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

CA No. 113-114/2004
HC Kegalle No. 1609/01

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

Vs.

01. Pinnawala Appuhamillage Ranathunga

02. Wijekoon Mudiyanselage Daya Mallika

Defendants

And

Pinnawala Appuhamillage Ranathunga
(Presently at Bogambara Prison)

Defendant Appellant

Vs.

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

Complainant Respondent

C.A. No. 113-114/2004 H.C. Kegalle No. 1609/01

BEFORE	:	SISIRA DE ABREW, J. & SUNIL RAJAPAKSHE, J.
COUNSEL	:	Dr. Ranjit Fernando for the 2nd accused-appellant. Kapila Waidyaratne DSG for the respondent.
ARGUED AND DECIDED ON	:	31st October, 2012.

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SISIRA DE ABREW, J.

Heard both Counsel in support of their respective cases.

The two accused in this case were convicted of the murder of a woman named Agnas Mary Madanayake and of robbery of items worth Rs.84800/= from the possession of said Agnas Mary Madanayake. Both accused, on the 1st count, were sentenced to death. They, on the 2nd count, were sentenced to a term of 10 years rigorous imprisonment. Being aggrieved by the said conviction and the sentence both accused appealed to this Court.

The 1st accused-appellant by his letter dated 06th of January 2005 has withdrawn the appeal filed by him. The learned High Court Judge by his Journal Entry dated 18th January 2005 has made a note on this matter. Facts of this case may be briefly summarized as follows:-

The two accused were employed as domestic servants at the house of Agnas Mary Madanayake who is the deceased woman in this case. They were employed at this house about 1 ½ months prior to 09th of May 1995 on which date the incident of murder took place. They introduced themselves to inmates of the house as husband and wife. Jayasena who was the driver employed by Agnas Mary Madanayake and Senaratne who was a worker at this house say that one and half months prior to the incident, two accused came to this house and were staying at this house. They slept in the garage of the house. On 08th of May 1995, both accused were seen at the house of the deceased woman. They both say that the two accused were seen in this house on 08th of May 1995 around 5.30 p.m.. Prosecution relied on following items of circumstantial evidence.

(1) Both accused were employed at this place as domestic servants.

(2) Soon after the incident, both accused left the house. That is to say when Jayasena and Senaratne came to work on 09th of

May 1995, they noticed that both the accused had left this place.

(3) The 1st accused pawned jewellery of the deceased woman through one Gamini to a pawning centre. The said items were identified by the daughter of the deceased woman.

(4) The 2nd accused pawned jewellery of the deceased woman to a pawning centre and the said jewellery was identified by the daughter of the deceased woman.

(5) When police arrested the 2nd accused she was in possession of a bottle of perfume. This bottle of perfume was later identified by the daughter of the deceased woman as a gift given by her to her mother.

The 2nd accused in her dock statement at page 262 admitted that she pawned the jewellery of the deceased woman to a Pawning Centre. She however, claimed in her dock statement that she did not get involved in the murder of Mary Madanayake, the deceased woman in this case. Learned Counsel for the accused-appellant submitted the following grounds of appeal.

1. Failure to evaluate the principles applicable to cases of circumstantial evidence.
2. There was erroneous application of Section 114(a) of the Evidence Ordinance.

3. There was erroneous application of the dictum of Lord Ellenborough.

4. Failure to evaluate the dock statement of the 2nd accused.

Since the 1st accused had withdrawn his appeal it is not necessary for us to consider the dock statement of the 1st accused. Although the learned Counsel for the accused-appellant submits that there was an erroneous application of Section 114(a) of the Evidence Ordinance we find that the learned trial Judge has not applied the presumption in Section 114(a) of the Evidence Ordinance to the charge of murder. The learned trial Judge at page 316 of the brief, has applied the presumption in Section 114(a) of the Evidence Ordinance to the charge of robbery. When we consider these matters we are unable to agree with the said submission made by the learned Counsel for the accused-appellant. Although the learned Counsel for the accused-appellant submitted that there was a failure to evaluate the dock statement of the 2nd accused by the learned trial Judge, we are unable to agree with the said submission when we consider pages 314, 315 and 318 of the brief. We are of the opinion that the learned trial Judge has correctly evaluated the dock statement. Learned trial Judge at page 314 has even considered *King vs. Kularatne* reported in 71 NLR 529 where principles governing the evaluation of dock statement were laid down. She has observed that the dock statement

of the 1st accused should not be considered against the 2nd accused. When we consider all these matters we are unable to agree with the said submission of the learned Counsel for the accused-appellant.

We note that the learned trial Judge in her judgment, has not stated the principles governing cases of circumstantial evidence. Although she has not stated the said principles, when we consider the evidence of this case, we are of the opinion that failure to state the principles governing cases of circumstantial evidence has not caused prejudice to the accused-appellant. We arrive at this decision especially when we consider the evidence led at the trial against the 2nd accused .

We note that the learned trial Judge in stating the dictum of Lord Ellenborough has made a small mistake. But when we consider the strong items of evidence led against the accused we are of the opinion that the said mistake has not caused any prejudice to the 2nd accused-appellant. We note that the 2nd accused in her dock statement has not explained as to why she left the house of Mary Madanayake immediately after the incident. We note that the 1st and the 2nd accused came together and work together in this house and left the house soon after the incident. When we consider all these matters, we are of the opinion that there is no merit in this appeal

filed by the 2nd accused-appellant. We are of the opinion that the prosecution has proved the case against both accused beyond reasonable doubt. We therefore affirm the conviction and the sentence of the 2nd accused-appellant and dismiss the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

SUNIL RAJAPAKSHE, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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