

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

Iddagodage Janaka Saman Kumara

**ACCUSED-APPELLANT**

C.A. 16/2012  
H.C. Kegalle 04/2010

Vs.

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

**RESPONDENT**

**BEFORE:** Anil Gooneratne J. &  
Malinie Gunaratne J.

**COUNSEL:** Indika Mallawarachchi for the Accused-Appellant

Dileepa Peiris S.S.C. for the Respondent

**ARGUED ON:** 12.05.2014

**DECIDED ON:** 03.07.2014

**GOONERATNE J.**

Accused-Appellant was convicted of murder of one 'Magoda Ralalage Prasanna Kosla Somaratne' and sentenced to death in the High Court of Kegalle. The incident was on 23.9.2000. Accused convicted on 8.2.2012. The proceedings of 30.8.2005 and 18.10.2005 indicate that an application was made to the High Court by learned State Counsel to amend the indictment to include a charge of robbery. Court had allowed the application to amend the indictment on 30.8.2005. The journal entry of 18.10.2005 states that as count No. 2 a charge of robbery would be filed. It is filed of record. The case of the prosecution is as follows.

The prosecution relies heavily on circumstantial evidence. Witness No. 1 states that he was in his garden sweeping the garden when he saw a 'trishaw' coming on the lane where he lives, and since the only trishaw that is found in that lane belongs to his household, the witness had taken a good look as to who was in the trishaw that was driven at a speed. In the evidence before court he identified the deceased as the trishaw driver and the Accused as the

passenger. A little while later another witness came and informed him about a dead person lying at the end of the road. There is some evidence led on behalf of the prosecution that the deceased was wearing a chain and a bracelet, when he left the house for a hire. Police arrested the Accused who had been evading arrest and found a gold chain inside his wallet. The evidence of one 'Sally Nona' was that the Accused was in her house and after he left found that the knife belonging to her was missing (P7). Medical Evidence support the prosecution case and the Medical Officer has expressed the opinion that the knife shown to the Doctor (P7) could have caused the injuries to the deceased.

The learned counsel for the Accused-Appellant urged the following:

1. It is unsafe to convict on circumstantial evidence alone.
2. The chain of causation or the link to find the Accused guilty is broken, and or not, in order.
3. High Court Judge has not addressed the position of the robbery charge.
4. Item of evidence referred to by the learned High Court Judge at pg. 200 cannot establish a case of murder based on such items of evidence.
5. Contradiction marked V1 (pg 72/72) has not been considered by the learned High Court Judge.

The learned Senior State Counsel whilst supporting the judgment of the trial Judge emphasized the position that the several items of evidence taken collectively establish the guilt of the Accused. He also referred to the item of evidence of witness No. 1 at pgs. 48 & 49 which evidence remains unchallenged. It was the position of the State Counsel that the 7 items of evidence referred to at pg. 203 and highlighted by the learned High Court Judge would establish the case of the prosecution beyond reasonable doubt.

I find that the trial Judge has narrated the evidence of each witness for the prosecution briefly and thereafter analysed the prosecution evidence. In the analysis the trial Judge collect the relevant facts as follows. The deceased on the date of the incident left the house wearing his gold chain etc. and went on a hire. Thereafter the dead body of the deceased was found by the witnesses who gave evidence. There is also reference in the judgment by naming the witnesses that he was able to maintain the position even under cross-examination. However the trial Judge very correctly does not rely on the testimony of another 'trishaw' driver, Wijeratne for good reasons, i.e that the Accused hired the deceased's vehicle prior to the day of the alleged incident which had not been stated in the police statement. This court wish to observe that witness No. 1 had been able to give some evidence of identity of the

Accused since he was the first person to observe the trishaw being driven by a person and that the Accused was seated behind. Due to curiosity he explains the reason for a dock identity as follows:

ප්‍ර : ඒ රියදුරු තමා හඳුනනවාද?

උ : නැහැ

ප්‍ර : රියදුරාට අමතරව සිටි පුද්ගලයා තමා හඳුනනවාද?

උ : ඒත් නැහැ

ප්‍ර : තමාට ඔහු මතක තිබුණ විශේෂ හේතුවක් තිබුණාද?

උ : අපේ ගෙදර විතරයි ඒ පාරේ ත්‍රිචල් එකක් තියෙන්නේ. මම ඒ වෙලාවේ ගේට්ටුව අරින්න ආවා. තාත්තා තමයි ආවේ කියලා. අපේ ගෙදර ලග ඉඳලා මීටර 100 ක් විතර ගියාම ඒ පාර ඉවර වෙනවා. ඒ හරියේ වෙන ත්‍රිචල් එකක් නැහැ.

In cross-examination the witness fortify his position as follows:

ප්‍ර : දැන් තමා බලාපොරොත්තු වෙලා තිටියේ තමාගේ ත්‍රිචල් එක එනවා කියලා, ඒ බලාපොරොත්තු වුණ ත්‍රිචල් එක හෙවෙයි?

උ : වෙනත් ත්‍රිචල් එකක් නිසා හොයලා බැලුවා. මගේ නිවස ලග පල්ලම තියෙන්නේ. ගේ ගාවින්ම පල්ලම, ත්‍රිචල් එකක් ලගට එනකල් ජෙන්නේ නැහැ. ත්‍රිචල් එක ලගට ගියා බලන්න. අපේ ත්‍රිචල් එක හෙවෙයි. මම බැලුවා. විශේෂයෙන්ම මේ පුද්ගලයා තියෙන්නේ ගෙවල් පහයි. අපේ නැදැයෝ. විශේෂයෙන් කවුරු හරි එනවද කියන එන මම බැලුවා.

This court note that the starting point of the entire episode stands rather firm. The wife of the deceased and his father's evidence suggest that the deceased was wearing gold chain and ring/bracelet and leaving the house on a hire. Trial Judge also note the testimony of one Jayatilleke going to the place where the dead body was found and the Accused found inside a container truck close to the dead body. The other important evidence is that of the Medical Officer and 'Sally Nona'. The Doctor testify to the injuries on the neck to be fatal caused by a sharp cutting weapon and expressing an opinion that the injuries could have been inflicted by the knife produced (P7) at the trial. Witness 'Sally Nona' testify being a relative of the Accused and the loss of knife from her house hold which was identified as P7. This witness as well as the Doctor was able to withstand the cross-examination, and the inference drawn based on circumstantial evidence would fortify the chain of causation to find the Accused guilty. Though the learned defence counsel commented on the several circumstantial items of evidence, categorized by the trial Judge at pg. 200 & 203 of the judgment, no doubt adding all 7/8 items of evidence referred to by the trial Judge as aforesaid would lead this court to believe the prosecution version of the case.

The Accused in his dock statement only state he did not have in his possession a chain or a bracelet. This may be an explanation to prove the Accused innocence, but this position had not been elicited in cross-examination of the prosecution witness, by the Accused party. As such trial Judge disbelieve the Accused version. The evidence of the police is that the gold jewellery of the deceased were found in the wallet of the Accused when he was arrested by the police. Therefore the trial Judge having annalysed all the evidence and the factual position would be in a position to conclude that the case of the prosecution has been proved beyond reasonable doubt. The cross-examination of the prosecution witness had not made the case of the prosecution weak since the 7/8 items of circumstantial evidence placed before the trial court, had not been attacked directly or indirectly by the defence to demonstrate and create a doubt in the prosecution case. However this court wish to observe that the indictment was amended at a certain point of time and a charge of robbery was added. Unfortunately there is no finding of the trial Judge as regards the added charge. We are not inclined to substitute our judgment as regards the added charge, since the charge of murder has been established based on circumstantial evidence which evidence had not been

challenged by the defence, except in certain very limited areas. Therefore we affirm the conviction and sentence, and proceed to dismiss the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL