

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

Kurampola Ralalage Wejekoon
Banda,

Accused -Appellant

C.A. Appeal No. 112/09

H.C.Trincomalee No. HCT/13/2004

Vs.

Hon. Attorney General,

Respondent

Before : **SISIRA J DE ABREW, J.(P/CA) &
P.W.D.C. JAYATHILALA, J.**

Counsel : Indika Mallawaarachchi for
Accused-Appellant.

Shanil Kularatne S.S.C. for the Attorney
General.

Argued &

Decided on : 10.03.2014

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

Heard both counsel in support of their respective cases.

The accused-appellant was convicted of the murder of a man named Marakkandage Punniyathasa and was sentenced to death. Being aggrieved the said conviction and sentence he has appealed to this court. Facts of this case as narrated by the prosecution may be briefly summarized as follows. The accused-appellant and the deceased person are living in the same neighbourhood. On the day of the incident around 1.00 P.M, the accused-appellant came to the house of the deceased person and made inquiries about a pendant of the accused-appellant's daughter. Thereafter the accused-appellant dragged the deceased from the house of deceased to the road and started assaulting him with sticks of the fence. According to the witnesses he uprooted all the sticks of the fence and assaulted the deceased. According to witness Dharshani the daughter of the deceased person, this attack went on for about one hour (vide page 114 of the brief). The above incident was witnessed by two daughters of the deceased and the wife of the deceased.

The accused-appellant too gave evidence on oath. He took up the defence of intoxication. The learned trial judge has, in his judgment, failed to state whether or not the evidence of the accused-appellant creates a reasonable doubt in the prosecution case. He has also not mentioned in his judgment whether he rejects the evidence of the

accused-appellant or not. In our view, this is a misdirection committed by the learned trial judge. However it is interesting to find out whether his evidence relating to the plea of intoxication can be accepted or not.

According to the prosecution witnesses, the incident had taken place around 1.00 P.M. According to the evidence of the accused-appellant, he around 1.30 P.M. went to his mother's house and drank arrack/kasippu. The accused-appellant, in his evidence, further says that after going to his mother's place he slept at his mother's place till 5.00 to 5.30 P.M. Thus from the evidence of the accused-appellant itself, it appears that he had gone to his mother's place around 1.30 P.M. and slept there till 5.00 to 5.30 P.M. According to the prosecution case the assault on the deceased by the accused-appellant took place around 1.00 P.M. Therefore from the evidence of the accused-appellant himself it appears that he had taken liquor after the assault on the deceased person took place. Thus the evidence of the accused-appellant does not affect the prosecution case. Further it does not create any reasonable doubt in the prosecution case. For the above reasons I hold that the misdirection which I have referred to earlier has not caused any

prejudice to him. I therefore decide to act under Proviso to Section 334 of the Code of Criminal Procedure Act which reads as follows;

“Provided that the court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.”

According to the contention of the learned counsel for the accused-appellant, the accused-appellant may have consumed liquor before going to the mother's house. Assuming without conceding that he consumed liquor before going to the mother's house, was he in a state of intoxication? The mother's house was thousand meters away from his house. If he consumed liquor around 1.00 P.M. and attacked the deceased person could have walked thousand meters if he was in a state of intoxication. I am unable to answer this question in the affirmative. This shows that he was not in a state of intoxication even if his evidence was accepted.

After he assaulted the deceased person on the road, the deceased person went back to his house. Thereafter accused-appellant again came to the house of deceased and slapped him. Thereafter the accused-appellant went back. But little later he again came armed with an axe and pressed the axe in the neck and chest area of the deceased person. According to the evidence of Dharshani, the

accused-appellant ,at this time, came to the house of the deceased person after jumping over the fence. When I consider all these matters, I have to ask the following questions. Was he in a state of intoxication at the time he attacked the deceased person? When I consider all the above matters, I have to answer the above question in the negative. For the above reasons, I hold the view that the evidence of the accused-appellant cannot be accepted and it is not capable of creating a reasonable doubt in the prosecution case. I have considered the evidence led at the trial and I am of the opinion that the prosecution has proved this case beyond reasonable doubt. I therefore affirm the conviction and the sentence and dismiss the appeal.

Appeal dismissed.

PRESIDENT OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL.

/mds