

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

In the matter of an Appeal in terms of
Section 331(1) of the Code of Criminal
Procedure Act No.15 of 1979.

Adambawa Jawfar,

Bazeer Street,

MavadyChennai,

Valaichenai.

Accused-Appellant

C.A Appeal No: CA 118/2008

High Court Batticaloa

Vs.

Case No: HCEP/2203/2004

The Hon. Attorney General,

Attorney General's
Department,

Colombo 12.

Complainant-Respondent

BEFORE : Deepali Wijesundera J.
L.U Jayasuriya J.

COUNSEL : Indika Mallawarachchi for the Accused-Appellant
P. Kumaranrathnam D.S.G for the A.G

ARGUED ON : 17th January, 2017

DECIDED ON : 7th March, 2017

L.U Jayasuriya J.

The Accused-Appellant was indicted in the High Court of Batticaloa for the murder of his wife, Mohamed Haniffa Rizwana, under section 296 of the Penal Code and was convicted and sentenced to death.

The story of the prosecution is that, on the day of the incident, the deceased had gone to the Accused-Appellant's barber-shop in a three-wheeler in the night to ask the Appellant to come home. Having initially refused to come home, the Appellant had eventually accompanied the deceased in the same three-wheeler to the matrimonial home of the deceased. Subsequently, the deceased was found in flames and was taken to hospital by the Appellant himself.

The deceased died 21 days after the incident. She has made a dying declaration to the mother, the 1st Witness, saying that the Appellant after dousing her with Kerosene oil set fire to her.

The argument of the learned Counsel of the Appellant was that the learned High Court Judge was silent on the dying declaration.

The learned Counsel further submitted that the Appellant had tried to put-out the fire with a gunny-sack which was later found by the Police at the crime scene.

The learned Counsel for the Appellant submitted that the evidence shows that the Appellant and the deceased were constantly quarrelling with each other; the reason being the Appellant visiting his 1st wife who is also the elder sister of the deceased.

The Appellant, at the High Court, in his evidence, has stated that the deceased after having poured kerosene oil on her body, set fire to herself and that he doused the fire and took her to the hospital. He has also stated that when he visited the hospital the deceased was not in a position to speak.

The Counsel further submitted that the State has failed to elicit from the Judicial Medical Officer, as to whether the deceased was in a position to make a dying declaration.

On a perusal of the evidence of the Mother of the deceased, we find that this position was never put to the witness. Therefore, we reject this point of argument.

If the Appellant tried to douse the fire, he would have sustained at-least minor burn injuries on his hands.

There is no evidence to say that the Appellant had burn injuries. Further, there were no signs of burning on the gunny-sack which was found at the scene.

We are of the view that the Appellant cannot take up the defence of cumulative provocation since he has not taken up the said defence in the trial court.

Therefore, we reject the said argument.

Although the learned High Court Judge has not dealt with the dying declaration, it has not occasioned any miscarriage of justice to the Appellant.

We see no reason to set aside a well-considered judgment.

We affirm the judgment dated 03.03.2008 of the High Court of Batticaloa. The Appeal is dismissed.

Appeal Dismissed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J. :

I Agree.

JUDGE OF THE COURT OF APPEAL