

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

In the matter of a petition of appeal in  
terms of section 331 (1) of the Code of  
Criminal Procedure Act No 15 of 1979

**High Court (Embilipitiya)**

Democratic Socialist Republic of Sri

**Case No: H.C.E.30/2011**

Lanka

**C.A. Case No: 155/2012**

Attorney General,

Attorney Generals Department,

Colombo 12.

**Complainant**

**Vs.**

Hewa Konamalage Champika alias

Wasthu

**Accused**

**AND**

Hewa Konamalage Champika alias

Wasthu

**Accused Appellant**

**Vs.**

Attorney General,

Attorney Generals Department,

Colombo 12.

**Complainant Respondent**

**BEFORE**

: H.N.J. PERERA, J

P.W.D.C. JAYATHILAKE, J

**COUNSEL**

: Indika Mallawarachchi for the Accused

Appellant.

Thusith Mudalige SSC for the

Respondent.

**ARGUED ON**

: 22.09.2014

**DECIDED ON**

: 2014.10.31

**P.W.D.C. Jayathilake, J**

Investigator is the person who examines a situation such as an accident or a crime to find out the truth. They are being considered as intellectuals, that is because they should possess the ability to think in a logical way and understand things. In the case of crimes that take place with eyewitnesses and direct evidence, the task of the investigator would be easier. Their job is of greater importance in a crime where direct evidence is not available. When considering the instances where investigators have done their job very skillfully, what we find is that shrewd investigators have not been dependant only on the matters which are found with ease. Where they act on the circumstances seen at 1<sup>st</sup> glance, the missing of the actual culprit is probable.

Inspector Hewavitharana was a sub inspector when he was serving attached to Embilipitiya police station. He played the role of the chief investigating officer into the murder of Sanjeewa Kumarasena. Sanjeewa Kumarasena was the cashier of

'Nawarasa Hotel' situated in Embilipitiya. Sumanapala had been working as the cheff and the caretaker. There were two other persons, namely, Dayananda and Champika who were waiter and the "Kottu" and hopper maker respectively. A few days prior to 29<sup>th</sup> September 2001, Sumanapala went on leave leaving 3 other persons in the hotel, he came back on the 30<sup>th</sup> early morning around 4.30 a.m. As there was no response to his calling from the front door, Sumanapala went to the rear side and found the rear door unlocked which was opened as he placed his hand on it. He found Dayananda was fast asleep in the vegetable room. When he proceeded further to switch on the boiler he saw that a person had been assassinated. The one who was lying in a pool of blood was Sanjeewa. Champika was not there, but Sumanapala came to know that Champika's wife had been admitted in Hambantota Hospital. Inspector Hewavitharana arrived at the scene with his investigation team on the complaint made by Sumanapala. Having observed the dead body and the surroundings, he further observed that the door of the cashier's table had been forcibly opened. It was also discovered that a person who was asleep in the hotel had left without informing others that night. He was none other than Champika who was the hopper maker. Inspector Hewavitharana gave instructions to his team to arrest the man. Sub inspector Ranjith arrested Champika who was coming out of the hospital after visiting his wife who had given a birth to a child and the new born baby. The police officer had produced a wallet

with Rs: 6250/= and also a bunch of key which were said to be in the possession of Champika.

Thereafter, inspector Hewavitharana had found a drawer of the cashier's table in Nawarasa Hotel that could be opened with some of those keys. He has recovered a pestle, a "manna" Knife and a sarong with blood stains on the statement by Champika.

Hewa Konamalage Champika alias Wasthu was indicted for the murder of Sanjeewa Kumarasena under Sec. 296 of the Penal Code and after trial convicted and sentenced to death in the High Court of Embilipitiya. This is the appeal against the said conviction and the sentence.

Learned Counsel for the Accused Appellant made the following submissions to demonstrate to this court that the adverse inference against the Accused Appellant is unjustifiable.

The main reason to have a suspicion on the Accused Appellant from the initial stage was his leaving the hotel without informing others. She submitted that the Accused Appellant had a just/good reason to leave the hotel as early as possible, as his wife had been admitted to hospital for confinement. Though the recovery of an amount of money was made this is no way connect it with the crime on the evidence available. And the other unbelievable thing is that one who has just committed a

murder cannot be expected to take the bunch of keys which was used to open the drawer of the table of the deceased.

The learned Senior State Counsel drew the attention of court to the following factors in his submission. The back door of the hotel could be locked only from inside by putting a bar, so the opening of it from outside is impossible. It is evident that the Accused Appellant was one of the three persons including the deceased who went to sleep that night in the hotel. There is a high probability of the said murder being committed by one of the inmates rather than an outsider. When this probability and the circumstantial evidence available against the Accused Appellant are considered together, the irresistible inference is that this crime has been committed by none other than the Accused Appellant.

I could have agreed with the learned Senior State Counsel, if the circumstantial evidence placed by the prosecution was strong enough, in order to create such an irresistible inference. Two items of those circumstantial evidence are the wallet and the bunch of keys said to have been recovered from the Accused Appellant which the counsel for the Accused Appellant submitted are of no evidentiary value.

But the learned trial judge has come to the conclusion in respect of the above matters that it has been revealed in investigation that the drawer had been opened by some inmate and it has not been revealed that opening of it was done by an outsider. The other items are the pestle "manna" Knife and the sarong. These items

have been recovered on the statement made by the Accused Appellant according to Inspector Hewavitharana. It is strange that inspector Hewavitharana and his investigating team had not seen the pestle which had been placed against the wall, "manna" Knife which had been lying in the floor of the water tank on the floor and the sarong which was hanging on the cloth line until the Accused Appellant made his statement referring to them. But the trial judge had treated the Accused Appellant's knowledge about the place where the pestle was as an item of circumstantial evidence leading to the conviction of the Accused Appellant.

*"On the day of this incident, I worked in the hotel. At that time, my wife who had given a birth to the child was hospitalized in Hambantota hospital. I got up early morning and went to Hambantota hospital to see the wife with goods needed for the child. I returned home and once again went to hospital at 12.00 noon. On my way, at the gate of the hospital, I was arrested by the police..... "*

Above is part of the Accused Appellant's dock statement. He has further stated that he was assaulted and the pestle and the knife were introduced to him by the police.

Accused Appellant's wife being hospitalized is an acceptable fact. Therefore, he had had a valid reason to leave the hotel early morning as submitted by the Counsel for the Accused Appellant. And his leaving without telling others was also reasonable, because they were already aware of his wife being hospitalized.

When there is a cause to show to negate the inference, such inference cannot be considered to be irresistible. As there was no hurry to arrest the Accused Appellant on suspicion caused at first glance, the police should have acted in an intelligent manner to find out independent evidence to bring the culprit into book whether the real culprit was the Accused Appellant or not.

For the above reasons, I am of the opinion that learned trial judge has come to an erroneous conclusion to draw an irresistible inference against the Accused Appellant in convicting him for the charge leveled against him by deciding that the prosecution has proved the charge beyond reasonable doubt. I therefore, set aside the conviction and the sentence and acquit the Accused Appellant.

*Appeal allowed.*

**JUDGE OF THE COURT OF APPEAL**

**H.N.J. PERERA J**

I agree

**JUDGE OF THE COURT OF APPEAL**