

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

Pargoda Vithanalage Thilakaratne Rupasinghe
Accused-Appellant

Vs

CA 212/2009
HC Trincomalee HCEP 2259/04 (T)

The Attorney General.

Respondent

Before : Sisira J de Abrew J &
Sunil Rajapakshe J

Counsel : Ranjan Mendis with Ravi Jayawardene and AC Kandambi and
Upeksha Guniyangoda for the Accused Appellant.
Ayesha Jinasena DSG for the Respondent.

Argued on : 5. 2.2013 and 7.2.2013
Decided on : 28.3.2013

Sisira J de Abrew J.

The accused appellant in this case was convicted of the murder of a woman named Thilakarathnage Vasanthi Renuka Ratnayake and was sentenced to death. Being aggrieved by the said conviction and the sentence he has appealed to this court. Facts of this case may be briefly summarized as follows:

The accused appellant who lived in the neighbourhood of Vasanthi met Vasanthi on 19.10.2012 at the village temple and asked her as to why she did not reply the letter sent by him. When Vasanthi replied in the following language: “do not disturb me”, the accused appellant gave her a blow with his hand. This was

witnessed by Priyadarshani Kumari who came to the temple to do certain religious activities.

On the fateful day (25.11.92) between 10.00 a.m. and 11.00 a.m. when Premawathi who lived in the neighbourhood of the appellant was coming from her chena she heard somebody shouting. When she looked in that direction, she saw the accused appellant stabbing Vasanthi. Thereupon she ran away from this place. When she met the mother of the accused appellant she addressed her in the following language. "Prema Akka Prema Akka Chutty is stabbing Vasanthi". The accused-appellant is also called Chutty.

The accused appellant in his dock statement denied the incident. Learned counsel who appeared for the accused appellant did not challenge the credibility of witness Premawathi. He contended that since the accused appellant had inflicted only one penetrating injury he did not have murderous intention at the time he inflicted the injury and the learned trial judge should have convicted the accused appellant only for the offence of culpable homicide not amounting to murder on the basis of knowledge. He further submitted that the learned trial judge had not considered this aspect of the case. He in support of his argument cited the judgment in Weerappan Vs Queen 76 NLR 109 where His Lordship Justice HNG Fernando held thus: "Where a person is charged with murder, evidence showing that only one stab injury was inflicted by him on the deceased may indicate the absence of murderous intention. In such a case, it is the duty of the judge to give appropriate direction to the jury." I now advert to this contention. The contention of learned counsel for the accused appellant was that the accused appellant inflicted only one penetrating injury. How many injuries did the accused appellant inflict on the deceased woman? He inflicted nine injuries on the deceased woman. Four of them were stab injuries and the five were cut injuries. The injury no 1 which was on the chest had penetrated into the heart. According to the doctor who

conducted the Post Mortem Examination (PME), injured person would die instantaneously after infliction of this injury. According to the doctor 2nd, 3rd and 4th injuries would have been caused when the deceased woman tried to prevent her being stabbed. The 3rd and 4th injuries were on the armpit. The 5th injury which was a stab injury would have been caused when she was falling or after she fell on the ground. The injury no 7 was on the face. The 8th and 9th injuries which were on the fingers on the left hand would have been caused when the deceased woman attempting to snatch the knife. These facts show that the accused was not satisfied with one injury being caused and that his intention was to end the life of the deceased woman. In a charge of murder it is difficult to find direct evidence to prove the murderous intention. How does the court decide whether the assailant had murderous intention? Several factors can be considered in this regard. Some of them are as follows.

1. The weapon used.
2. The number of injuries caused.
3. The place of the body where the assailant inflicted injuries.
4. The force used by the assailant to inflict injuries.

The doctor who conducted the PME says that a considerable force had been used to inflict the injury No.1 which had penetrated to the heart. The accused appellant had inflicted nine injuries. The weapon used was a knife. He has even inflicted injuries when the deceased woman attempted to prevent her being stabbed. All these factors clearly indicate that the accused appellant, at the time of injuries being inflicted, had the murderous intention. Then the contention that the accused appellant did not have murderous intention cannot be accepted. I have earlier held that the accused appellant had murderous intention when he inflicted injuries. There are no any other defences available in the evidence to consider lesser culpability.

For the above reasons I am unable to accept the contention of learned counsel for the accused appellant. When I consider the evidence led at the trial I hold the view that the prosecution has proved the charge beyond reasonable doubt. In my view there is no merit in this appeal.

For the above reasons I affirm the conviction and the death sentence and dismiss the appeal.

Judge of the Court of Appeal.

Sunil Rajapakshe J

I agree.

Judge of the Court of Appeal