

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

Oliver Dayananda Kalansuriya alias Raja
Accused-Appellants

Vs

The Democratic Socialist Republic of Sri Lanka
Complainant Respondent

CA 28/2009
HC Galle 2900

Before : Sisira de Abrew J &
Sunil Rajapakshe J
Counsel : CR De SilvaSilva President's Counsel with D Weerasekara and
Chinthaka Rankotge for the appellant
Yasantha Kodagoda DSG for the Respondent.

Argued on : 29.1.2013, 30.1.2013, 31.1.2013
Decided on : 13.2.2013

Sisira de Abrew J.

The accused appellant in this case was convicted of the murder of a man named Ratnayake Sumanasekare alias Raja and was sentenced to death. 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: On the day of the incident around 7.30p.m when Ajith who is one of the sons of the deceased person was talking to Piyal near his shop, he saw his father (the deceased person) was going towards his house. At this time his father who was after liquor was scolding

his younger brother Thilina for plucking young coconuts. Fearing his father would harm his younger brother he started following his father. He then saw the accused appellant who was living in his neighborhood coming to the road carrying a knife and addressing his father in the following language: "Raja wait I have to settle a transaction with you." When the deceased person started coming towards the accused appellant, the latter stabbed the former. This was witnessed by his son Ajith from a distance of about 20-25 meters. After the stabbing when the accused appellant came towards him he ran away from the scene. Thereafter he, after taking a circuitous route, came to his house. He then saw his father lying fallen in the compound with bleeding injuries. He thereafter went back to Piyal's shop and requested his car to take the father to the hospital. He says he told Piyal that the accused appellant stabbed his father. But the fact that Ajith mentioning accused appellant's name was denied by Piyal in his evidence. Piyal says that he took deceased person to the hospital in his car and Ajith too went with him in the car. Piyal says that he got the first information about the stabbing from Thilana who of course had not given evidence at the trial. Piyal further says that at the time Thilina gave this information to him Ajith too was there near his shop, but in the next answer he said Ajith was near the other boutique which was little away from his shop.

Main contention of learned President's Counsel was that Ajith did not see the stabbing. Learned DSG who did not support the conviction too contended that Ajith had not seen the stabbing. He contended that if Ajith was present near Piyal's shop at the time Thilina gave the said information Ajith could not have seen the incident. According to his contention Ajith had not moved from Piyal's shop when the deceased person was scolding his son. I now advert to this contention. If Ajith had not moved from Piyal's shop he could not witness his father being stabbed. He drew our attention to the distance between Ajith and his

father at this time. It was a distance four lamp posts. Can any argument be advanced to the effect that it was difficult for Piyal to reach his father before the stabbing because of the distance between him and the father? In considering this argument one must not forget that deceased person at this time was after liquor. Thus he would have been walking slower than his usual speed. Further Ajith being a young man of about 26 years could walk this distance within few minutes. He would have walked faster than his usual speed since he thought his father who was under influence of liquor would harm his brother. In fact he says that he walked fast and slowed down when he came closer to the father. When I consider all these matters, I hold the view that there was no difficulty for Ajith to reach his father before the stabbing. In fact he says that fearing his father would harm his brother he hurriedly went behind his father. When he was about 20-25 meters behind his father the accused appellant stabbed the deceased. The position taken up by Ajith was that he came back to Piyal's shop after seeing the stabbing. He did not directly come to Piyal's shop. He came to Piyal's shop after seeing his father fallen in the compound. At the time Thilina gave the information, according to Piyal, Ajith was near his shop but he did not give the information of his father being stabbed. Learned DSG relying on the above matters submitted that Ajith had not seen the stabbing. I now advert to this contention. What was Ajith's intention at this time? His intention was to take his injured father to the hospital as quickly as possible. It may be that before Ajith gave the information to Piyal, Thilina also arrived at the Piyal's shop almost at the same time and gave the information to Piyal. When considering the contention of learned DSG one must not forget the fact that Ajith made a statement to the Police in the same night and that no omission was marked to prove that he failed to give the name of the accused appellant to the Police. Ajith takes up the position that he came back to Piyal's shop after seeing the stabbing

incident. When I consider all these matters, I am unable to accept the submission of learned DSG.

Ajith says that he went and told Piyal that the accused appellant stabbed his father. But Piyal does not confirm this position. Learned PC who appeared for the accused appellant therefore contended that Ajith could not be believed. He further submitted that Ajith had not even told his mother the name of the assailant of his father. But one must not forget that Ajith in the same night made a statement to the police and as I pointed out earlier no omission was marked to prove that he had not mentioned the name of the accused appellant. Thus his evidence satisfies the test of promptness and consistency. What was the behaviour of Ajith? He on seeing that his father who was after liquor scolding his brother followed him fearing he would harm the younger brother. When the accused appellant was stabbing his father, he raised his voice. When the accused appellant turned towards him he ran away. Thereafter he, after taking a circuitous route went to his house. On seeing his father lying fallen in the compound with bleeding injuries he ran to Piyal's shop to get a vehicle. He immediately took his father to the hospital. After hearing from the doctor about his father's death he in the same night made a statement to the police. His conduct is, therefore, in my view, very much compatible with a conduct of a normal human being.

It is an accepted principle that a criminal case cannot be proved with a mathematical accuracy as it has to be proved by the evidence given by human witnesses. Thus discrepancies, errors and contradiction are bound to occur. If they do not create a reasonable doubt in the prosecution case court should disregard them. Courts should not reject evidence of witnesses on the basis of minor discrepancies and contradictions. This view is supported by the judicial decision in State of Uttar Pradesh Vs MK Anthony [1984] SCJ 236. Indian Supreme Court in that case held thus: "While appreciating the evidence of a witness, the approach

must be whether the evidence of the witness read as a whole appears to have ring or truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to tender it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witness may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals.”

When I consider the above matters, I am unable to agree with contentions of both learned DSG and the learned President’s Counsel that Ajith had not seen his father being stabbed by the accused appellant. I hold that the learned trial judge was right when he accepted the evidence of Ajith.

There is no evidence to say that the accused appellant had fled the area after the incident. But the learned trial judge concluded that the accused appellant had fled the area. I agree with learned President’s Counsel when he contended that

this was a misdirection. But this misdirection, in my view, has not occasioned a miscarriage of justice in view of the evidence led at the trial.

When I consider the evidence led at the trial, I am of the opinion that there are no reasons to interfere with the judgment of the learned trial judge. For the above reasons, I affirm the conviction and the death sentence of the 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