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

Democratic Socialist Republic of Sri Lanka.

PLAINTIFF

Court of Appeal
Case No: CA/15/2014

Wickrama Mudiyanselage Indika Prasanna
Alias Podde

High Court Badulla
Case No: 353/2008

ACCUSED

And Now

In the matter of an appeal in terms of section 331(1) of the Code of Criminal Procedure Act,

Wickrama Mudiyanselage Indika Prasanna
Alias Podde

ACCUSED APPELLANT

-Vs-

Democratic Socialist Republic of Sri Lanka.

PLAINTIFF RESPONDENT

Before : P.R. Walgama, J

: S. Devika de L. Tennekoon, J

Council : Sumudu K. Wickramarachchi for the Accused – Appellant.

: Dileepa Pieris, SSC for AG.

Argued on : 27.06.2016

Decided on : 09.12.2016

CASE- NO- CA- 15/2014- JUDGMENT- 09.12.2016

P.R. Walgama, J

In this appeal the Accused -Appellant has called in question the legal acceptability of the judgment passed by the Learned High Court Judge on 5th March 2014 by which Judgement death sentence has been pronounced.

It is against the said conviction and sentence the Accused -Appellant has preferred the instant appeal to this court.

The only eyewitness to the said incident was a boy of 3 ½ years old, who is the son of the deceased. According to the narration of the prosecution at the time of the incident the son of the deceased was seated on his lap and the deceased was watching

the TV at about 7.30 at night. The Accused – Appellant is a known party who was living in the same vicinity. The son gave evidence in the Magisterial Inquiry and Non Summary Inquiry to the effect that the Poddeaiya killed the farther(the deceased). There is no doubt as to the identity of the Accused – Appellant as it was not a fleeting glance that the only eye witness identified the Accused – Appellant. Besides it is vital to note that soon after the incident the wife who was at a another house close to the deceased had heard the son crying had come home, and to her surprise has seen the deceased seated on a chair with bleeding injuries from the neck. When she entered the house the son has said that the accused stabbed the father, more fully soon after the incident when investigating officer came to the place of incident the child has promptly stated that the accused cut the father's neck. But it is observed from the proceedings that the investigating officer has failed to record a statement from the said witness. (the son)

The failure on the part of the investigating officer to have recorded the statement of the said witness according to the counsel for the Accused - Appellant was a fatal irregularity and inimical to the procedure laid down in Section 110(1) of the Criminal Procedure Code which states thus;

Section 110(1)

" Any police officer or inquirer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and shall reduced into writing any statement made by the person so examined, but any oath or affirmation shall not be administer to any such person....."

Therefore it is contended by the counsel for the Accused -Appellant , that although the witness had made a statement the police officer has not recorded the same.

Hence it is contended by the counsel for the Accused- Appellant, that in the above setting the Police Officer is not entitled to proceed with criminal investigation without recording statements. Therefore it is said that the evidence of the sole eye witness statement has not been recorded such evidence should not be taken in to account in deciding the case.

Further it was the position of the Counsel for the Accused – Appellant that he was implicated by the prosecution witness due to an enmity arose between them due to a land dispute. But it is salient to note that a child of above tender age did not know of such dispute but knew who the assailant was.

It is observed from the submissions of the counsel for the Accused- Appellant that the defence is purely planked on the ground that the failure on the part of the investigating officer to comply with section 110 (1) of the Criminal Procedure Code therefore the police would have not proceeded to investigate the crime.

The short point for consideration revolves on a narrow compass, which is explicitly stated above. Therefore it was incumbent on the trial judge be convinced of the testimonial trustworthiness of the boy of tender age. It was the opinion of the Learned High Court Judge that the police would have not recorded the statement of the boy as he was too tender for the said purpose. Nevertheless he has made a statement in the Magisterial Inquiry as to how his father came about his death. In addition he gave evidence in the non summery inquiry and was subjected to cross - examination too, without a single contradiction. Further the Leaned High Court Judge was also convinced of the fact that immediately after the incident the boy has stated that the Accused cut his father's neck and same was stated to the investigating officer. Therefore when there is cogent evidence against the Accused- Appellant for committing the murder of one Chandrapala the deceased, the mere fact that the statement of witness No.2 was not taken down in writing is not a fatal procedural irregularity as alleged by the Counsel for the Accused- Appellant.

In the said back drop this Court is of the view that the position of the Accused- Appellant and ground of Appeal raised by the Counsel for the Accused – Appellant is untenable as no material prejudice has been caused to the Accused- Appellant and it is worthy to mention that the Learned High Court Judge has arrived at the above conclusion in the correct perspective, and as such we see no reason to interfere with the same. Hence the Appeal should stand dismissed.

Appeal is dismissed accordingly.

JUDGE OF THE COURT OF APPEAL

S. Devika de L. Tennekoon, J

I agree.

JUDGE OF THE COURT OF APPEAL