

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

Dikelle Gamaralalage Sarath  
Walpola  
Delbaduwa.

**ACCUSED-APPELLANT**

C.A. 105/2011  
H.C. Kegalle 1975/2004

Vs.

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

**RESPONDENT**

**BEFORE:** Anil Gooneratne J. &  
P.W.D.C. Jayathilake J.

**COUNSEL:** Dharmasiri Karunaratne for the Accused-Appellant  
Shavindra Fernando P.C., Addl. S.G. for the Attorney-General

**ARGUED ON:** 27.03.2014

**DECIDED ON:** 04.04.2014

**GOONERATNE J.**

The Accused-Appellant was convicted of murder of one Galappaththi Gamage Priyantha Galappaththi and sentenced to death. The facts of this case briefly are as follows.

The Accused and the deceased had been close friends and also close relatives. According to the evidence of the mother of the deceased both the Accused and the deceased are very close friends and most of the time they eat, drink and sleep and gamble together, and the two of them had no issue as far as she is aware. There was only one eye witness to the incident and he too gave evidence at a very late stage of the trial and he was a person who surrendered after a lapse of time since the version of the prosecution was that the Accused threatened him and he left the village no sooner after the incident, and had been absconding through fear. On the day of the incident the Accused had told this witness Sirisena to give a loaf of bread to his father. He did so but since the father was not at the house he left the loaf of bread on the table. It was the position of the witness that he saw the Accused and the

Deceased consuming liquor at that time (2.30 p.m). At that moment itself the Accused had uttered “කවුලෙන් වැඩක් නැත”, and attempted to hit the witness with a club. When the witness turned he saw the Accused hitting the deceased with the club, and the deceased fell. Thereafter the witness left the place and went to the house of one Lalith. The Accused had come to Lalith’s house and threatened the witness with a knife. As such witness Sirisena through fear left the village and had been in various places and absconding from the law enforcement authorities. It was also in evidence that the Accused also had absconded from being arrested for a period of about 1 ½ years.

Prior to the above witness Sirisena giving evidence, the prosecution called the deceased’s mother and another brother of the deceased who on hearing the death of his deceased brother had gone to the place where the deceased body was found and on the way he met the Accused at his house and had conveyed the news and both of them went together to the place where the body was found. This witness in his evidence said that the Accused had been behaving in a very peculiar way either in fear or suspicion. Accused had not waited with the witness at the place where the body was found and he left the place to buy cigarettes. It is in evidence that the Accused had also not attended the funeral of the deceased. This witness also testified that near

the place where the deceased body was found there had been a pair of slippers and a torch that belongs to the Accused.

The learned counsel for the Appellant in his oral submissions made it clear to this court that the position of the Accused-Appellant was a total denial of the incident. He also submitted that the body of the deceased was in a decomposed state and referred to the evidence of the Accused who had taken up the position at the trial that it was the deceased brother (one of them since the family was a large family) who attacked the deceased after an argument at a gambling den where all of them were gambling. He made reference to the utterance made by the Accused brother and by that attempted to demonstrate that the Accused was totally innocent.

Learned counsel for the Accused-Appellant attempted to demonstrate that evidence of eye witness Sirisena cannot be relied upon. It was this witness's absence that was focused since the witness had been absconding and had not given evidence at the non-summary inquiry. Perusal of the judgment we find that the learned High Court Judge has given his mind to this aspect and we see no real basis to interfere with the trial judge's views. The finding of the trial on circumstantial evidence is an item of evidence which

support the guilt of the Accused. We have noted the contents of the witness's submission made on behalf of the Accused-Appellant.

The learned Additional Solicitor General submitted to this court that the trial Judge relies on circumstantial evidence i.e torch and Accused slippers found at the place where the deceased was found. He also submitted to court that material aspect of the prosecution case had not been challenged by the defence. He also drew the attention of this court to the medical evidence which confirm a severe injury to the skull caused by a blunt weapon. (P5) Good amount of force had been used, in causing such injury. In cross-examination of the medical officer it was his view that by a club (P5) which had now deceased would have in its original form been a strong peace of wooden club which could have caused such an injury.

We are of the view that the prosecution case had been proved beyond reasonable doubt. The learned trial Judge has analysed the evidence of the prosecution and as well as the defence. He has given cogent reason in considering the version of the eye witness who had been absconding and others for the prosecution and the version of the Accused.

The trial Judge has rejected the version of the Accused for good reasons. The conduct of Accused wherein he absconded and the story of the

Accused as narrated to court on oath not being corroborated on vital matter had been considered by the trial judge. The medical evidence is consistent with the injuries caused by a wooden club, and the body to be in a decomposed state is acceptable due to the heavy blow to the skull and parts of the brain jutting out, and as a result the decomposed state of the body is acceptable by the evidence led through the Doctor. In all the above circumstances we do not wish to interfere with the findings of the trial judge and the conviction and sentence. We affirm the conviction and sentence. As such this appeal is dismissed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

P.W.D.C. Jayathilake J.

I agree.

JUDGE OF THE COURT OF APPEAL