

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

Rajapakshe Gedera Swarnawathie,
Katupatwewa junction,
Pahala Maragahawewa.

Accused-Appellant

C.A. No. 78/2009
H.C. Anuradhapura
Case No. 22/2009

Vs.

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

Respondent.

C.A. No. 78/2009

H.C. Anuradhapura Case No. 22/2009

Before : Ranjith Silva, J. &
H.N.J. Perera, J.

Counsel : Saliya Peiris for the Accused-Appellant.

Rohantha Abeysooriya, S.S.C., for the A.G.

Argued &
Decided on : 22.03.2012.

Ranjith Silva, J.

Accused appellant (some times referred to as the appellant) is present in Court brought in custody. Heard Counsel for the appellant and the State respectively. In this case the accused appellant was indicted in the High Court of Anuradhapura for causing the death of her own husband which is an offence as defined under Section 294 and punishable under Section 296 of the Penal Code. She was tried without a jury and was convicted and sentenced to death. This appeal is against that conviction and the sentence.

At the trial the prosecution led evidence to show the strained relations between the accused and the deceased. There were no eye witnesses in this case who had seen the incident. The body of the deceased was discovered after a few days, lying in the toilet pit in the premises of their residence. The only circumstantial evidence against the appellant was the evidence led to show the motive, the strained relations and the fact that this particular accused appellant had confessed to one of her brothers in the following words, that is

“සුනිල් අයියාගේ මිනිය තියෙන්නේ ලෑටි වලේ මාව පොලිසියට බාර දෙන්න”

The Judge has considered this piece of evidence as a confessional statement, confessing to have murdered the deceased. It was not fair to give such an interpretation because she had only indicated her knowledge with regard to where the body was and she had only asked to surrender herself to the police. Did she think that she was guilty of murder or of any other offence? Could the appellant be an illiterate woman from a village not knowing the difference between murder and culpable homicide. Has she confessed that she killed or did she think that she was responsible for the murder as a confederate had done it. Can she dump the body in the toilet pit lifting the concrete slab on her own without a confederate. If there was a confederate have they ruled out that the confederate killed the deceased I refer to the judgment in Queen Vs Kularatne 72 NLR 529 wherein it was held that when there were more than two people and both could have done it, the prosecution is duty bound to exclude the possibility of that other person committing the offence. The police had recovered two weapons on a statement made by the accused appellant, one is a katthy and the other one is a sickle. But

none of these weapons was sent to the Government Analyst to assert whether there were human blood stains on it. If they had done that the Government Analyst may have been in a position to state whether there was blood even if the weapon had been washed. This had not been done. Specially in a case where the evidence was so meager, the prosecution should have made some attempt at least. On top of this there is evidence that there wasn't any blood on the weapon, and those articles that were found in the house were things used for domestic purposes. A Judge has to be very slow in arriving at conclusions on this type of evidence against the appellant especially so, in view of the fact that not only the appellant even her daughter had testified as to the harassment that was meted out to the accused and the relatives.

Another item of incriminating evidence against the accused-appellant is that she made false utterances to the police and elsewhere about the whereabouts of the deceased husband, whilst being fully aware that the body was lying all that time in the toilet pit.

The question is whether the circumstantial evidence can rule out the innocence of the accused. Is the circumstantial evidence capable of any other interpretation other than the guilt of the accused. We are of the opinion that the circumstantial evidence in this case is not sufficient to warrant a conviction for murder.

I am doubtful whether the Lucas Theory could be applied, although on the surface it appears that it could be applied, because an accused placed in a situation of this sort a false statement by the accused-appellant could be naturally to protect herself, or to protect the confederate. Lucas Theory should not be applied indiscriminately in all cases. It should be applied only where the Judge thinks that it should be applied. A Judge must be mindful of the evidence available against the accused-appellant before seeking corroboration of the prosecution story. If there is no case for the prosecution then no amount of corroboration can cure that. Therefore it is not safe to allow the conviction for murder stand. At this stage considering all these facts both counsel come to the rescue of this Court. Under the circumstances I think it would have been much more discrete if the trial Judge had adopted a different course and framed a charge for

concealing a dead body under Section 198 of the Penal Code, which would have been more appropriate and then found her guilty for that offence as there is ample evidence to support a conviction in terms of that section. Counsel for the appellant does not object to this procedure and he consents and approves adopting such a course. This Court is empowered to do whatever a High Court Judge could have done at the stage of trial. Since it is too late to frame a charge now and record a plea and since the Counsel for the appellant is prepared to concede and agree to such a course we set aside the conviction for murder and set aside the death sentence. We find her guilty under sections 186 and 188 and convict her accordingly, but we impose her the maximum term 07 years Rigorous Imprisonment. In addition we impose Rs. 1000/= fine and in default 03 months Simple Imprisonment. We back date the sentence to be operative from the 26.03.2009. Appeal partly allowed.

JUDGE OF THE COURT OF APPEAL

H.N.J. Perera, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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