

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

M. Ganasundara

Accused-Appellant

C.A.No. 260/08

H.C. GalleNo. HC 2674

Vs.

Hon. The Attorney General

Respondent

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BEFORE : SISIRA J. DE ABREW, J. (ACTING P/CA) &  
P.W.D.C. JAYATHILAKA, J.

COUNSEL : M. Wannappa for the accused-appellant.  
Kapila Waidyaratne A.S.G. for the respondent.

ARGUED AND

DECIDED ON : 20<sup>th</sup> January, 2014

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**SISIRA J. DE ABREW, J. (ACTING P/CA)**

Accused-appellant produced by the Prison Authorities is present in Court.

Heard both Counsel in support of their respective cases.

The accused-appellant and his brother Matiwalage Mahindapala (2<sup>nd</sup> accused) were indicted for the murder of a man

named, Walitharage Niyathapala. Before the conclusion of the trial the 2<sup>nd</sup> accused, Matiwalage Mahindapala died. After trial the learned trial Judge by his judgment dated 11<sup>th</sup> of December 2009 convicted the accused-appellant for the offence of murder and sentenced to death. Being aggrieved by the said conviction and the sentence he has appealed to this Court. The facts of this case may be briefly summarized as follows:-

On the day of the incident after 6.00 p.m. the deceased person Niyathapala and Rajapakshe after laying a foundation in the village went to the nearby river to have a bath. While the deceased person was bathing in the river, Rajapakshe heard the voices of both the accused and the voice of the deceased person. Rajapakshe then saw the 2<sup>nd</sup> accused Mahindapala attacking the deceased person. At this time the 1<sup>st</sup> accused-appellant was also there. He witnessed this incident from the other side of the river as the deceased person had already swam across the river.

The deceased person's son Rasika, says that his father and Rajapaksha went to the river for the purpose of bathing. Little later he heard the voices of the 1<sup>st</sup> accused-appellant, 2<sup>nd</sup> accused and his father. His father was pleading not to attack him. Further, his father was addressing them in the following language. "I have not done any wrong

thing to you". Rasika then saw the 1<sup>st</sup> accused-appellant attacking the deceased person with a weapon, length of which was 3 to 4 feet. He also saw the 2<sup>nd</sup> accused attacking his father (the deceased person) with a knife. When he shouted not to attack his father, the 1<sup>st</sup> accused-appellant chased after him saying that I would kill you too. He ran a little distance and came back. Then he saw both the accused throwing his father into the river. The incident was brought to the notice of the priest in the village by both of them. According to Rajapaksha he saw the incident around 7.30 p.m. But Rasika says he saw the incident around 6.30 p.m. Learned Counsel appearing for the accused-appellant contends that if Rajapaksha saw the incident around 7.30 p.m. it was not possible for Rasika to see the incident around 6.30 p.m.. I now advert to this contention. Whether the time of incident was at 6.30 p.m. or 7.30 p.m. there should have been light for them to identify. The investigating police officer who went to the scene of crime to investigate says that there was lamp post at this place and there was a light of Somapala's house. The beams of both lights were spreading to the place where the incident took place. Therefore, it is seen that there had been sufficient light for the two witnesses to identify the accused-appellant. When I consider all these matters I hold that the witnesses have identified the accused-appellant and the 2<sup>nd</sup> accused. Therefore, the difference of time spoken to by two witnesses is not a material contradiction. The accused-appellant gave evidence and took up the

position that on the day of the incident he was at Ratnapura. He first said that he went to Ratnapura in the month of November. Later he said that he went to Ratnapura on 8<sup>th</sup> of December. When the learned prosecuting State Counsel suggested that he was lying he did not give an answer. Further, when Rasika and Rajapaksha were giving evidence, learned defence Counsel who appeared for the accused-appellant at the trial did not suggest to them that the accused-appellant was on that day at Ratnapura. I therefore hold that the learned trial Judge was correct when he rejected the evidence of the accused-appellant. When I consider the evidence led at the trial, I hold the view that the prosecution has proved the case beyond reasonable doubt. I therefore, refuse to interfere with the judgment of the learned trial Judge. I affirm the conviction and 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

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