

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

Thiramanna Gedera Maheepala

ACCUSED-APPELLANT

C.A 13/2011
H.C. Monaragala 69/2008

Vs.

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

RESPONDENT

BEFORE: Anil Gooneratne J. &
Malinie Gunaratne J.

COUNSEL: Dharmasiri Karunaratne for the Accused-Appellant
Haripriya Jayasundera D.S.G for the Respondent

ARGUED ON: 22.05.2014

DECIDED ON: 08.07.2014

Accused-Appellant. However learned counsel for the Accused-Appellant raised a question of mental disorder of the Accused-Appellant and also referred to a report filed of record but not produced at the trial. Nor has such a defence pleaded on behalf of the Accused at the trial. I would refer to the report not as an item of evidence, but only since same is filed of record. It gives an indication of a mental disorder which had not been established at the correct stage in the trial court.

The learned Deputy Solicitor General very correctly submitted to court that the plea of insanity cannot be considered since as per Section 77 of the Penal Code is necessary to establish that as at the time of doing the act the Accused was a person of unsound mind. It was also submitted that the Accused also attempted to harm the main witness in this case. (evidence support such position). Report at P6 does not support any mental condition of the Accused.

In Barnes Nimalaratne Vs. The Republic of Sri Lanka 78 NLR 51..

Held:

Interpreting Section 77 of the Penal Code which embodies insanity, it is not sufficient for the defence to raise a doubt in the minds of the Jury. The defence has to establish that the accused did not know the nature of the act or, in the alternative that it was contrary to law, on a preponderance of probability or on a balance of the evidence. The burden on the accused is no heavier than that resting on the plaintiff or the defendant in a civil case.

Held, further:- that it must be carefully borne in mind that, in order to succeed, the defence must establish on a preponderance of evidence that at the time the accused committed the criminal act he was in one or the other alternative states of mind set out in Section 77 of the Penal Code.

The question of an abnormal personality due to "irresistible impulse" discussed.

The trial Judge very briefly refer to the act of murder by the Accused, on the evidence placed before court, and convicted the Accused. Trial Judge has also considered and explained his views on the contradiction marked at the trial. We see no basis to interfere with the judgment of the High Court. As such 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