

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

M.S. Siripala alias Poddda

Accused-Appellant

Vs.

The Attorney General,

Respondent

C.A. 200/2008

H.C. Trincomalee Case No:2190/04

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

Counsel : Dasun Nagashena for the Accused-Appellant.
Tusith Mudalige SSC. for the respondent.

Argued &

Decided on : 05.02.2014

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 a man named Manik Ralage Dissanayake and was sentenced to death (1st Count). He was also

convicted of the offence of abduction of a girl named Despani Dissanayake and was sentenced to a term of seven years Rigorous Imprisonment and to pay a fine of Rs: 10,000/- carrying a default sentence of 6 months Rigorous Imprisonment (Count No: 2). He was also convicted for causing grievous hurt to Wimalawathie who is the wife of the deceased Dissanayake and was sentenced to a term of 5 years Rigorous Imprisonment and to pay a fine of Rs: 10,000/- carrying a default sentence of 6 months Rigorous Imprisonment. Being aggrieved by the said convictions and the sentences he has appealed to this Court.

Facts of this case may be briefly summarized as follows: On 30.01.2001 around 11.30 p.m., the accused-appellant who was living in the neighbourhood of the deceased person came and called the deceased person. At this time the wife of the deceased person Wimalawathie lit a bottle lamp in the house. The accused-appellant called the deceased person to go out with him. The deceased person first refused to go with the accused person. However the accused-appellant persuaded the deceased person to go along with him. Wimalawathie too followed the accused-appellant and the deceased person. When they walked a distance of 10 feet, the accused-appellant took an axe and attacked the deceased person. The deceased person fell on the ground. Thereafter the accused -appellant chased after Wimalawathie. Wimalawathie came up to her house. The accused-appellant then attacked Wimalawathie with the axe. Wimalawathie fell on the ground. Thereafter Wimalawathie managed to go to Manikhamy's house which was very close to her house. She complained to Manikhamy

that the accused-appellant killed her husband. At this time one of the children of Wimalawathie had also come to Manikhamy's house. Manikhamy who was concerned about three children of Wimalawathie came running to Wimalawathie's house in search of the children. She found a child crying on the pillow. But she did not find the other child. The Officer-in-Charge of Morawewa Police station on receiving a complaint from the Commanding Officer of the Army Camp of area launched an investigation on the following day. The police party led by O.I.C. Rajapakshe, the villagers and home guards in the area went to the jungle in search of the missing child of Wimalawathie. When they were searching for the child in the jungle, O.I.C. Rajapakshe heard a report of a gun. He says that the said shot had been fired by Wipulsena a home guard. Wipulasena had apparently shot at the accused person who was guarding the missing child of Wimalawathie. The Police party, the villagers and home guards gathered at the scene found the missing child of Wimalawathie, whose name is Deepani Dissanyake with the accused-appellant. It has to be noted that I.P. Rajapakshe found Deepani Dissanayake in the jungle with the Accused-appellant. At this time the accused-appellant was having a blood stained axe with him. According to the doctor who conducted the post mortem examination, the deceased person had sustained two cut injuries and one fracture on the head. Doctor says that the fracture on his skull could be caused by the blunt side of the axe.

Accused who gave evidence denied the incident. According to him on 30.01.2001 around 11.00 p.m. he was at home. On the following

day, on hearing the incident he went to Dissanayake's house and Wipulasena shot at him. He further says that the child Deepani Dissanayake too sustained injuries as a result of firing by Wipulasena at the house of Wimalawathie. Deepani Dissanayake, in her evidence, says that the accused-appellant took her to the jungle. I.P. Rajapakse and the crowd found the accused-appellant and the child in the jungle on the following day. When we consider the entire evidence led at the trial, the evidence of the accused-appellant cannot be accepted and is not capable of creating a reasonable doubt in the prosecution case. Further the accused-appellant does not give an explanation to the evidence given by the Police Officer wherein he says that the accused-appellant and the child were found in the jungle.

Learned counsel for the accused-appellant submits that the identification of the accused-appellant has not been proved beyond reasonable doubt as it was a rainy day and there was no light. But according to Wimalawathie when the accused-appellant came and called her husband she lit a bottle lamp in the house. Thus there was enough light for her to identify the accused-appellant. According to Wimalawathie it was the accused-appellant who took her husband from her house. Wimalawathie too followed her husband. When we consider the said evidence, we hold the view that the identification of the accused-appellant has been proved beyond reasonable doubt.

The learned counsel for the accused-appellant further submits that the incident described by Wimalawathie could not have taken place as the

way she described. He does not give any reason for the said argument. But when we consider the evidence of Wimalawathie, the contention raised by the learned counsel for the accused-appellant cannot be accepted. We note that soon after the incident, Wimalawathie complained to Manikharay that her husband was killed by the accused-appellant. Learned counsel who appeared for the accused-appellant at the trial could not mark any contradictions or omissions with Wimalawathie's evidence and the police statement. This shows that Wimalawathie's evidence satisfies the test of consistency. When we consider the evidence led at the trial, we hold that the prosecution has proved its case beyond reasonable doubt. We therefore refuse to interfere with the judgment of the learned trial judge. We affirm the convictions and the sentences and dismiss the appeal.

Appeal dismissed.

Acting President of the Court of Appeal

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

I agree.

Judge of the Court of Appeal

Jmr/-