

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

**In the matter of an Appeal in terms of
Section 331 of the Criminal
Procedure Act No. 15 of 1979.**

**The Democratic Socialist Republic of
Sri Lanka.**

COMPLAINANT

Vs,

Sunil Harischandra

Jayabima

Karandeniya

ACCUSED

CA No.255/10

H.C Balapitiya 587/03

And

Sunil Harischandra

Jayabima

Karandeniya

ACCUSED-APPELLANT

Hon. Attorney-General

Attorney-General's Department

Colombo 12.

RESPONDENT

Before : **Vijith K. Malalgoda PC J (P/CA) &**
H.C.J. Madawala J

Counsel : **A.K. Chandrakantha for the Accused-Applicant**
H.I Peris S.S.C for the Complaint- Respondent

Argued On: 13/02/2015, 20/02/2015

Decided On: 23/ 03/2015

Vijith K. Malalgoda PC J (P/CA)

The Accused Appellant was indicated before the High Court of Balapitiya on two Counts namely,

- a) Committing murder of Ranasinghe Premadasa on 06th April 2004, an offence punishable under sec. 296 of the Penal Code.
- b) Causing hurt to one Hewa Dewage Gunawathie during the same transaction, an offence punishable under sec. 316 of the Penal Code.

At the conclusion of a trial before the High Court Judge, the accused was found guilty on both counts by the learned High Court Judge on 21st October 2010 and sentenced as follows,

- a). Count 1- Death Sentence
- b) Count 2- 2 years Rigorous Imprisonment.

Being dissatisfied with the above order the Accused had preferred an appeal to this Court.

At the trial prosecution has led the evidence of Hewa Dewage Gunawathie injured and the wife of the deceased, Ranasinghe Jayaseeli daughter of the deceased and the injured. Wickramasinghe Ariyadasa, a neighbor and few official witnesses.

According to the evidence of Gunawathie this incident had taken place around 12.30 in the midnight. At that time she was sleeping on a mat in the sitting hall of her house.

Her daughter was sleeping on the bed in the adjoining bed room. When she got up from her sleep after hearing of some sound she saw the Accused who is her husband's brother's son,

inside the house with the aid of a red color bulb burning beneath the statue of Lord Buddha. When she tried to switch on the light, Accused switched off the main switch and thereafter cut her with a razor and ran away. She called her daughter and ran out of her house calling for help.

Witness Ariyadasa who is a neighbor of the deceased and Injured, confirms this position and said that the injured told him “හොරු ඇවිල්ල අපිව කැපුව” when this statement was confronted with witness Gunawathie, under cross examination by the defense her answer was

ප :- තමන්ට යෝජනා කර සිටින්නේ හොරු පැන්නා කියලා කිවුවේ ඒ ආපු පුද්ගලයා හදනා නොගත් නිසාය කියලයි.

උ :- හොරු පැන්නා කියලා කිවුවේ, නම කිවුවා නම් අපිට පිටත් වෙන්න බැහැ. ඒකයි මම හොරු පැන්නා කියලා කිවුවේ.

(Page- 126.)

According to the evidence of Inspector of Police Jagath Samarasinghe, he visited the injured Gunawathie at the hospital the following day but she was not in a position to make a statement but he could obtain some information from her. He visited the house of the accused on the 6th itself but he was not found at home. The suspect was arrested on 8th of April two days after, by a different office.

Witness Jayaseeli has corroborated her mother and said that when she came to the sitting room there was some light similar to moon light inside the house and with the aid of that she could identify the accused who was struggling with her mother. She has seen the Accused leaving the house from the rear door.

According to the investigation, the person who has entered the house used the roof to enter by removing some roof ties and the fact that there was moon light inside the house cannot be ruled out.

However, as agreed before us by both the counsel, non of the witness had seen how the deceased received injuries. His body was found outside the house with sharp cutting wounds caused by a reasonably heavy weapon (page 175)

ප :- මෙම මරණකරුගේ මරණයට හේතුව වශයෙන් ඔබ මොකක්ද සඳහන් කලේ ?

උ :- සියලුම කැපුම් තුවාල සලකා බැලීමේදී පෙනී යන්නේ හොඳින් කැපෙන සුළු තරමක් බරැති ආයුධයකින් මරණකරුට පහර දීමක් සිදුවී ඇති බවයි. මෙම ආයුධය කැත්තක්, මන්නයක් හෝ කඩුවක් වැනි ආයුධයක් විය හැකියි.

Witness Gunawathie who received injuries had said that the Accused caused injuries on her body using a razor. No MLR was marked at the High Court trial in support of her injuries but according to a document marked P2 at the High Court trial, witness was admitted to the hospital on 6/04/1994 under BHT 21869 but the relevant document was destroyed after 5 years.

Even if this court decides to accept the version of witness Gunawathie to the effect that she was cut by the accused causing injuries to her, we have to further conclude that the weapon used by the accused at that time was a razor. None of the witnesses had neither seen any other weapon with the accused nor, the Police recovered such weapon at the scene of crime or from any other place during their investigation. This creates a serious doubt in our mind whether the injury caused to the Deceased was committed by the Accused or by any other person.

The Indictment against the Accused carried two simple counts of Murder and Causing Injury. They are not coupled with section 32 of the Penal Code to include "with another unknown to prosecution", since no such proposition is born out from the prosecution evidence. Under these circumstances I conclude that the prosecution has failed to prove beyond reasonable doubt the first count in the Indictment.

However both witnesses had managed to identify the accused as the person who inflicted injuries on the injured. Accused is a known person to both the witness and none of the eye witnesses implicated the accused for the Murder of Premadasa. This Court is of the view that the witnesses were truthful witnesses and they only spoke of things, what they saw at that time. With regard to Count 2, in the Indictment, I see no reason to interfere with the conviction by the learned High Court Judge since there is sufficient evidence to find the accused guilty of Count 2.

The Senior State Counsel brings to our notice the decision in *Bandara Vs Republic of Sri Lanka*, (2002 - Sri Lanka 277) and requested us to consider enhancing the sentence already imposed on count 2, even without an appeal from the state.

We observe at this stage, that the circumstances of the said case are different to the present case. In the case of *Bandara Vs Republic* the accused faced 16 charges, for causing death of 16 people by rash and negligent driving. The sentence imposed by the High Court was a jail term of 30 months on each count and the sentences to run concurrent. In that case *Amarathunga J* observed,

"Therefore, in this case he deserves a longer Period of imprisonment.....to deliver a message to all those who have no respect for other persons right to life and property..... This Court will never hesitate to use its powers under section 336 in appropriate cases."

The circumstance of the present case does not warrant such consideration.

The accused was in remand since the date of conviction. i.e. 21.10.2010 considering all these facts we are not inclined to enhance the sentence imposed by the High Court. We set aside the death sentence imposed on count one and acquit the Accused from count one and confirm the conviction and sentence imposed on count two. The jail term of two years imposed on count two will operate from today.

Registrar is directed to communicate this order to the High Court of Balapitiya and return the record to High Court of Balapitiya to communicate this decision to the accused and issue a fresh committal on the accused. Appeal is partly allowed.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala,

I agree,

JUDGE OF THE CUORT OF APPEAL