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

Liyana Mendis Keerthi Sudarman Harisachandra

Accused-Appellant

Vs

The Democratic Socialist Republic of Sri Lanka

Complainant Respondent

CA 108/2005
HC Gampaha 65/97

Before : Sisira J De Abrew J &
PWDC Jayathilake J

Counsel : Mahendra Kumarasinghe for the accused appellant
DPJ De Livera DSG for the Respondent

Argued on : 5th,9th,10th,12th,13th and 16th of September 2013
Decided on : 31.10.2013

Sisira J De Abrew J

The accused appellant in this case was convicted of the murder of a girl named Nirosha Gamini Kumari Ranawaka and was sentenced to death. Being aggrieved 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 in this case worked as a Sub Inspector of Police at Gampaha Police station prior to the incident of this case. Ranawaka whose daughter was the victim in this case associated closely with the accused appellant when he was working as a Sub Inspector of Police. At the time of the incident in

this case the accused appellant was not in the police service. Ranawaka who was engaged in the cashew business requested the accused appellant to come and stay at his place in order to help his business. The accused appellant thereafter started staying in Ranawaka's house and helped Ranawaka. He also started helping the deceased girl in her studies. All family members used to sleep in a room in upstairs. On the day of the incident Ranawaka, his wife, younger daughter, and his son got up around 8.00 in the morning and all of them went downstairs but Nirosha was still sleeping in the room. The accused appellant who got down three cigarettes through one Priyantha who usually comes to this house to have breakfast went upstairs in order to iron his clothes. The ironing table had been kept close to the room where Nirosha (the deceased girl) was sleeping. When he went upstairs he took a box of matches. Around 8.30 a.m. while the accused appellant was in upstairs Mrs. Ranawaka heard Nirosha shouting 'mother, mother'. It has to be noted here that at this time only the accused appellant and Nirosha were in upstairs. When Mr. and Mrs. Ranawaka tried to go to upstairs the accused appellant did not allow them to go to upstairs and threatened them with death. When questioned where her daughter was, he said that she got burnt by a cigarette. The accused appellant was, at this time, only wearing his underwear. His hair on the head was burning. Mr. Ranawaka with the aid of a gunny bag doused the fire of the accused appellant. The room in which the deceased girl was sleeping was also on fire. Mrs. Ranawaka says that there was fire around the mattress. Mr. Ranawaka went inside the room and tried to pull the deceased girl who was on fire but could not pull her out. She says that even the window-frames were on fire. However the neighbours came and pulled the deceased girl out but at this time she had died. According to the police officer, upstairs of the house was fully gutted.

One month prior to the incident whilst the accused appellant was teaching the deceased girl in upstairs Buddhism book was thrown out. There is no

clear evidence to say as to who threw the book. But after this incident the accused appellant scolded the deceased girl in filth and said that he would take the revenge. One day he had said if a person does one wrong thing to him, he would take revenge ten times. After the incident relating to the throwing of the Buddhism book the deceased girl did not like him and according to her sister's evidence the deceased girl did not want to see his face.

According to Mrs. Ranawaka (Shanthilatha) the accused appellant having lighted a cigarette went upstairs taking a box of matches. It was brought to the notice of the trial court that she had not stated this fact in her statement made to the police. According to Mrs. Ranawaka, the accused appellant did not permit them to come to upstairs and threatened them with death when they tried to come to upstairs. She had not stated this fact in her statement made to the police. This fact too was brought to the notice of the trial court. Learned counsel for the accused appellant harping on these matters contended that Mrs. Ranawaka could not be accepted as a reliable witness. I now advert to this contention. According to Mrs. Ranawaka she saw her daughter in flames. Her daughter who was sleeping with her in this room became a charred body within few hours. Her house was gutted. In fact the Air Force officers too came and tried to douse the fire. When these matters are considered one can understand the trauma that she underwent. Under these circumstances the fact that she forgot to tell these matters in her statement made to the police can be understood. When I consider all these matters, I am unable to reject her evidence on the basis of the said omissions.

Learned counsel for the accused appellant contended that it was difficult to believe that Mr. Ranawaka went and doused the fire of the accused appellant who had threatened them with death. He therefore contended that the evidence that the accused appellant made death threats could not be believed. I now advert to this contention. According to the evidence led at the trial Mr. Ranawaka had

established a good friendship with the accused appellant who was even permitted to stay in the house. He was almost living in this house. In the same morning the accused appellant went and dropped the younger sister of the deceased girl at her tuition class. He rode Ranawaka's motor cycle as Ranawaka could not ride it after he met with an accident. When there was such an intimate relationship between the two, there is no difficulty to think that Ranawaka doused the fire of the accused appellant even though he was threatened with death.

Learned counsel for the accused appellant contended that it was difficult to think that Ranawaka couple had permitted the stay of the accused appellant in this house after the book throwing incident. In fact Mrs. Ranawaka had discussed this matter with her husband who resisted the idea of requesting the accused appellant to leave home as they had treated him well all this time and that he was planning to leave on the 16th of September. When I consider all these matters, I am unable to agree with the above contention.

As the case of the prosecution depended on circumstantial evidence, I would like to consider principles governing cases of circumstantial evidence. In the case of King Vs Abeywickrama 44 NLR 254 Soertsz J remarked as follows. "In order to base a conviction on circumstantial evidence the jury must be satisfied that the evidence was consistent with the guilt of the accused and inconsistent with any reasonable hypothesis of his innocence".

In King Vs Appuhamy 46 NLR 128 Keuneman J held that "in order to justify the inference of guilt from purely circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt"

In Podisingho Vs King 53 NLR 49 Dias J held that "in a case of circumstantial evidence it is the duty of the trial Judge to tell the jury that such evidence must be totally inconsistent with the innocence of the accused and must only be consistent with his guilt"

In Emperor Vs Browning (1917) 18 Cr. L.J. 482 court held "the jury must decide whether the facts proved exclude the possibility that the act was done by some other person, and if they have doubts, the prisoner must have the benefits of those doubts."

Don Sunny Vs A G [1998] 2 SLR page1.

"The accused-appellant and two others were indicted on the first Count with having between 1.9.86 and 27.2.87 committed conspiracy to commit murder by causing the death of Amarapala with one G. and others under s. 113(8) and s. 102 Penal Code and on the second count having committed murder by causing the death of the said Amarapala on 27.2.87 under s. 296 Penal Code. After trial the accused-appellant and the absent-accused were convicted and sentenced to death.

Held:

1. When a charge is sought to be proved by circumstantial evidence the proved items of circumstantial evidence when taken together must irresistibly point towards the only inference that the accused committed the offence.

On a consideration of all the evidence the only inference that can be arrived at should be consistent with the guilt of the accused only.

2. If on a consideration of the items of circumstantial evidence if an inference can be drawn which is consistent with the innocence of the accused, then one cannot say that the charges have been proved beyond reasonable doubt

3. If upon a consideration of the proved items of circumstantial evidence if the only inference that can be drawn is that the accused committed the offence then they can be found guilty.

The prosecution must prove that no one else other than the accused had the opportunity of committing the offence, the accused can be found guilty only and only if the proved items of circumstantial evidence is consistent with their guilt and inconsistent with their innocence."

Applying the principles laid down in the above judicial decisions, I hold that in a case of circumstantial evidence if the court is going to draw an inference of guilt from the proved facts, it should be the one and only irresistible and inescapable inference and such an inference should be compatible only with the guilt of the accused and should be incompatible with the innocence of the accused.

I must consider whether the deceased girl committed suicide by setting herself ablaze. According to Mrs. Ranawaka's evidence, when the inmates of the house went downstairs around 8.00a.m on the day of the incident from the room where the burning incident took place, the deceased girl was still sleeping. The incident took place around 8.30 in the morning. Then the girl who was sleeping could not have committed suicide by setting herself ablaze. Further according to the dock statement of the accused appellant, little prior to the incident of burning

he went upstairs and was ironing his clothes. Thus if the girl went and brought the can of petrol which was in the adjoining room, he would have seen it. He was ironing almost in front of the door of this room. When I consider all these matters, contention that she committed suicide by setting herself ablaze has to be rejected and I reject it.

The accused appellant, in his dock statement, admits that at the time of the incident he was in upstairs ironing his clothes in front of the door of the room. The inmates of the house were in downstairs. Then the contention that any outsider coming and setting fire to the room has to be rejected.

The accused appellant, in his dock statement, says that when he was ironing his clothes in front of the room he heard somebody shouting (he does not say it was the voice of the deceased girl); that he felt a smell of smoke; that he went to the room; that he saw the smoke and fire in the room; that he tried to rescue the girl who was in flames; that his clothes caught fire; that he shouted saying 'Ranawaka'; that he could not breath; that he came out an sat on the floor; that Ranawaka came and doused the fire with the aid of gunny bag; and that thereafter he was taken to the hospital.

What were the injuries that the accused appellant had? He was having burn injuries on the face, head, neck and right hand. These were only superficial burns. The above evidence is found in his medical record. But according to IP Raymond from Gampaha Police, he (the accused appellant) had burn injuries on his face, chest, both hands, shoulder, lips and two ears. But if he had these injuries why didn't the doctor who treated him notice them.

Although IP Raymond noticed the said injuries, when the accused appellant was examined by the doctor for treatment he had injuries only on the face, head, neck and right hand. Therefore court can take into account only the injuries observed by the doctor.

According to his dock statement the room was on fire and his clothes also caught fire. He admits that he was wearing a sarong and a shirt. Under these circumstances if he went and tried to rescue the girl who was on fire he would have sustained severe burn injuries. But his injuries were also superficial burn injuries. It is difficult to think that he only sustained injuries only on the face, head, neck and right hand if he tried to rescue the girl who was in flames in the room which was also in flames. Both parties admit that the accused appellant went inside the room. There is no argument on this matter. There was a can of petrol in the adjoining room. Mrs. Ranawaka says both the accused appellant and her husband used this can whenever they rode the motor cycle. Thus the accused appellant was aware of the existence of the can of petrol. The deceased girl was sleeping on a mattress on the floor. If the accused appellant after pouring petrol on the mattress bent down and lighted a match wouldn't he have sustained only superficial burns on the face, head, neck and **right hand**? But if he went inside the room which was in flames how did he sustain only superficial burns? If the story of the accused appellant was true he could not have escaped only with superficial burn injuries. He admits that his clothes caught fire. If this is true where are the injuries on his legs and feet? Do these facts suggests that he went inside the room to ignite the petrol soaked mattress and that as a result of this he sustained injuries only on the face, head, neck and right hand? This contention is strengthened when he did not permit Mr. and Mrs. Ranawaka to come up and made death threats. This contention is again strengthened with his words relating to taking revenge. He, on a

previous occasion, had said that if one person did one wrong to him he would take revenge ten times. Learned counsel for the accused appellant contended that Ranawaka who went inside the room to rescue the girl did not sustain injuries. But it has to be noted that this question was never raised at the trial. Ranawaka or his wife was not questioned on this matter.

The accused appellant, in his dock statement, was trying to say that fire emanated by an action other than his action. Learned counsel for the accused appellant also tried to advance this contention. He tried to contend that it could happen due to electricity leakage. He contended that the accused appellant could not be held responsible for the fire in the room especially when the cause of the fire had not been established through the Government Analyst. The accused appellant himself admits in his dock statement that soon prior to the fire broke out, Ranawaka came upstairs and was having a chat with him. If there was a fire or smoke in the room at this time, Ranawaka would have felt it and would have gone inside the room to inquire into it especially because of the fact that his daughter was sleeping. Thus according to his own dock statement there could not have been a fire little prior to the incident of this case. This also shows that the fire in the room was a sudden incident. At the time of the fire broke out only the accused appellant and the deceased girl were present in upstairs. If this was a sudden fire such thing can happen only with highly inflammable substance such as petrol which was available in upstairs. The accused appellant knew that there was a can of petrol in the adjoining room. Thus the above contention cannot be accepted. When I consider all these matters the stand taken up by the accused appellant in his dock statement that he went to the room to rescue the girl cannot be accepted and it does not create a reasonable doubt in the prosecution case.

I must consider as to why the girl did not get up and run away. In considering this matter one must not forget the evidence of Mrs. Ranawaka (Shanthilatha) She says that although her husband pulled the girl who was in fire he was unsuccessful. It has to be noted that at the time of the fire only the accused appellant and the deceased girl were in upstairs. The stand taken up by the accused appellant in his dock statement was that he tried to rescue the girl but failed. Did he tell this story to the father who was dousing his fire? The answer is no. If his story was true he would have told his efforts to the father of the girl. But in his dock statement he does not say so. Any reasonable prudent man will say that he tried to rescue the girl if he in fact tried to do so. Failure on the part of the accused appellant to say that he tried to rescue the girl but failed can be considered against him especially when he was the only person present near the deceased girl. This failure suggests that his stand taken up in the dock statement is untrue.

When I consider the evidence led at the trial, one and only irresistible and inescapable conclusion that can be reached is that the accused appellant committed the murder of the girl by setting fire to her. This conclusion in my view is only compatible with his guilt and is incompatible with his innocence. For the above reasons I affirm the conviction of the accused appellant and the death sentence and dismiss the appeal.

Appeal dismissed.

Judge of the Court of Appeal

PWDC Jayatilake J

I agree.

Judge of the Court of Appeal