

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

C.A. NO. 82/ 2008

**DANGALA PATHIRAGE SUNIL
ALIAS MAHATUN**

H.C. GALLE CASE NO. 2606/05

ACCUSED- APPELLANT

VS

THE HON. ATTORNEY GENERAL

COMPLAINANT- RESPONDENT

BEFORE : ANIL GOONERATNE .J

P.R. WALGAMA . J

COUNSEL : MS: INDIKA MALLAWARATCHI for the Accused-Appellant

MR: SHANVINDRA FERNANDO ASG for the Attorney General

ARGUED : 15.10.2014

WRITTEN SUBMISSIONS : 31.10. 2014

JUDGMENT : 02.12. 2014

P.R. WALGAMA, J.

The instant appeal lies against the judgment of Learned High Court Judge Galle dated 01.07.2008 by which judgment the trial judge has found the Accused- Appellant (herein after sometimes called and referred to as the Accused) guilty of the charge of murder of Gunadasa and was sentenced to death. Being aggrieved by the above sentence the accused had appealed to this court to have the said conviction and sentence set aside on the grounds averred in the petition which are stated herein below.

Prior to dealing with the grounds of appeal I wish state the evidence unraveled by the prosecution in the course of the trial. The testimony of the witness Kularatne was that on the fateful day he had accompanied the deceased who was going to consume liquor, and while they were returning home near Karunasena's boutique the accused had dealt a blow on the deceased head with a club like a bat. Thereafter the deceased had fallen on the ground and at the same moment the witness had gone to inform the wife of the deceased about the incident. Thereupon the deceased was taken to Karapitiya hospital. The witness has also stated that on previous day before the incident there had been a quarrel between the deceased and accused and had assaulted each other. It is salient to note that the alleged club purported have used to assault the deceased has got destroyed as the premises of the production room was submerged for tsunami. Therefore the above witness did not have the opportunity in identifying the purported club which was used by the accused to attack the deceased.

The wife of the deceased Nandawathi in her testimony to court had testified thus; that on the day of this incident at or about 7-7.30 at night the deceased had asked for Rs. 30/ from the witness and had proceeded to have liquor. Few minutes later the witness who accompanied the deceased had conveyed the news to the wife of the deceased that the deceased was attacked by the accused. She had gone to the place where the deceased was attacked and there she saw the deceased lying fallen near Kalu Aiya's boutique. Further it was her version that there was a enmity between the accused and the deceased, which probably had led to this incident. Therefore it is abundantly clear that there has been a intelible motive for the alleged murder and the prosecution had proved the element of mens rea and actus reus on the part of the accused and had established the charge against accused beyond reasonable doubt.

In the course of the cross examination certain allegations were made against the witness Kularatne and was suggested it was the said witness Kularatne who was responsible for the alleged murder. In that many suggestions were made to the witness that in order to establish the culpability of the witness Kulatilleke with an unsuccessful attempt.

It was contended by the counsel for the defence that the evidence of the witness Kulatilleke and the medical observation of the JMO is not compatible and therefore the evidence adduced by the said witness for the simple reason that the witness had seen

only once that the deceased being assaulted with the club. But it is salient to note that soon after the deceased was attacked the said witness had left the place to inform the wife of the deceased about the said attacked. More fully it is to be noted that certain injuries appeared due to the main injury received by the deceased on the head. The JMO had described the injuries in detail and had confirmed that the head injury inflicted by a blunt weapon was fatal and cause of death was due to excessive bleeding of the brain. Therefore it is abundantly clear the cause of death that was identified by the JMO has fortified the version of the witness who accompanied the deceased and who was there at the time the alleged assault took place.

In considering the evidence regarding in the process of the investigation there were no doubts or shortcomings in the same and same was not assailed by the defence. Therefore the court is compelled to accept that the above duty was duly performed, by the officers who investigated the alleged crime.

In the instant matter the accused had made a dock statement and the Learned Trial Judge has had extensively dealt with the above statement with the decided case law and in fact had stated that such dock statement should be taken in to consideration subject to the infirmities as the said statements are not made under oath and they are not subject to cross examination. The said proposition was observed in the case of SOMASIRI.VS. ATTORNEY GENERAL-1982(2) SLR- 225.

More fully the Learned Trial Judge has extensively dealt with the dock statement made by the accused and the legal effect of such statement and was of the view that the statement made by the accused lacks probative value and the said statement from the dock is not capable of challenging and create a doubt in the version of the witnesses for the prosecution. Therefore it is abundantly clear that the prosecution has proved its case beyond reasonable doubt which stands unassailable and unscathed.

It is to be noted that the Defendant has made a dock statement to the effect that he was not at scene and had taken the defence of alibi which was defeated by the cogent and overwhelming evidence of the witnesses for the prosecution. In the above setting the Learned Trial Judge has very correctly rejected the dock statement of the Accused.

It is also to be noted that the prosecution has established the motive for the alleged assault on the deceased by the accused. The evidence has revealed that there was a brawl between the two and the animosity has culminated to the assault. Therefore it is apparent that the prosecution has successfully proved that the said act of assault was dealt by none other than the accused.

In the above exposition of the facts and the law relating to legal concepts that revolve around this scenario this court is compelled to affirm the conviction and the sentence thereto and dismiss the appeal.

Accordingly appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

ANIL GOONERATNE .J

I agree.

JUDGE OF THE COURT OF APPEAL