

IN THE COURT OF APPELA OF THE DRMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

High Court Kegalle

Case No: HC 2989/2010

The Democratic Socialist Republic of
Sri Lanka

Vs.

Arambe Wiyannalage Thilakaratne

Court of Appeal

Case No: CA 80/2013

ACCUSED

And Now Between

Arambe Wiyannalage Thilakaratne

ACCUSED – APPELLANT

Vs.

Honourable Attorney General
Attorney General's Department
Colombo 12.

RESPONDENT

Before : P.R. Walgama, J
: S. Devika de L. Thennakoon, J

Council : A. S. M. Perera P.C. for the Aced – Appellant.
: S. Thurairaja ASG for the A.G.

Argued on : 26.07.2016

Decided on : 18.11.2016

CASE-NO- CA /80 /2013- JUDGMENT- 18.11.2016

P.R. Walgama, J

The Accused appealed against the capital conviction, wherein in he was sentenced to death, for the charge of murder of his wife.

The evidence surfaced at the trial, it is salient to mention that this case purely rests on circumstantial evidence. Therefore it is incumbent on this court to note

how the Learned Trial Judge has evaluated the evidence though not direct, in arriving at the determination to convict the Accused – Appellant for the charge of murder in terms of Section 294 of the Penal Code and directed a sentence of death penalty, in terms of Section 296 of the Penal Code.

In so far as the case for the prosecution is concerned the Learned high Court Judge has adverted court to the following;

That on this day in question the Accused – Appellant had gone to the house of the prosecution witness at or about 5.30 to 6.00 p.m and had asked her to keep their child with her, and when asked where his wife the accused supposed to have had said that she had gone to the police station. Surprisingly there after Accused – Appellant had never returned to take the child home.

At about 8.30 p.m. the Accused – Appellant had made a complaint to the police regarding the wife's body lying near the house, and the Police had accompanied him to the place where the body of the deceased was. The deceased was found in a pool of blood and with bleeding injury at the back of her head. It is also to be noted that in pursuant to a section 27 statement made by the Accused – Appellant a mamoty was recovered.

The post mortem report reveals three injuries on the deceased. One was a cut injury which was found on the back of the neck.

It is also apposite to note the behaviour of the Accused - Appellant, from the time he left the child with the above witness, and the way in which he found the dead body of his wife.

According to the witness No. 1 the Accused - Appellant had left the child with her saying that his wife the deceased went to the Police Station and had left the house of the witness. But never returned to take the child home.

On the other hand if his version was that the wife the deceased went to the police station what made him to look for his wife else where.

It is also to be noted that the mamoty was recovered as a result of the statement made by the Accused - Appellant. The said mamoty was covered with human blood and human hair. The hair that was taken from the back of the head of the deceased and the hair taken from the mamoty was compatible. Further it is of vital importance to consider how he had the knowledge as to the location of the body of the deceased and the location of the mamoty. It is apparent that in the course of the investigation the police was able to recover the mamoty due the directions given by the Accused - Appellant. It is salient to note that the house key was with the Accused - Appellant and non other than the Accused can enter the house to take the mamoty and commit the alleged crime and keep the mamoty behind the door. This arouses a

very strong probability as to the Accused – Appellant' involvement in the commission of the crime.

It is the contention of the Counsel for the Respondent that the above facts were within the knowledge of the Accused – Appellant and he should proffer an explanation as to the above facts, as per Section 106 of the Evidence Ordinance. To buttress the above position the Counsel for the Respondent had cited the case of SOMARATNE RAJAPAKSA .VS. AG (SC AP 2/02) wherein it was held that “the failure of the accused to explain the incriminating circumstantial evidence against him upon the Lord Ellenborough dictum and came to the conclusion that there is no principle in the law which precludes a conviction in a criminal case being based entirely on circumstantial evidence and the fact that the accused failed to offer any explanation”. (emphasis added)

Further the counsel for the Respondent has adverted this court to the case of DON SHAMANTHA JUDE ANTHONY JAYAMAHA .VS. AG (Royal Park case) has held thus;

“in order to base a conviction on circumstantial evidence the jury must be satisfied that the evidence was consistent with the guilt of the accused and inconsistent with any reasonable hypothesis of his innocence.”

Therefore the attended circumstances stated herein before this court is of the view that the prosecution has proved the charge against the Accused – Appellant beyond reasonable doubt, and the Learned High Court Judge has

evaluated the evidence in the correct perspective in arriving at the above determination.

In the circumstances attended thereto this court is of the view that same does not warrant an interference by this court to vary the conviction and the sentence.

Hence we affirm the conviction accordingly.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

S. Devika de L. Tennekoon, J

I agree.

JUDGE OF THE COURT OF APPEAL