

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

CA No. 269/2007

H.C.Colombo No. HC 3092/2006

Faul Hameed Jeinudeen alias Manidan
No: 47,
Church Street,
Colombo 02.

Appellant

Vs.

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

Respondent

C.A. NO. 269/2007

H.C.Colombo No. HC 3092/2006

BEFORE : SISIRA J. DE ABREW, J. &
P.W.D.C. JAYATHILAKA, J.

COUNSEL : Rushdi Zarook, Assigned Counsel for the
Accused-appellant
Shanil Kularatne SSC for the respondent.

ARGUED ON : 08.05.2013 & 09.05.2013.

DECIDED ON : 09th May, 2013.

SISIRA J. DE ABREW, J.

Heard both Counsel in support of their respective cases.

The accused-appellant in this case was convicted of the murder of a man named Cader Mohideen Sulaiman Farook alias Nana and of the murder of Miskin Saibu Asaami Beebi, who is the wife of Nana and for robbing jewellery worth Rs. 48,000/= from the possession of said Miskin Saibu Asaami Beebi. On the 1st and the 2nd counts he

was sentenced to death. On the 3rd count he was sentenced to a term of 7 years Rigorous Imprisonment. Being aggrieved by the said convictions and the sentences the accused-appellant has appealed to this Court. The facts of this case may be briefly summarized as follows:-

The deceased person, Nana ran a boutique in Galle Face and was in the habit of coming home around 3.30 a.m. in the morning after finishing business in the said boutique. Nana had several workers working in the boutique and these workers were staying in a separate room which was very close to Nana's house. Nana was in the habit of going to sleep after getting a massage done by one of his employees who was working in the boutique. On the day of the incident around 5.30 a.m. Fazarudeen who was one of the employees, employed by Nana came to Nana's house in order to see whether the doors of the house were properly locked. He found both front door and the rear door locked. When he came near the rear entrance of the house of Nana, he heard the shouts of Nana's wife and thereafter he continued to wait near the rear door. Whilst he was waiting near the rear door, the accused - appellant after opening the rear door came out of Nana's house carrying a parcel of money. Fazarudeen grappled with the accused-appellant who dropped the parcel of money. During the grapple the accused-appellant also dropped a knife. Both items were later handed over to the

police. When Fazarudeen went inside the house, he found Beebi suffering from serious burn injuries. Fasarudeen and the people in the neighbourhood took both Nana and the Beebi to the hospital. Nana was found to be dead on admission. Beebi was admitted to the hospital and died few days later. Beebi whilst in the hospital made a statement to the investigating police officer. Beebi, in her 1st statement, stated that the accused-appellant came to her house, tied her legs and took her jewellery from the Almairah in the house. According to Beebi the accused-appellant thereafter set fire to the house. Beebi made another statement to her son stating that the accused-appellant entered the house and took her necklace which was on her neck. Beebi in her statement made to the police stated that the necklace was taken from the Almairah. But she said a slightly different version to her son with regard to the necklace. According to the statement made to her son, necklace had been taken from her neck. In our view this is not a material contradiction to reject the dying declaration made by Beebi. Learned Counsel for the accused-appellant contended that statement made by Beebi who is the second deceased person in this case cannot be considered as a dying declaration under Section 32(1) of the Evidence Ordinance.

Section 32(1) of the Evidence Ordinance reads as follows:-

“ Statements, written or verbal, of the relevant facts made by a person who is dead, or who cannot be found or who has

become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:-

(1) when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question"

The contention of the learned Counsel for the accused-appellant was that the statement made by the deceased person to a police officer does not come within the meaning of verbal statement. I now advert to this contention. In the **Ali Sandiri vs. The King 38 NLR page 257**, a nod of assent given by the deceased person who was unable to speak to a question whether it was the accused who cut her neck was held to be admissible under Section 32(1) of the Evidence Ordinance. In the present case the deceased person has made a statement to the investigating police officer. When I consider the principle laid down in *Alisandiri's* case I hold the view that the statement made by a deceased person to a police officer (before his death) comes within the meaning 'of verbal statement' and is admissible under section 32(1) of the Evidence Ordinance. I therefore reject the contention of learned Counsel for the accused-appellant. The accused-appellant has come from the house of

the two deceased persons (nana and Beebi) at the time of the incident (5.30 a.m. on the day of the incident). Both deceased persons were found inside the house at this time. Both deceased persons who had injuries were admitted to the hospital. Nana died due to a haemorrhagic shock due to stab injuries that he sustained. Beebi died due septicemic shock following superficial and deep skin burns. Beebi in her dying declaration says that the accused-appellant who entered the house after tying her legs set fire to the house. The accused denied the incident in his dock statement. When we consider the evidence led at the trial, we are of the opinion that the learned trial Judge had rightly convicted accused-appellant on all three charges. We therefore affirm the convictions and the sentences and dismiss the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

P.W.D.C. JAYATHILAKA, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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