

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

Kotarge Harischandra alias Harison

ACCUSED-APPELLANT

C.A. 55/2010

H.C. Negombo 39/2009

Vs.

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

COMPLAINANT-RESPONDENT

BEFORE: Anil Gooneratne J. &
Malinie Gunaratne J.

COUNSEL: Jeffry Zainudeen for the Accused-Appellant

V. Malalgoda A.S.G. for the Complainant-Respondent

ARGUED ON: 07.07.2014

DECIDED ON: 30.07.2014

GOONERATNE J.

This is a case of double murder. The eye-witness was the 12 year old daughter (only child) of the two victims. (mother and father) on the date of the incident 5.9.2008 the witness had been in the bath room taking a wash. The deceased mother was near the bath room seated, and the deceased's father was in the compound of the house with the pet dog. Evidence reveal that this is a routine thing and the father takes the dog to the garden in the evening. Witness has given a description of the house in detail and the surroundings. The address of the deceased and witness is at Weligampitiya, Ja-Ela. The iron gate of 4 ½ feet is at the entrance to the house with a garden. When the witness was taking a wash, at 7.30 p.m she heard a loud noise of somebody shouting. She came out of the bath room and in the corridor she saw a person running towards her deceased mother and pushed her and as a result mother fell. That person who pushed the mother attacked the deceased mother with a katty. He was identified by the witness as the Accused in the dock. It was a dock identification and the victim says that the Accused is called 'Harison,

whom she had seen him earlier. Witness had seen this Accused prior to the incident near the gate of her house.

The witness having seen the incident through fear, hid herself in the store-room of the house. After a while she opened the door of the house her mother was near the door and told her she was attacked. There was blood pouring from the deceased mother. Witness attempted to speak to the deceased mother but she could not talk. Thereafter the witness had immediately called her relatives. At that moment itself witness heard the voice of her father shouting, and she also heard footsteps of somebody. Thereafter the witness had gone near the fence in the garden and narrated the incident to another witness, Erandi. The neighbors came to help her and rushed the deceased mother to hospital but even at that time deceased mother was dead. At that point of time itself the evidence is that the father was lying dead in the garden. Witness also found that the pet dog had also been attacked. Witness was able to identify the weapon (P1).

The material available support that there had been previous occasions on which the Accused had come to the premises in dispute and threatened the inmates of the house and claiming that the house and property belongs to him. There is clear motive for the double murder by which the

Accused threatened the inmates that they would be evicted. The other important and an independent witness was one Hubert Shantha. Witness Hubert was returning home from the church and on the way had to pass the house of the deceased persons. He saw the Accused jumping over the wall and coming out of the premises at about 8.30 p.m. Accused was armed and had by force taken the push cycle of the witness and fled the scene of the crime. The prosecution had led enough evidence to prove previous enmity between the deceased party and the Accused over the land dispute.

The position of the Accused-Appellant according to the evidence led at the trial and in his dock statement was a complete denial and falsely being implicated by the main witness. We find that the trial Judge has carefully analysed the evidence led at the trial. Prosecution no doubt has proved the case beyond reasonable doubt. There is hardly any merit in the dock statement and the Accused's version. At the hearing before this court learned counsel for the Appellant referred to the defence position. However the burden of the defence had not been properly discharged. The prosecution rely on both direct and circumstantial evidence inclusive of a dying declaration. In

all the above facts and circumstances of this case we see no basis to interfere with the conviction and sentence. We affirm the conviction and sentence and dismiss this appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL