

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

C.A. No.60/2009

Velayuthan Ravi
2, Doloswatte,
Nivitigala

H.C.Ratnapura 107/2003

Accused Appellant

vs

Hon. Attorney General

Respondent

Before

Sisira De Abrew J.
Sunil Rajapakse J.,

Counsel

Ms Indika Mallawarachchi for the Accused Appellant
Mr. Kapila Waidyaratne, D.S.G., for the Respondent

Argued on:

09th November 2012

Decided on:

08th February 2013Sunil Rajapakse J.,

The Accused Appellant was charged under Section 296 of the Penal Code for committing the offence of murder. The trial Judge, after hearing the evidence of the prosecution and defence convicted the Accused Appellant, Velayuthan Ravi for the said offence and sentenced him to death. Being aggrieved by the said conviction and sentence the accused has appealed to this Court.

The death of Mayalaghu Devaraj occurred due to an incident that took place on the night of 8th February 1994 at the Accused Appellant's line room No.6 in Doloswatte Estate. At the trial prosecution led the evidence of four witnesses and the accused Appellant and his wife

gave evidence on behalf of the defence. The Accused Appellant stood trial without jury in the High Court of Ratnapura.

The facts of this case is briefly summarized as follows:

Deceased Mayalaghu Devaraj and his father Mayalaghu lived in the 3rd line room in Doloswatta Estate and the Accused Appellant lived in the line No. 6 of the same estate. The distance between the two line room was only 200 meters. Father of the deceased Mayalaghu, in his evidence, said that he heard someone scolding him using filthy language and he identified the said voice as that of Ravi (the Accused-Appellant) since he knew the Appellant from his childhood. Therefore he went to the Appellant's house with his son to inquire as to why Ravi has uttered such bad words to him. Heated argument had taken place between Mayalaghu, Devaraj and the accused appellant. Further, he claimed that the accused appellant stabbed his son Devaraj, who was walking behind him.

Mayalaghu Devaraj, the deceased had succumbed to his injury. The accused appellant had escaped from the place immediately with the knife. They could not catch him. Perumal testified for the prosecution and stated that the deceased came to his house after the incident and fell on the ground saying that he was stabbed. He further said that he never witnessed the stabbing.

The Accused Appellant has not denied the incident. In his evidence he has said that he was having dinner when the deceased and his father came to his house to assault him.. He then took a knife which was under the table. He stated that Devaraj forcibly took him out of the house and was assaulted by Devaraj Mayalaghu and some other people. Then the accused Appellant brandished the knife to defend himself. In his evidence the Accused Appellant stated that he was unaware of the injury caused to the accused, however, he did not deny the fact that Devaraj had died due to stabbing. Therefore, there is no dispute over that the deceased

died due to stabbing. The Accused Appellant claimed that this stabbing was as a result of sudden fear and due to counter attack.

In this case the accused Appellant's main contention was that he acted in self defence of his person when he was being assaulted by the deceased, deceased's father and some other people. Further, he has said that he had no intention of causing more harm than necessary. The Learned Counsel for the Appellant contended that the learned Judge had not considered the defence of right of private defence.

After analyzing the prosecution and the defence evidence court holds that the sole eye witness Mayalaghu is a trustworthy witness. No material contradictions or omissions were marked by the accused Appellant at the trial.

In this regard I would like to cite following authorities. .

In Sunil vs Attorney-General – 99 S.L.R 191 "the court observed solitary witness can be acted upon, provided that he is wholly reliable.

Further Madkani Baja vs The State (1996) C.V.L.J 433 (Law of Crimes, P.M. Bakshi – Volume 2, page 57) It was held that the evidence of a solitary witness in a murder can be acted upon, only if it was clear, cogent, trustworthy and above reproach.

The testimony of Mayalaghu states that the accused had stabbed the deceased on his back closer to the backbone. Also the Medical evidence and the post mortem report revealed that the stabbing took place from behind the deceased, causing a fatal injury to his backbone. Therefore the testimony of Mayalaghu and the medical observation have proved the fact that the deceased had been followed and stabbed by the Accused Appellant when he was moving from Appellant's house. Even though the accused claimed that this injury might have occurred while he was wagging the knife as self defence, the Court holds after observing the pattern of injury that such injury could not have taken place by mere wagging of a knife. . According to

the medical evidence the injury on the back of the chest is deep. Just wagging a knife can't cause such a deep injury. Further according to the medical evidence the injury which caused by stabbing behind the chest has been identified as a deep injury, it is understood that a mere wagging of a knife cannot be a cause of such a deep injury. .

Thus it is clearly evident that the stabbing had taken place from the back of the victim while he was moving away. The Accused Appellant had stabbed the deceased with a knife which stuck on a vulnerable part of deceased's body resulting his death. The court holds that the accused stabbed the deceased with the intention to kill him. After considering the evidence of Malayaghu, nature of the injury and the type of the weapon, court holds that the accused acted with the intention of killing the deceased. When I consider all these matters I am of the opinion that the Accused Appellant is not entitled to the benefit of right of self defence.

Accused Appellant's second contention is that he acted upon grave and sudden provocation due to a heated argument. But at the trial the Accused Appellant had not taken up this defence. Therefore, in terms of Section 105 of the Evidence Ordinance, the Appellant has failed to prove sudden provocation.

Further, the court holds that there is no sufficient evidence to prove that the victim or the father of the victim had caused sudden provocation to the Accused Appellant.

Therefore, the accused appellant is not entitled to receive the said exception of sudden provocation.

Furthermore, after analyzing the defence evidence there are inconsistencies in evidence which was given by the accused and the wife of the accused appellant. The learned trial Judge has correctly decided to reject defence evidence.

The Learned Counsel for the Appellant contended that the death of Malalaghu Devaraj had occurred due to a sudden fight. But at the trial stage the defence had not pointed out this position. The prosecution evidence revealed at the time of the incident that the deceased was unarmed and did not cause any injury to the Appellant. The Appellant had inflicted fatal blow on the deceased. The sole witness Malayaghu and the medical evidence supported this position.

The sole eye witness's evidence and the medical evidence prove that the Appellant has stabbed the unarmed deceased near his backbone from behind.

In the case of Ahmad Sherair – A.I.R.193, 1936 L.A.H 513 where the deceased was unarmed and did not cause any injury to Appellant, the appellant following a sudden quarrel had inflicted fatal blows to the deceased, it was held exception of sudden fight did not apply.

In the case of Amaranth Singh A.I.R 1928 O.U.D 282, it was held "*If two men were fighting and one of them unarmed while the other use a deadly weapon. The one who uses such a weapon must be held to have taken an undue advantage and not entitled to the benefit of this exception.*"

Therefore the exception of a sudden fight does not apply to the accused. In the circumstance, I don't agree with the submissions of the Counsel for the Appellant. The Accused Appellant has failed to prove the defence of self defence, grave and sudden provocation and sudden fight.

Hence, the Accused Appellant is not entitled to these exceptions. .

For the aforesaid reason I am of the view that the defence had not succeeded in raising a reasonable doubt in the prosecution case. The Court holds that the trial Judge has carefully and correctly evaluated the evidence of prosecution and defence .There is no reason to interfere with the trial Judge's findings. Therefore we affirm the conviction and sentence imposed by the learned High Court Judge.

Appeal is dismissed..

Judge of the Court of Appeal .