

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

L.G.Dhanaratne

Vs.

The Attorney-General.

C.A. 102/2012

HC Kandy Case No. 203/2001

BEFORE : Sisira J. de Abrew, J. &

P.W.D.C. Jayathilake, J.

COUNSEL : Chandana Nissanka for the accused-appellant.

Buveneka Aluvihare ASG for the State.

ARGUED ON : 01.08.2013 & 02.08.2013

DECIDED ON: 02.08.2013

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

his own daughter Lukadagedara Champika Kumari Dhanarathne 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 deceased woman Champika Kumari was having a love affair with a person called Jayantha who is the brother of the sister-in-law of the accused-appellant. On the day of the incident sister-in-law of the accused-appellant brought letters supposed to have been sent by Champika Kumari to Jayantha. When she came home Champika Kumari had left home in order to go to her tuition classes. Thereafter the accused-appellant left home and brought a parcel. Subsequent evidence reveals that there was a bottle of poison inside the parcel. After Champika Kumari came home the accused-appellant had dragged her to the rear side of the house, poured the substance of the bottle that he brought and asked Champika Kumari to drink. The two sisters of Champika Kumari and the mother shouted not to drink. At this time Champika Kumari took a sip from the cup and

refused to drink the rest. The accused-appellant then kept the cup to the mouth of Champika Kumari and asked her to drink. According to the evidence he used pressure on Champika Kumari to drink and she drank the liquid in the cup. Thereafter Champika Kumari fell on the ground and one Kamala who was living in the neighbourhood of the accused-appellant came to this place and took her to the hospital in a three-wheeler. According to the evidence the accused-appellant too went in the three-wheeler. The above incident was witnessed by the sisters of the deceased woman Keshani and Nirosha Chandani. According to the post mortem report the cause of death is 'Paraquat Poisoning'.

The accused-appellant gave evidence under oath. His evidence may be briefly summarized as follows. On the day of the incident he came home after attending a funeral in the neighbourhood and then he found his daughter lying fallen on the ground. He thereafter took her to the hospital. In his evidence he was trying to say that Champika Kumari

committed suicide. Learned Counsel for the accused-appellant submitted that the evidence of the prosecution witnesses cannot be relied upon as they have made their statements to the police 26 days after the incident. Should the evidence of the witness be rejected on the ground of delay? This question was considered by His Lordship T.S. Fernando in Queen vs. Paulin de Croos 71 NLR 169 wherein His Lordship held thus “just because the witness is a belated witness the court ought not to reject his testimony on that ~~or~~ score alone and that a Court must inquire into the reason for the delay and if the reason for the delay is plausible and justifiable the court could act on the evidence of the of the belated witness”. This judgment was cited with the approval by His Lordship Justice Jayasooriya in Sumanasena vs. Attorney General 1999 (3) SLR page 137. I will now find out from the evidence whether there was any reason for the delay. Keshani and Nirosha Chandani were at the time of the incident 14 years and 17 years. They were under the care of their father who is the accused-appellant in this case. The only breadwinner of the

family was their father. When I consider all these things I hold the view that it is not possible for them to make a prompt complaint against their father. Wife has also not made a prompt complaint to the police. The accused-appellant was a mason by profession and was the only breadwinner. Therefore the reason for not making a prompt statement to the police by the wife can also be understood. When I consider all these matters, I hold the view that the evidence of the witnesses should not be rejected on the ground of delay.

Why did the witnesses make a complaint 26 days after the incident? After the incident, the accused-appellant had tried to squeeze the neck of their mother. It appears that this was the reason for them to make a complaint to the police. Apparently they would have thought that they have lost their sister and would also lose their mother under the hands of the father. Therefore, making of the complaint 26 days after the incident can be understood. Learned Counsel for the accused-appellant complained that there are discrepancies

between Keshani and Nirosha Chandani. Nirosha Chandani at one stage stated that their father gave the bottle of poison to Champika Kumari. But according to Keshani the accused poured poison to the cup and gave it to Champika Kumari. Nirosha Chandani although under cross examination stated the said fact she, in examination chief and cross examination, has stated that father poured poison into the cup and gave it to Champika Kumari. When I consider the evidence of both Keshani and Nirosha Chandani I am of the opinion that there are no major discrepancies in their evidence.

The accused-appellant, in his evidence, tried to take up the position that Champika Kumari committed suicide by drinking poison. I now advert to this position. According to the accused-appellant he was at a funeral house. He saw the daughter lying fallen on the ground only after he arrived home from the funeral house. The fact that he was at a funeral house in the village was never suggested to two daughters who gave evidence at the trial. According to the accused-appellant

his wife was also at the funeral house. But no such suggestion was made when Keshani and Nirosha Chandani gave evidence. According to the evidence led by the prosecution, on the day of the incident (in the morning session) Champika Kumari and her boy friend Jayantha had gone to Kandy town and visited Dalada Maligawa. They both had come to the village in the same bus. According to the evidence they had taken lunch in the Kandy town. Under these circumstances what was the reason for Champika Kumari to commit suicide. From the evidence it appears that there was no reason for Champika Kumari to commit suicide. In the morning on of the fateful day she visited Dalada Maligawa with her boy friend. After lunch they came home together. Was there any opportunity for her to buy a bottle of poison? The obvious answer is no.

There is no evidence to suggest that the bottle of poison was found in this house prior to the incident.

According to the prosecution evidence, the accused had, in the morning, brought some parcel home and later the witnesses found that the accused had brought a bottle of poison. When I consider all these matters I am unable to accept the evidence of the accused-appellant and further I hold the view that his evidence does not create any reasonable doubt in the prosecution case. The learned trial judge was therefore correct when he rejected the accused-appellant's evidence. When I consider the evidence led at the trial, I hold the view that the prosecution has proved its cases beyond reasonable doubt. I therefore affirm the conviction and the death sentence and dismiss the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

P.W.D.C. Jayathilake, J.

I agree.

JUDGE OF THE COURT OF APPEAL