

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

T.P. Neel Abeyratne

Accused -Appellant

C.A. Appeal No. 134/2008

H.C. Badulla No. 233/2003

Vs.

The Republic of Sri Lanka

Respondent

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

Counsel : W.D. Dharmasiri Karunaratne for the
Accused-Appellant.
Wasantha Nawarathna Bandara D.S.G. for
the Attorney General.

Argued &

Decided on : 08.07.2013.

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

Liyanaarachichige Podi Hamine, Hema Wasantha Wijesuriya, Jayanthi Wickremasinghe, Indrani Wickremasinghe, Dayawathie Wickremasinghe, and Nuwan Wickremasinghe and was sentenced to death. He was also convicted of robbery of wrist watch from the possession of Indrani Wickremasinghe (one of the deceased women) and robbery of a pair of earrings and a sari pin from the possession of Dayawathie Wickremasinghe (one of the deceased women). According to the prosecution, both robberies have been committed at the time he committed the murder of 6 persons.

Being aggrieved by the said convictions and the sentence the accused-appellant has appealed to this court.

Facts of this case may be briefly summarized as follows:

The accused-appellant was an army soldier. He was, at the time of the incident, attached to Walimada Army Camp. On 11th of December 1989 around 10.00 p.m. Jayasekara, one of the army soldiers working with the accused-appellant, complained to the senior officers in the army camp that his gun was missing. When he came back after dinner to his dormitory he found his gun

missing. The authorities immediately conducted an inspection and came to the conclusion that Jayasekara's gun was missing from the army camp and that the accused-appellant was also missing from the army camp. They further found that the gun issued to the accused-appellant was in the dormitory of the accused-appellant. The time was around 10.00 p.m. Around 2.00 a.m. in the following morning when the accused-appellant came to the army camp, the officer at the gate and other senior officers found that gun issued to Jayasekara was with the accused-appellant. The senior officers of the army camp also found 2 empty cartridges with the accused-appellant. They also found that 26 cartridges in the magazine attached to the gun had been used. The senior officers of the army camp also found the smell of gun powder emanating from the barrel of the gun. This indicates that the gun had been used little while ago. When the senior officers searched the accused-appellant, they also found three wrist watches, one pair of earrings and a sari pin in the possession of the accused-appellant. It has to be noted here that the said three watches, the pair of earrings and the sari pin were later identified by witness Padmini as the items belonging to the house of the deceased women Jayanthi, Indrani and Dayawathie. Padmini was one of the sisters of the said three deceased women.

Government Analyst's confirmed that the 2 empty cartridges found in the possession of the accused-appellant had been fired from the gun found in the possession of the accused-appellant at the time he entered the army camp (2.00 a.m.) in the morning. This is the gun that had been issued to soldier Jayasekera. This was the situation that was prevailing in the army camp between 10.00 p.m. to 2.00 a.m. I will now state what happened outside the army camp.

Around 1.00 a.m. in the morning (12th December 1989), the accused-appellant went and knocked on the house of Podi Hamine who was the one of the deceased women in this case. She was living in a village called Ella which is some miles away from the Army Camp. Rathnayake who is a nephew of Podi Hamine opened the door. Thereafter the accused-appellant took Podi Hamine out of the house. Rathnayake identified the accused-appellant. But it has to be noted here that no identification parade had been held. According to Rathnayake the duration of the time that he saw the accused-appellant is about 15 minutes. According to Rathnayake, after the deceased woman Podi Hamine was taken out of the house he heard two gun shots. Rathnayake found that his aunt Podi Hamine lying fallen in a pool of blood a little away

from the house. The accused-appellant according to the prosecution evidence, did not stop at this place. He thereafter went to the house of Jayanthi, Indrani, and Dayawathie which was situated less than one mile from the house of Podi Hamine.

Gunapala and Mahindapala who were living in the adjoining houses of Jayanthi, on hearing that somebody knocking on the house of Indrani became vigilant. Little later they heard several gun shots inside the house of Indrani. When they open the door they saw the accused-appellant inside the house of Indrani where five dead bodies were lying fallen. According to Gunapala, the accused-appellant shot at him but he did not sustain any injuries as he felt that the bullet was passing near his ear. Police found 13 empty cartridges in the house of Indrani. Government Analysts confirmed that the 13 cartridges had been fired from the gun which was taken into custody from the possession of the accused-appellant. Both Gunapala and Mahindapala had seen the accused-appellant at the scene armed with the gun. They also had seen two other people but they were not armed with any weapons.

Learned Counsel appearing for the accused-appellant contended that the identity of the accused-appellant had not been established as no identification parade had been conducted after the incident. In our view although no identification parade had been conducted, there is evidence to establish his identity as the jewellery found in the possession of the accused-appellant had been identified by Padmini as the jewellery belonging to the house of Indrani. Further prior to shooting at Podi Hamine's home Ratnayake spoke to the accused-appellant for about 15 minutes and he pleaded with the accused-appellant not to take his aunt as she was having a four months old baby. Therefore there was a good opportunity for him to identify the accused-appellant. According to Padmini the pair of earrings, the sari pin were used by her and her three sisters Jayanthi, Indrani, and Dayawathie. Three watches found in the possession of the accused-appellant too had been identified by Padmini as the watches belonging to her family.

When we consider all these matters, we are of the opinion that the identity of the accused-appellant had been established beyond reasonable doubt. The accused-appellant denied the incident in his dock statement.

When we consider the evidence led at the trial, we are of the opinion that the all charges levelled against the accused-appellant had been proved beyond reasonable doubt and there is no reason to interfere with the judgment of the learned trial Judge.

For the above reasons, we affirm the convictions, the death sentence and the sentences imposed on counts 7th and 8th 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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