

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

W. A. Kamal Priyantha

ACCUSED-APPELLANT

C.A No. 45/2008

H.C. Hambanthota 110/1999

Vs.

Hon. Attorney General

Attorney General's Department

Colombo 12.

COMPLAINANT-RESPONDENT

BEFORE: Anil Gooneratne J. &
P.R. Walgama J.

COUNSEL: P. K. Prince Perera for the Accused-Appellant
Dilan Ratnayake S.S.C for the Complainant-Respondent

ARGUED ON: 25.11.2014

DECIDED ON: 21.01.2015

GOONERATNE J.

The Accused-Appellant was indicted for the murder of one M. Sunil on or about 23.12.1993. He was convicted and sentenced to death on 04.04.2008. Prosecution version is that the main witness was walking on the road along with the deceased at about 2.30/3.00 in the afternoon from Denagama in the direction of Bowala. Deceased is a close relative of the witness and described in evidence as **හෑ කමට පුතෙක් වන බව**. It is in evidence that at a certain point whilst walking the deceased was given a blow by something (**පහර දුන් දෙය නොදන්නා බව**). Witness was able to identify the Accused-Appellant at the identification parade, and he also identified the Accused in open court. It is in evidence that by the very first blow given to the Accused party the witness having seen the first blow had fled the scene, and gone to the nearby police station.

I also find that on perusing the evidence the witness had been probed further by the prosecuting counsel about the weapon used and his answer was, **පොල්ලක් වගේ වකක් අතේ තිබුණා**. Witness having lodged a complaint at the police about the allege assault on the deceased came to the

scene of the crime along with the police and found the deceased lying on the ground little away from the scene of the crime. The mother of the deceased also testified who lives in the adjoining property of the Accused-Appellant. When this witness (mother) was sweeping the property the Accused had come close to the fence and uttered the words 'උමේ පුතාගේ කැලි අරගෙන එරෙහි පෙට්ටියෙන්. Then the witness had gone in the direction of the Accused and on the way found the body of the deceased.

The Medico Legal Report gives details of 11 cut injuries cause of death was due to shock and hemorrhage following multiple injuries to the body with damage to internal organs.

Learned counsel for Accused-Appellant inter alia submitted that the prosecution case has not been established beyond reasonable doubt. He refers to the contradictions marked V1 & V2 and submits that the main witness for the prosecution is highly unreasonable and unworthy of credit. It was also emphasized that the learned trial Judge has failed to consider and analyse the dock statement of the Accused-Appellant. Evidence of witness No. (1) is not consistent with the medical evidence. The object/weapon used by the Accused is in doubt. Whether it was a club or a kaththy? No 'kaththy' was marked and identified and no evidence led on this connection. He also submitted that

evidence only reveal that the Accused only dealt one blow and left the scene of the crime. In the absence of strong of evidence as to what weapon was used it is unsafe to convict the Accused? Learned counsel also submitted that the circumstantial evidence if at all would not connect the Accused-Appellant with the crime. He also submitted that circumstances of the case does not match the culpability of the Accused-Appellant.

Learned Senior State Counsel supported the conviction and sentence. He inter alia submitted that the contradiction mentioned are not material to the prosecution case and cannot harm the prosecution case on any account. Learned trial Judge has carefully analysed the evidence led at the trial and evaluation of evidence is contained at folios 176-178 of the record. As regards the contradiction the trial Judge has correctly approached same at folio 179 and given a correct ruling since such contradiction do not go to the root of the case and not material contradictions.

I find that the learned trial Judge at folios 178-180 had considered and given serious thought to the contradictions V1 & V2. This court need not once again narrate the reason of the trial Judge as regards the alleged contradictions. These sort of contradictions could occur when human beings give evidence may be after a period of time. We are satisfied that the

contradictions do not go to the root of the case. In the famous Bihoginbhai Hirjibbai vs. State of Gujarat ... held by and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen. Therefore we reject the argument based on contradictions by the learned defence counsel. There cannot also be a doubt of identity since the incident took place in broad day light. Further the witness was in a way known to the Accused and identified at the identification parade. All this may have been the idea of the Accused party to correct it with contradictions, but such an argument would necessarily fail.

The first blow was dealt by the Accused and this was very clearly seen by the main prosecution witness. Others on the road were persons walking or by standers. Sufficient questions had been posed by counsel from the witness, to exclude all other from the scene of the crime. The test of spontaneously could be well maintained since the main eye witness promptly informed the police and gave a statement. The case of the prosecution is fortified by the evidence of the 2nd prosecution witness. I have already referred to the utterance made by the Accused party. This is an item of

evidence relevant to the question of the culpability of the Accused. Evidence of the 2nd prosecution witness had not been challenged on any material aspect.

I have to conclude that it would be grossly unfair to state that the trial Judge has omitted to consider the evidence of the Accused party. What is contained in the Judgment of the learned trial Judge on the material contained in the dock statement is more than adequate. This court had nothing more to add on same. Nor has the Accused party cross examined on matters contained in the dock statement, from the prosecution witness. We have considered the case of the prosecution and the Accused-Appellant, and we cannot interfere with the views of the learned High Court Judge's views and reasoning on same. As such we affirm the conviction and sentence and proceed to dismiss this appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

P.R. Walgama J.

I agree.

JUDGE OF THE COURT OF APPEAL