

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

The Petition of Appeal in terms of
Article 154(P)(6) read with Article 138 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

C.A.No. HCC No.270/2018
H.C. Colombo No.3370/2006

Balan Suresh Kumar alias Aiyar Kutti alias
Aiya
(Presently staying at No.3/6, Thirumalai
Priya Nagar, 2nd Street, Pudur, Chennai-
600 053)

3rd Accused-Appellant

Vs.

The Democratic Socialist Republic of Sri
Lanka.

Complainant- Respondent

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

Respondent

1. Muniyandi Chandrakumar Siwanandan,

1st Accused-Respondent

2. Suppaiya Sivanadan alias Siva

2nd Accused-Respondent

BEFORE : ACHALA WENGAPPULI, J.
K. PRIYANTHA FERNANDO, J.

COUNSEL : Accused-Appellant is absent and unrepresented.
Dilipa Peeris D.S.G. for the Complainant-
Respondent and the Respondent

WRITTEN SUBMISSIONS

TENDERED ON : 25.11.2019 (by the 3rd Accused-Appellant)
17.02.2020 (by the Complainant-Respondent
and the Respondent)

DECIDED ON : 17.07.2020

ACHALA WENGAPPULI, J.

The 3rd accused-appellant (hereinafter referred to as the Appellant) preferred the instant appeal seeking to set aside his conviction for murder entered by the High Court of Colombo in case No. HC/3370/2005 and the imposition of sentence of death.

In the indictment filed by the Hon. Attorney General before the High Court, the Appellant, along with two others were accused of having committed murder of *Egambarampillai Rasaiah Sekar* on 15.05.1997 at *Orugodawatta*.

At the initial stages, the Appellant appeared before the High Court but before his trial commenced he absconded and tried in *absentia*. The High Court convicted the 1st accused and Appellant to murder while acquitting the 2nd

accused. Being aggrieved by the said conviction and sentence, the Appellant preferred the instant appeal through his Attorney-at-Law.

On 02.04.2019, the Appellant was represented before this Court by his Counsel with a letter of authority said to be issued by him and filed written submissions in support of the appeal. Since then there was no appearance for the Appellant. Therefore, this Court proceeds to consider the merits of the Appellant's appeal as per Section 325(2) of the Code of Criminal Procedure Act No. 15 of 1979.

It was contended by the Appellant that the charge of murder against the Appellant is not proved beyond reasonable doubt since PW2 is not reliable, who should be considered as an accomplice, and the said witness's evidence is contradictory with that of PW9.

The prosecution, although had led evidence of several lay witnesses, *Palliyage Prasanna Perera* only clearly incriminated the Appellant with the murder of the deceased. According to this witness, he along with the deceased and one *Selvam* were at a roadside boutique along *Majeed Place* of *Orugodawatta*. He also saw the 1st accused and the Appellant there. These two initially spoke with the deceased and then, realising something is about to happen, the witness had crossed on to the other side of the road. He saw the 1st accused throwing a punch at the deceased. With the punch the deceased fell down. Then the witness saw the Appellant dropping a big stone on the fallen deceased, who screamed. The witness fled from the scene as they were chased away by the 1st accused.

The medical evidence revealed that the deceased had two contused abrasions on his head which caused subdural haematoma of 25 ml of blood in the left occipital and parietal area with contusion of left occipital pole. The death

of the deceased was due to Cranio-cerebral injuries. Consultant JMO Dr. *Subramaniam* was of the opinion that the head injuries could be a result of dropping a stone on the head and the internal injuries caused by such blunt trauma is sufficient in the ordinary course of nature to cause death.

It is against the back drop of above evidence that this Court would venture to consider the grounds of appeal urged by the Appellant.

One of the grounds was that the evidence of the witness *Prasanna Perera* was not analysed properly by the High Court for its credibility. In this context, it must be noted that the Appellant did not cross-examine the witness since he opted to abscond. Therefore, the Appellant relies on the cross-examination conducted on behalf of the 2nd accused to sustain his contention. The 2nd accused has suggested to the witness that he was not involved with this incident. The witness admitted that position. Other than eliciting the 2nd accused's non-participation, there was no cross-examination of the witness to assail his credibility. In short, the High Court had no basis to reject his evidence.

The two injuries found on the head of the deceased does not create a dent in the witnesses' evidence since the witness was emphatic that as he saw the Appellant dropping the stone on the deceased, he was chased by the 1st accused. He did not see where the deceased was hit with the stone or whether it was once or several times the stone was dropped. The investigating officer did not recover the stone from the scene and the exact nature of the object was therefore not known.

In this context, the contention that the witnesses account and the medical evidence does not correspond with each other cannot succeed.

There was clear expert opinion that the head injuries caused to the deceased are sufficient in the ordinary course of nature to cause death, whoever who dropped that stone had dropped it on the head of the deceased “ *with the intention of causing bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death*” as per limb three of Section 294 of the Penal Code. There was clear and unambiguous evidence before the High Court that it was the Appellant who dropped that stone on the deceased, who had fallen on the ground.

Hence the conviction for murder is clearly sustainable.

In view of the reasoning contained in the preceding paragraphs, this Court is of the opinion that there is no merit in the appeal of the Appellant.

His conviction for murder and the sentence of death imposed by the High Court of Colombo is therefore affirmed.

The appeal of the Appellant is accordingly dismissed.

JUDGE OF THE COURT OF APPEAL

K. PRIYANTHA FERNANDO, J.

I agree.

JUDGE OF THE COURT OF APPEAL