

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

Hapuarachchige Indralal Pradeep Kumara

Accused – Appellant

Vs.

CA. No : 123/2008
HC Gampaha : 10/2004

The Attorney General

Respondent

Before : Sisira de Abrew J &
Sunil Rajapakshe J

Counsel : Indika Mallawaarachchi for the Accused Appellant
Varunica Hettige SSC for the Attorney General

Argued on : 7.11.2012

Decided on : 12.12.2012

Sisira de Abrew, J.

The accused appellant in this case was convicted of the murder of a child named Sujith Kumara and was sentenced to death. Facts of this case may be briefly summarized as follows:

The accused appellant is the step father of the deceased child who was 3 ½ years old at the time of the incident. On the day of the incident the mother of the child went to work in a nearby paddy field.

When she came back home around 10.30 a.m. to keep a pot of rice on the stove she saw the accused appellant combing the hair of the deceased child. Thereafter she went back to the paddy field. Sister of the deceased child Samanmalee says that the accused appellant kept the deceased child on the ground and trampled his stomach area, dashed him on the floor and thereafter threw him up. There were eleven injuries (contusion and abrasions). Some of them were healed and partially healed injuries and some were fresh injuries. The doctor who conducted the Post Mortem Examination (PME) was asked if 3 ½ year old child was trampled whilst he was lying fallen on the ground whether there could be injuries. He was of the opinion that there could be contusions if the trampling was done with a force, but he did not find such injuries on the body of the child (vide pages 93,94 and 95 of the brief). The doctor was specifically was asked whether the injury found on the back of the head could took place if the child was dashed on the floor. He did not answer this question in the affirmative, but said such an injury could take place if the child fell from a higher place (vide page 88 of the brief). When the doctor was asked whether the injury found on the head could take place if the child fell from a bed, he answered this question in the affirmative (vide page 98 of the brief). It is therefore seen that the story of the prosecution has not been corroborated by medical evidence. When I consider these matters I am of the view that it is dangerous to rely on the evidence of the Samanmalee. When I consider all these matters I hold the view that it is unsafe to permit the conviction to stand. For the above reasons I set

aside the conviction and the death sentence and acquit the accused appellant.

Appeal allowed

Judge of the Court of Appeal.

Sunil Rajapakshe J

I agree.

Judge of the Court of Appeal.