

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

Kiriyage Susil Rajapakshe

Accused-Appellant.

C.A. Appeal No. 109/2010

H.C. Puttalam Case No: 72/2006

-Vs-

Republic of Sri Lanka

Respondent

**Before : Sisira J. de Abrew, J. (Acting P/CA) &
P.W.D.C. Jayathilaka, J.**

Counsel : A.K. Chandrakantha for the Accused-Appellant.
Kapila Waidyaratne DSG for the Respondent.

Argued &

Decided on : 09.12.2013

Sisira J. de Abrew, J. (Acting P/CA)

Heard both counsel in support of their respective cases. The accused-appellant in this case was convicted of the murder of his own brother named Kiriyaage Abeyruwan 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. On the day of the incident the accused was seen taking the deceased person to a cadjan hut after placing a noose round the neck of the deceased person. At this time one end of the noose of the rope was in the hands of the accused person. This was witnessed by the brother and brother in law of the accused person. After 10-15 times the accused was seen loitering around the said hut in which the police found the deceased hanging. The accused-appellant in his allocutus said that the deceased was hanged by his brother Denzil Rajapakse and his brother in law Nimal Tilakaratne. Both Nimal Tilakaratne and Denzil Rajapakse gave evidence at the trial. But the accused-appellant did not suggest to them that murder was committed by them. The accused-appellant in his dock statement took up the position that the deceased person tried to commit suicide by hanging himself but he prevented it.

Learned counsel appearing for the accused-appellant invites this Court to consider the statement made in his allocutus and acquit him. But the accused-appellant has taken 2 contradictory positions in his allocutus and dock statement. Therefore we are unable to act on the allocutus of the accused-appellant.

The Doctor who gave evidence had stated that the deceased person could not have committed suicide as the deceased person was suffering from an old fracture in his left hand. Thus the fact that the deceased person committed suicide by hanging himself has to be rejected. Therefore the position taken up by the accused-appellant in his dock statement cannot be accepted and is not capable of creating a reasonable doubt in the prosecution case. Therefore the learned trial judge is correct when he rejected the dock statement. According to the medical evidence the deceased person had sustained an injury on his head. He had also sustained an injury on his left knee. According to the medical evidence there was smell of alcohol in the stomach contents of the deceased person. When we consider the medical evidence it appears that the deceased person had suffered an injury on the head and an injury on his knee. This suggests that, prior to the hanging, he had been assaulted.

Doctor in his evidence has said that for one person to hang the deceased he (the deceased) should have been made partly unconscious.

He has also expressed opinion that if it did not happen, person who did it would need assistance of several people. But as I pointed out earlier the deceased had suffered a head injury and an injury on the knee. This suggests that the deceased person had been debilitated prior to the hanging. Therefore the said evidence given by the Doctor does not create a reasonable doubt in the prosecution case. When we consider the evidence led at the trial, we hold that the prosecution has proved its case beyond reasonable doubt.

We hold that there is no merit in this appeal. For the above reasons, we affirm the conviction and the sentence and dismiss the appeal.

Appeal dismissed.

ACTING PRESIDENT OF THE COURT OF APPEAL

P.W.D.C. Jayathilaka, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Kpm/-