

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

Janguwage Jayaweera  
(Presently at Bogambara Prison)

C.A. No. 59/2006  
H.C. Anuradhapura 152/2003

Vs.

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

**COMPLAINANT-RESPONDENT**

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

**COUNSEL:** Dr. Ranjit Fernando for the Accused-Appellant  
Chethiya Goonesekera D.S.G for the Complainant-Respondent

**ARGUED ON:** 13.06.2014

**DECIDED ON:** 01.09.2014

**GOONERATNE J.**

The Accused-Appellant was indicted in the High court of Anuradhapura on two counts. On Count (1) caused the death of Chandraratne on 03.08.1992. The second count was in the same transaction caused hurt to Renuka Damayanthi Kumari. Accused was found guilty of murder and sentenced to death. On the second count the Accused was sentenced to 6 months rigorous imprisonment. The Accused had been having an affair with the deceased's wife prior to her marriage to the deceased. The wife of the deceased was the main prosecution witness. When the wife of the deceased came to know that the Accused was a married man she gave up the affair and after a period of time married the deceased. They were newly married when this incident occurred. Deceased was not aware of any affair the wife had with the Accused.

The prosecution version as narrated by the main prosecution witness the wife of the deceased was that on the day in question the Accused-Appellant had suddenly visited their house at about 5.00 p.m with another who left immediately on arrival at the house. The Accused had said that he

came to the area and casually dropped in, to see her pretending to be an uncle who has returned from abroad. At that time the deceased and the wife were getting ready to have a bath. Accused had told them that he is leaving and the deceased's husband had said he would see him off. However both of them returned about 10 minutes later and the deceased has requested the wife to have a meal cooked, but she had refused. Both the deceased and the Accused left for a bath and returned at about 9.00 p.m The deceased is not a person who consumes alcohol but he had come home with a bottle of arrack. The witness the wife gathered that the Accused would have disclosed about the affair to the deceased since he was somewhat acting indifferently towards her. Evidence reveal that the wife did not approve the Accused visit. Both the deceased and the Accused consumed liquor in the evening after they returned from the bath. Thereafter both went to sleep but the deceased started to vomit. Both the deceased and his wife went to sleep in the bed room and the Accused-Appellant elsewhere. The deceased had been vomiting from time to time and the witness the wife had been engaged in cleaning the vomit. At about 10.30 p.m the Accused had come near the entrance to the bed room and called out the wife making various gestures. She resisted such action of the Accused but the deceased had said don't worry go and see him. Suddenly

the witness felt a blow on her hand and head and found a knife, at that moment itself. She heard a noise of an attack on the husband but her evidence was that she did not see the Accused attack the deceased but only heard the attacking noise. The witness with all this attack jumped out of the bed and gave chase behind the Accused who fled the scene of the crime in the cycle found in the house of the deceased.

Learned defence counsel's position was that it is highly unsafe to act on the sole testimony of the wife of the deceased. The story of the wife he submitted which is uncertain leaves certain gaps in the prosecution version. There is no other evidence to corroborate the main witness's testimony. Witness does not state she saw the deceased being attacked. Learned defence counsel also emphasis on constant quarrels between husband and wife and suggest that once the affair had been disclosed the victim and the wife would have had a quarrel, with the Accused intervening. Witness was arrested after investigations and a suspect in the non-summary inquiry. I would include in this judgment which the defence rely described as factors which necessarily call for corroboration of the single witness.

- Only witness Damayanthi Kumari – victim is “Hurt” Legal wife of deceased / former girl friend of Accused for three years.
- Accused wanting to leave no sooner he knew he was unwelcome but prevented from doing so by deceased/husband.
- Deceased’s obvious indifference, towards wife (may be) after being told of “affair” – by Accused.
- Victim/wife (claims) – Accused attacked at night using a mamoty and knife.
- Police say a weapon (knife found ..... (bedroom). But father-in-law says victim came with knife to his house ¼ miles away /left it there/and police collected it thereafter.
- Victim (claims) to have chased Accused/faints/falls and thereafter runs for assistance – with knife embedded in skull.
- Tells Kalu Nanda and father-in-law that ‘same man/uncle attacked’ – No name given.
- Does not claim to have seen any attack by Accused on husband – though sleeping next to him.
- Lies/hides facts regarding frequent fights with deceased/husband says no fights whatsoever.
- Arrested after investigations and a suspect before the MC/Non Summary Case No. 253/92.
- Would Accused have disclosed his previous ‘affair’ to deceased if he had preplanned or had any motive for visit.
- Suggestions by defence indicative that victim/PW had a fight with deceased/husband after the disclosure of “affair” and then Accused may have got involved to assist PW/victim who had attacked husband during fight.

Learned Deputy Solicitor General whilst supporting the Judgment and the prosecution case referred to several items of uncontradicted evidence of the main eye-witness and suggested that the several items of evidence would connect with the guilt of the Accused as there was no other present at the scene of the crime. He also referred to the medial evidence which corroborate the prosecution story especially the evidence from folios 134 to 138 which connect P1 and P2 used for the commission of the offence. Further the Accused had not by the dock statement correctly explained his position, which he ought to have explained.

This seems to be a rare case where the defence had not made any comments as regards the Judgment of the learned trial Judge. No misdirections of the learned trial Judge or that the trial Judge has erred in law had not been suggested or submitted by learned counsel for the Accused-Appellant in his oral as well as in his written submissions. However that would not influence this court to arrive at a conclusion as regards the innocence or guilt of the Accused. The position of the defence has already been discussed in this case. This court observes that the alleged previous love affair between the Accused and the deceased wife, witnesses rejection in evidence of the position put forward by the Accused party, of the witness having quarrels with the

deceased and that the witness had been remanded does not really have a serious bearing in the prosecution case. In fact some of the questions posed by the defence in cross-examination of the main witness has in a way fortified the prosecution case. I advert to the following positions elicited in cross-examination.

- (a) Witness requesting the Accused to leave the premises and house and said so when the deceased walked away (75).
- (b) Accused had a glass of water and got up from the seat to leave the premises, but the deceased wanted the Accused to wait. Witness indicates they have nothing to do with the Accused.
- (c) Returned after 5/10 minutes and asked for a sarong and towel . Witness did not offer same but the deceased gave it and both went for a bath (75).
- (d) Accused would have disclosed about the affair to the husband since the husband appeared to be indifferent (76).
- (e) Deceased vomiting. Witness told the deceased about the affair.
- (f) Suggestion of assault by witness and a quarrel between witness and deceased rejected by witness (7).
- (g) Heard the noise of attacking on the deceased and witness saw the Accused at that moment (78)

- (h) Witness did not see Accused attacking the deceased. When witness heard the noise of attacking turned towards the deceased. First blow on deceased and she received a blow on her hand (78).
- (i) When the witness heard the noise and felt blows to her head and hand. Accused fled the scene (78) witness was on the bed with deceased and was able to get hold of the knife.
- (j) Suggestion of witness attacking the deceased vehemently denied by witness. Both deceased and witness on bed (79). Heard the noise of attack on deceased (79).
- (k) Witness denies involvement in the incident and dissensions with deceased (81).

In the absence of continuous and sufficient probing of the witness leaves the prosecution case intact. Even if more and more probing of the main prosecution witness was done, witness may not have taken the defence case any further since the witness appears to be a truthful witness as observed by the learned trial Judge. On the other hand as observed by learned Deputy Solicitor General, the medial evidence support the prosecution case and corroborate material aspects of the prosecution case. Especially the length and depth of injuries found on the deceased and the injured witness and the use of



weapons P1 & P2 at the scene of the crime. We have also examined the judgment and the evidence led at the trial. The other witness no doubt support the prosecution case. Merely because a witness testifies about quarrels between husband and wife this court cannot infer any adverse aspects of the prosecution case. There is no credence in the defence case. We hold the view that the dock statement of the Accused-Appellant cannot be accepted and is not capable of creating any reasonable doubt in the prosecution case. When we consider the evidence led at the trial, we see no reason to interfere with the Judgment of the learned trial Judge. As such 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