

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

**In the matter of Appeal in terms of section 331(1)
of the code of Criminal Procedure Act No 15 of
1979.**

Rasathurai Rajakumar of
Santha Thoddam, Pulloly,
Presently of prison Bogambara, Kandy.

CA/120/2010
(High Court Jaffna Case No 1051/06)

Appellant- Petitioner

Vs.

The Attorney General,
Attorney General's Department
Colombo 12.

Respondent

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

Counsel : **Nehara Randeniya assigned counsel for the accused appellant**
S. Thurerajah S.D.S.G. for the A.G.

Argued on : 01-04-2015

Judgement Date : 28-05-2015

H C J Madawala J

The accused Appellant was indicted in the High Court of Jaffna on two counts. The first count being the Commission of the offence of murder of Rajakumar Rajkumar a child on the 04th day of June 2004 at Santha Thoddam, Pulloly punishable under section 296 of the Penal Code and count two, the Commission of the offence of causing grievous hurt to Rajkumar Jayanthi an offence punishable under section 317 of the penal code.

The accused opted for a non-jury trial. After trial the learned High Court Judge delivering his Judgment dated 1/9/2010 convicted the Accused on both counts and sentenced to death on the first count and Ten years rigorous imprisonment and Rs. 25,000 in default of which a further terms of 02 years simple imprisonment on the second charge.

The Appellant being dissatisfied with the said Judgment and sentence appealed there from on the following grounds namely,

- A- The first charge was not proved beyond reasonable doubt,
- B- The Sentence imposed on the second count is harsh and excessive with regard to the facts and circumstances of this case.

The learned counsel for the accused appellant urged that prosecution has not proved its case beyond reasonable doubt. The learned High Court Judge of Jaffna by Judgment dated 1/9/2010 convicted the accused appellant on both counts.

During the trial the District Judicial Medical Officer Sinnadure Kadiravepillai has given evidence and has stated that the death was resulted due to internal bleeding of the skull. He stated that the child could have died instantaneously and submitted that the child was dead on admission. He further submitted that he has examined the body of the deceased and has found that there was only one cut injury on the deceased and there was an abrasion on the right side of the nape and other than that there were no injuries but on his lips there were blood stains and the reason for it is the oozing of blood due to the rupture of the base of the skull and on removing the skin he could observe contusion and blood oozed out of it and when he examined inside of the skull in the right side of the cerebellum there was blood and below the soft tissue by the cerebellum was bleeding. These injuries would occur when the child had a severe blow on the

head. As the deceased was a small child these injuries would occur when the backside of the ankle hangs on a cloth when hit on hard surface or floor.

The first witness Rajkumar Jayanthi has given evidence to the effect that she saw the incident and has stated that her child was playing in the compound and thereafter on seeing the police the accused carried the child with the legs and dashed him on the cement floor. The child was about three and half years and was playing when the incident occurred. She saw her husband hitting the child from a distance about 5 feet. The child seems faintish she gave him water to drink and went near the jeep. The accused dragged her and the child and ran to the adjoining compound. The accused had a knife in his hand. It was when she was lifted up she saw the knife. When she regained consciousness she look for the child and found that her left hand was missing below the wrist.

Witness Rajkumar Jayanthi who was injured with grievous injuries had a cut on the right occipital area and her right hand completely severed left hand flex or tenders cut and a Traumatic amputation of 4th and 5th left hand fingers which injuries endangered her life.

The prosecution has produced the post mortem report marked as P1 and the Medico Legal Report as P3 which documents corroborate the injuries sustained by the deceased and the witness Rajkumar Jayanthi.

The accused in his evidence said as follows and stated that he and his wife and the child fell down and thereafter in a state of unconsciousness the child was taken to the hospital.

Q- What happened to your child?

A- When wife tried to go to Colombo with her mother carrying the child we grappled and fell down.

Q- Did she try to go to Colombo carrying the child?

A- Yes

Q- Did all three of you fall down?

A- Yes

Q- What happen then?

A- Elder sister came running seeing the child got a blow

Q- Who fell down first?

A- I, wife and child fell down together

The learned High Court Judge in his Judgement of pg 201 had stated as follows.

“However, when the accused gave evidence, he has stated that he, his wife and the child fell down and thereafter in a state of unconsciousness the child was taken to the hospital. When the witnesses for the Prosecution was giving evidence, no matters were put forward regarding the accused, his wife the 1st witness and the child falling down. When the 1st witness gave evidence for the Prosecution, the position took up by the defence that the child ran and fell has taken a new turn when the accused gave evidence. He has stated changing it into a new stand that the child died due to the child, the accused and his wife the 1st witness falling down. When this child got an injury on the head the 1st witness and the accused have stayed there. There were no changes of the stand of the 1st witness. However, as I stated earlier, the accused has taken up two stands contradicting each other. Due to this reason and due to the contradictions in the evidence of the accused. I reject the evidence of the accused in toto.”

The Judgement in this case has been delivered in the Tamil Language and we find that has been duly signed and delivered by the Hon. High Court Judge on 1/9/2010. It was the submission of the counsel for the appellant that the Hon. High Court Judge has not complied with the provisions of section 283 of the Criminal Procedure Code and has thus come to erroneous findings. On a perusal the said Judgement we find that the Hon. High Court Judge has given his reasons and has come to a correct finding. We are of the view that the Hon High Court Judge has evaluated the evidence placed before him. It was contended by the counsel of the appellant that the accused had acted under grave and sudden Provocation. When looking at the injuries received by the wife of the accused and as to how the death of the child has occurred, it is obvious that the accused had intentionally caused the death of the child and the injuries on the injured wife. According to the evidence led in this case there had been a family dispute at that time and the accused and his wife had gone to the police station before the incident occurred. The accused had under taken to reconcile with his wife and has promised to take his wife and child with him. However at that time when he went to his wife’s residence, he had seen a police jeep arriving to the premises and after seeing the police vehicle coming he has committed these acts. We find that there is no evidence to support that the accused had acted under grave and

sudden provocation. From the material placed before us it is clear that the accused appellant had the intention to commit the said offences and therefore, we are of the view that the accused appellant is guilty of both the counts brought against him and as such we do not wish to interfere with the Judgement of the learned High Court Judge. We find that the prosecution has proved its case beyond reasonable doubt and the accused has been convicted on both counts. Hence we affirm the conviction and the sentence imposed by Hon. High Court Judge.

However the learned counsel for the accused appellant contended that the sentence imposed on the second count to be harsh and excessive with regard to the facts and circumstances of the case. We have heard the submissions of the learned counsel for the appellant and the learned Deputy Solicitor General. We find that the sentence imposed by the learned High Court Judge to be just and reasonable. Accordingly we affirm the sentence of death imposed on the 1st count and the rigorous imprisonment of 10 years and Rs.25,000 in default of which a further the term of 2 years simple imprisonment on the second count which custodial sentence to be imposed to run from the date of conviction.

Accordingly this appeal is dismissed.

Registrar is directed to return this Record to the High Court of Jaffna for the implementation of the above order.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J(P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL