

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

Ratnasekera Acharige Pradeep
Nishantha Ratnasekera

ACCUSED-APPELLANT

C.A 12/2011
H.C. Gampaha 73/2011

Vs.

Hon. Attorney General
Attorney General's Department
Colombo 12.

COMPLAINANT-RESPONDENT

BEFORE: Anil Gooneratne J. &
Sunil Rajapaksa J.

COUNSEL: Indika Mallawarachchi for the Accused-Appellant
Dilan Ratnayake S.S.C. for the Complainant-Respondent

ARGUED ON: 03.04.2014

DECIDED ON: 30.04.2014

GOONERATNE J.

The Accused-Appellant was convicted of murder of his wife Devika Thilini Manamendra and sentenced to death. The Accused was the husband of the deceased. The facts of this case could be briefly summarized as follows. These facts, based on the evidence placed before the trial court are not disputed by either party.

It was the evidence of the Accused-Appellant's father (Ratnapala) that the deceased (daughter-in-law), Accused his son and the witness' sister, mother and child of both the deceased and Accused lived in the same house of the witness, Ratnapala. On the day of the incident the Accused was at a building site which was about 20 fathoms away from their house, inspecting the construction of a house, and the witness Ratnapala was also at the site with his son, the Accused. It was the position of the defence that the Accused was constructing a new house. Both the Accused and witness Ratnapala had been at the site till about 12 noon, and both of them left the site to have lunch at home. At that time all the above persons who lived in the house were

present (inclusive of the deceased) and all of them had lunch. It is in evidence that the Accused, after lunch left the house and went back to the building site. The Accused went first to the site and the witness followed him thereafter. At the site the Accused had told the witness that he is going to the petrol shed to pump petrol to his motor cycle and the Accused left the site, but the witness continued to be at the site. At that time the witness Ratnapala's sister Somawathie had come to the site and informed him that the deceased had fallen into the well situated within the premises. Witness had thereafter gone home on the information he received and saw the deceased fallen into the well.

Thereafter the witness had gone to the police and logged an entry in the police station and went in search of the Accused, his son, who is usually found at his sister's house in Dalugama, where the Accused is in the habit of spending long hours in the sister's house with his cousin, Don Lalith. Having met the Accused and on divulging the information both of them went to the place where the deceased body was found in a well.

It was the position of the learned counsel for the Accused-Appellant that the prosecution had not been able to lead any direct evidence and the

only evidence led at the trial was certain items of circumstantial evidence which does not prove the Accused' guilt or complicity of the crime or incident. In fact the only items of evidence elicited through witness Ratnapala and witness Don Lalith (cousin of Accused) was that the Accused told them that the Accused and the deceased had an argument, but exact details of such exchange of words and when and where or its magnitude had not been elicited or revealed in evidence.

The Post-Mortem Report gives the cause of death – drowning. Injuries are described as contusion, and abrasions, about 14 of such injuries are shown in the report. The learned counsel for the Accused-Appellant drew the attention of this court to pgs. 301/302 of the brief regarding learned High Court Judge's judgment. At that point of the judgment the learned High Court Judge had considered 9 items of evidence, to be important and relevant to the case. Only item 9 of same refer to constant quarrels between the husband and wife. It is very apparent that the trial Judge had categorized 9 itmes of evidence more particularly item Nos. 1 & 9 without a proper basis or analysis of the evidence that transpired at the trial. We find that none of the above 9 items of evidence have a real link to connect with the guilt of the Accused, and

such a categorization of evidence is not based on a proper understanding of the evidence led at the trial. The learned trial Judge's reasoning on same is highly unacceptable and lacking of any form of consistency to establish the guilt of the Accused. A mere exchange of words in the absence of supportive direct or circumstantial evidence will not take the prosecution case beyond reasonable doubt to support a conviction. In the instant case the evidence led would not show even a mere suspicion, to connect the Accused. Even in fact if there had been an exchange of words, we cannot find anything unusual or extraordinary in that sort of conduct of either party, more so such conduct between husband and wife. There is no evidence as to how or when or under what circumstances the body was found in the well which was an unprotected well. Nor has the prosecution eliminated the probability of suicide or whether the deceased fell into the unprotected well accidentally.

In *Gunawardena Vs. The Republic of Sri Lanka* 1981 (2) SLR 315. In a case resting on circumstantial evidence the Judge in addition to giving the usual direction that the prosecution must prove the case beyond reasonable doubt, must give a further direction in express terms that they must not convict on circumstantial evidence unless they are satisfied that the facts proved are:

(a) Consistent with the guilt of the Accused

(b) Exclude every possible explanation other than the guilt of the Accused.

In *Munirathne and Others Vs. The State* 2001(2) SLR 382 per Kulatilleke J. "Suspicious circumstances do not establish guilt. Nor does the proof of any number of suspicious circumstances relieve the prosecution of its burden of proving the case against the Accused beyond reasonable doubt....."

The learned Senior State Counsel very correctly and in the correct spirit of what is really expected from the officers of the Attorney General's Department indicated to court that he cannot support the conviction.

When a Accused was facing a capital charge it was essential that every point in favour of the Accused however trivial should be considered by the trial Judge. In this instance the trial Judge was concerned only to stretch every irrelevant items of evidence in favour of the prosecution, forgetting the fact that a link cannot be established to point towards the guilt of the Accused.

At the hearing of this Appeal the learned counsel for the defence invited this court to consider several other grounds which favour her client's innocence. We think it would not be necessary to consider the many other

grounds urged, for the reasons mentioned above. As such in the circumstances and in the context of this case it would be unsafe to allow the conviction to stand. Therefore we set aside the conviction and sentence and acquit the Accused.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

N.S. Rajapaksa J.

JUDGE OF THE COURT OF APPEAL