

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

CA No. 316/2006

HC Badulla No. 66/2002

Samarathunga Harsha Pathiranage Sunil Somasiri
Alakanda,
Minuwangoda.

Appellant

Vs.

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

Respondent

C.A. No. 316/2006

H.C. Badulla No. 66/2002

BEFORE : SISIRA DE ABREW, J. &
SUNIL RAJAPAKSHE, J.

COUNSEL : Chandana Sri Nissanka (Assigned Counsel) for
the accused-appellant.
Sudharshana de Silva SSC for the respondent.

ARGUED ON : 30.10.2012 & 31.10.2012

DECIDED ON : 31st October, 2012.

SISIRA DE ABREW, J.

Heard both Counsel in support of their respective cases.

The accused-appellant in this case was convicted of the murder of a man named Ellakade Jinadasa and of the offence of attempted murder on Ratnayake Mudiyansele Sudukuma alias Leela. On the 1st count the accused-appellant was sentenced to death and on the 2nd count the accused-appellant was sentenced to a term of 20 years rigorous imprisonment. Being aggrieved by the said conviction and the



sentence, the accused-appellant has appealed to this Court. Facts of this case may be briefly summarized as follows;

The alleged incident in this case has taken place in the police area of Badulla at a place called Mawalagoda. A few days prior to the incident Siri Samarasinghe with his family left for Colombo from his house at Mawalagoda, Hali Ela requesting the accused-appellant, Jinadasa (deceased person) and his wife to look after the house. On 03rd of May 1990 when Siri Samarasinghe returned home with his family, they found Jinadasa and his wife lying on their camp beds with bleeding injuries. The injured Leela was taken to the hospital but Jinadasa was found to be dead at the scene. Prosecution alleged that the accused-appellant who was the caretaker of Siri Samarasinghe committed the murder and the offence of attempted murder on Leela. Prosecution relied on the following items of evidence;

1. On the day of the incident the accused-appellant removed the tube light of the room in which Jinadasa, the deceased person and his wife was living.

2. At the time of the attack, the accused-appellant spoke in the following language "*that he does not want to see them again*". According to Leela she identified the voice of the accused-appellant when he made the said utterances.

3. Blood stains were found in the accused's room.

Learned Senior State Counsel appearing for the Attorney General submits that he does not support the conviction of murder as there is weak evidence against the conviction of murder. He further submits that he does not rely on the blood stains found in the accused's room. He however supports the conviction of attempted murder. In order to consider the conviction of attempted murder Court must consider whether the evidence of Leela could be accepted beyond reasonable doubt. According to Leela she identified the accused's voice when he uttered the said words which I have said earlier. According to the doctor, Leela was discharged from the hospital on 24th of May 1990. Although Leela says that she was attacked by the accused-appellant she has failed to mention the name of her assailant to the doctor. Doctor says that at the time he examined the patient, she has recovered from her ailment. She made a statement to the police six months after the incident. We note that she failed to mention the name of the accused-appellant for a period of six months. She has not given any reason for the delay in making her statement. Considering all these matters, we hold that her evidence does not satisfy the test of promptness. On this ground we are unable to rely on the evidence of Leela. Although Leela says that the accused removed the tube light of the room in which she

was sleeping, the Investigating Officer who went to investigate the crime has not made any observation on this matter. He has only observed that there was no light in the room. Later Siri Samarasinghe fixed a bulb in the room. We note that it was not a tube light that was fixed and it was only a bulb. Considering the above matters we are unable to rely on the said item of evidence relied on by the prosecution. Learned Senior State Counsel does not rely on the item of circumstantial evidence that is to say that the blood was found in the accused's room. According to the prosecution when Siri Samarasinghe went to the scene of crime the accused was not at the place and his room was opened at the time of the investigators went to the scene. The accused-appellant in his dock statement has submitted that there was an argument between him and the deceased person on the day of the incident. He has stated that he left the place in the night of 3rd of May 1990. It appears that argument between him and the deceased was the reason for him to leave the house. When we consider the evidence led by the prosecution, we are of the view that the circumstantial evidence led by the prosecution is not sufficient to affirm the conviction of attempted murder. We note that ✓ the Leela's evidence has not been corroborated by any other witnesses. Considering all these matters, we hold that the prosecution has not proved the case beyond reasonable doubt. Learned Senior State Counsel does not support the conviction of murder. In these circumstances, we set aside the conviction of murder and attempted murder and the

sentence imposed on the accused-appellant. We acquit the accused-appellant on all charges. Accused-appellant is acquitted.

JUDGE OF THE COURT OF APPEAL

SUNIL RAJAPAKSHE, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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