appeal set out by the 2nd appellant are as follows:

1. The learned Trial Judge was flawed by coming to a positive and premature conclusion that the prosecution had proved the case beyond reasonable doubt prior to evaluating the defence.

2. The learned Trial Judge has failed to address his judicial mind with regard to the veracity of the version as deposed by the sole eyewitness.

3. Without prejudice to afore-formulated grounds of appeal, evidence led at the trial, warrant the consideration of the exception of sudden fight and/or grave and sudden provocation.

The facts of the case are briefly as follows:

As per the evidence of the prosecution, the deceased came home after work at about 9.30 p.m. on the 13th of June 2006. Then he went to have a bath and came back home. His daughter (PW1) gave his dinner and the water in an aluminum jug. After he finished having his dinner, the deceased went out to wash his hands. PW1 heard the jug falling. When PW1 came out to see what had happened, she saw the two accused persons attacking her father with knives. The evidence reveals that there had been an electric bulb lighting outside the house at the time of the incident. The position of PW1 was that when she came and called out “father”, the appellants ran away. She saw the

knives in the hands of the first accused but did not see what was in the hands of the second appellant. The deceased was not in a position to speak; all he could say was "daughter". PW1 raised cries when she saw blood all over the body of the deceased. PW1 testified that she had known the appellants for seven years before the incident happened, as they lived in the same neighborhood.

The conviction of the appellant for the murder revolves around the evidence of PW1, the sole eyewitness.

Both appellants submitted that acting on the sole eyewitness's evidence was not safe. The appellants contended that the evidence of PW1 was not trustworthy and not corroborated. This is the main contention against the conviction.

The learned Senior Deputy Solicitor General for the respondent drawing attention to section 134 of the Evidence Ordinance, and a well-recognized principle is that the evidence has to be weighed and not counted. It is contended that the evidence of PW1 is cogent and trustworthy.

Further, the learned Counsel for the appellant pointed out that the Counsel who appeared for the first appellant at the trial sought to draw attention to an omission in the evidence of PW1. (On page 83)

The statement of PW1 was recorded by the police on the 14th of June 2006, at 2.15 a.m. The statement of PW1 was recorded within four hours of the incident. There was no omission or contradiction marked against the evidence led by PW1. The learned High Court Judge observed that it was not an omission. After a careful perusal, I found that, what was sought to draw attention as an omission, was actually not an omission. Counsel for the second appellant submitted that PW1 had not stated to the police that the second accused had cut her father. However, the following portion is also

there in the statement of PW1 " **මා මෙම පලනි සහ බාලු යන අය තාත්තට ගසා කැපූ ඒ සිද්ධිය දැක්කේ නිවසේ ඉදිරිපිට දල්වා තිබූ බල්බ් එකෙන්ය."** She also stated as **"මා නිවසින් එලියට එකපාරටම එනකොට තාත්තට බාලු යන අය කෙටුවා අතට. පස්සේ මා කෑ ගහනකොට බාලු සහ පලනි යන අයයි අතේ පිහියක් තියාගෙන පාර දෙසට දිව්වා".** Therefore, it cannot be said that there was an omission in the evidence of PW1. As observed by the learned High Court Judge, there was no contradiction or omission found in the evidence of PW1. As the police recorded PW1's statement without delay, it cannot be said that PW1, who was only 20 years old at the time of the incident, had time to fabricate a story against the two appellants. Besides, there were three other people at the house who came out as PW1 raised cries, and testified that they had not seen the appellants. If they were to concoct a story, they could have also stated that they had seen the appellants attacking the deceased. I find no reason or legal basis for the learned High Court Judge to reject the evidence of PW1.

The main contention against the conviction is that the evidence led by the sole eyewitness is not credible. At this point, it is worth examining the law that is being followed in dealing with credibility of the solitary eyewitness.

Section 134 of the Evidence Ordinance provides; "No particular number of the witnesses shall, in any case, be required for proof of any fact."

Sir John Woodroffe and Syed Amir Ali (Law of Evidence 20th edition, Vol. 4 page 5171) says that,

"It is true that there is no rule of law that uncorroborated testimony of one witness cannot be accepted. If there is any such rule, it is the rule of prudence, and whether the rule should be adopted or not, will depend on the circumstances of each case. Whether the general rule should be adopted or not depend on the circumstances of each case. As a general rule a court can and may act on the testimony of a single witness though uncorroborated. Unless corroboration is

insisted upon by a statute, the court should not insist on corroboration except in the cases where nature of testimony of single witness itself requires corroboration. One credible witness outweighs any number of other witnesses. In an appropriate case, conviction can be founded on solitary testimony of a witness but court must be satisfied that the evidence of the witness, which it is asked to accept, is wholly true. In a murder case, conviction can be based on the testimony of sole eyewitness. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise."

Hence, a conviction may be based on the sole testimony of a single witness, if believed and if the testimony is found to be credible and trustworthy.

It is the Trial Judge who has the opportunity to see the demeanor and deportment to assess the credibility of a witness. In the case of Fradd v Brown & Company Ltd. (20 NLR Page 282) the Privy Council held:

"It is rare that a decision of a Judge so express, so explicit, upon a point of fact purely, is over-ruled by a Court of Appeal, because Courts of Appeal recognize the priceless advantage which a Judge of first instance has in matters of that kind, as contrasted with any Judge of a Court of Appeal, who can only learn from paper or from narrative of those who were present. It is very rare that, in questions of veracity so direct and so specific as these, a Court of Appeal will over-rule a Judge of first instance."

In the instant case, the learned High Court Judge has carefully analyzed the evidence of the eyewitness PW1, and found it to be credible and capable of being acted upon.

I find no reason to accept the argument that the evidence of PW1 should not have been relied on. That argument cannot be sustained.

The next point is that PW1 could not have identified the person who attacked her father, as it happened in the night. The police observed the place on the

same night. The position of PW1 that there was a light outside the house, was corroborated by the police evidence. The appellants were living in close proximity to the deceased's house. PW1 had been known to the two appellants for seven years before the incident. The incident happened a few feet away from the house of the deceased, almost at the threshold of the house. Therefore, there was no difficulty for PW1 to recognize the appellants. There were no questions put to PW1 in the cross-examination, based on the fact that PW1 could not recognize the appellants at that time. Therefore, I reject this contention.

Upon careful consideration of the evidence of PW1 with the medical evidence, this court has no reason to interfere with the decision of the learned High Court Judge to act upon the evidence of PW1. The evidence of the doctor corroborates with the evidence of PW1. All injuries were deep-cut injuries. Such injuries could have been caused by the knife produced as P1, which was recovered consequent to the statement made by the first appellant. The injuries were sufficient to cause death in the ordinary course of nature. The medical evidence is that the deceased would die in 10 to 15 minutes after sustaining the injuries. The deceased had already died when he was taken to the hospital.

As both appellants had cut the deceased together, it is manifestly clear that both of them had the common murderous intention to kill the deceased. Therefore, the contention that the learned Trial Judge has not considered the provisions in section 32 of the Evidence Ordinance is not tenable.

The argument that the learned High Court had come to a positive and premature conclusion that the prosecution has proved the case beyond reasonable doubt before evaluating the defence, cannot be sustained. A Judge commences writing the judgment after reading all the evidence, considering the applicable legal principles, making up his mind, and coming to the final

conclusion of the case. Therefore, whether the art of narrating the events in chronological order or otherwise is irrelevant.

The last point argued was that there was a sudden fight or a grave and sudden provocation. There was no evidence to show that such an incident happened at the scene. The defence suggested to PW1 that her father had caused injuries to the wife and the sister of the first accused. A careful perusal of the evidence of PW1 revealed that she never admitted that there was a fight. No such incident was reported to the police. As per the police officers who gave evidence, there had not been such an incident reported to the police. Even the dock statement of the appellants does not reveal that there was a fight.

In the above circumstances, we see no reason to interfere with the judgment of the learned High Court Judge. We affirm the conviction and the sentence imposed upon the appellants. Therefore, the appeal of the appellants are dismissed.

Judge of the Court of Appeal

N. Bandula Karunarathna, J.

I agree.

Judge of the Court of Appeal