

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

C.A.Appeal No. 137/08

High Court Gampaha No. 96/99

- 1.Perumbada Pedige Ajith Sanath
Kumara, (dead)
- 2.Perumbada Pedige Nimalsiri,
- 3.Nuwarapaksha Pedige Thilakarathna,

Accused-Appellants.

-vs-

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

Respondent.

Before: Sisira J .de Abrew, J &
P.W.D.C. Jayathilaka, J

Counsel: Indika Mallawarachchi for the 1st Accused-Appellant.
Neranja Jayasinghe for the 2nd Accused-appellant.
Ms. Haripriya Jayasundera DSG for the Respondents.

Argued and

Decided on: 18.09.2013 and 20.09.2013

Sisira J. de Abrew, J

Heard counsel for both parties in support of their respective cases. The three accused-appellants in this case were convicted of the murder of a man named Ilandari Pedige Nimal Ranasinghe and were sentenced to death. Being aggrieved by the said conviction and the sentence the accused-appellants have appealed to this Court.

The learned DSG appearing for the Attorney-General submits that she cannot support the conviction in view of the contradictory nature of the prosecution evidence and also considering the fact that the witness Guneratne is an unreliable witness.

The facts of this case may be briefly summarized as follows. On the day of the incident Gunaratne went to a nearby well to have a bath. The time was 9.30 p.m . When he was waiting near the well ,he saw a flash of a torch and later saw the 3rd accused attacking the person who carried a torch with a club. He does not say that the person who was attacked was the deceased person in this case. Litter later, the 1st and the 2nd accused-appellants came to this place flashing a torch and all three of them dragged the person who was attacked away from the scene. Nowhere in his evidence has he said that he identified the person who was attacked as the deceased person in this case. But the learned trial judge has concluded that the

1st, 2nd and 3rd accused-appellants have attacked the deceased person. The learned Deputy Solicitor General too submits that there is no evidence to reach such a conclusion. Therefore the prosecution has failed to prove that the accused-persons in this case had attacked the deceased person. On this ground itself the case for the prosecution should collapse. The most important question that must be decided in this case is whether the witness Gunaratne who claimed to be an eye witness has seen the incident. According to Guneratne he went to a nearby well around 9.30 p.m to have a bath. He admits that he has never gone to this well before. According to Guneratne there was moonlight on this day and he was able to see the incident with the aid of the moon light. Was there moon light on that day? If this question is answered in the negative his evidence becomes false. We have checked the calendar for 1996 issued by the Government. According to the calendar the new moon was on 14th of August and the full moon was on 28th of August. The incident has taken place on 18th of August 1996. Therefore there could not have been any moon light on the 18th by 9.30 p.m. Therefore the stand taken by Guneratne appears to be false. Guneratne has made a statement to the Police 7 months after the incident. According to him he was motivated to make a statement to the Police after he was abused by the brother in law of the 1st accused. He has given several other reasons which cannot be accepted. When we consider the above reasons given by him it appears that there was a reason for him to implicate the accused-appellant in this case with the crime. We have examined his evidence. For several questions he has said either he does not know or he cannot remember. He admits that he did not tell this incident to anybody after he saw the incident. He told the incident to the police only after he was abused by the brother in law of the 1st accused-appellant. When we consider these matters, we are unable to

accept his evidence as truthful evidence. In our view the learned High Court Judge was wrong when he decided to rely on the evidence of Guneratne. If the evidence of Guneratne is disbelieved, the case of the prosecution should fail. The learned Deputy Solicitor General upholding the best traditions of the Attorney-General's Department concedes this position. We are pleased with the submissions made by the learned DSG. The accused-appellants in their dock statements have denied the incident. They have called their wives and 2 other independent outsiders to say that in the night of 18.08.1996 the accused-appellants were engaged in the profession of wrapping beedi. When we consider the evidence led at the trial we are of the opinion that the prosecution has not proved its case beyond reasonable doubt. We therefore set aside the conviction and the death sentence of the accused-appellants and acquit the accused-appellants.

Appeal allowed.

Judge of the Court of Appeal

P.W.D.C. Jayathilaka, J

I agree.

Judge of the Court of Appeal

Kpm/-