

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

*In the matter of an appeal in terms of
Article 138(1) of the Constitution of the
Democratic Socialist Republic of Sri
Lanka read with Section 331 of the
Criminal Procedure Code and Section
19(B) of High Courts of the Provinces
(Special Provisions) Act No. 19 of 1990.*

Court of Appeal

Case No: CA 20/2014

High Court of Gampaha

Case No: H.C. 47/2002

The Democratic Socialist Republic of
Sri Lanka.

COMPLAINANT

Vs.

Peduruk Athukoralage Premachandra,
No. 191,
Kannimahara,
Wathurugama.
(Currently in the Remand Prison of
Welikada)

ACCUSED

AND NOW

Peduruk Athukoralage Premachandra,
No. 191,
Kannimahara,
Wathurugama.
(Currently in the Remand Prison of
Welikada)

ACCUSED - APPELLANT

Vs.

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

RESPONDENT

Before : P.R. Walgama, J
: K.K. Wickramasinghe, J

Counsel : Isuru Somadasa for the Accused – Appellant.
: Shanaka Wijesinghe DSG for the A.G.

Argued on : 16.11.2016

Decided on : 21.03.2017

P.R. Walgama, J

The appellant is before this court, aggrieved by the judgment dated 31.03.2014 delivered by the Learned High Court Judge of Gampaha. The Accused - Appellant was charged for murdering his wife by strangulating with a wire. The Learned High Court Judge after evaluating the evidence in the correct perspective, convicted the Accused-Appellant for murder and imposed a death sentence accordingly. It is against the said conviction and sentence the Accused - Appellant has appealed to this court to have the conviction and sentence set aside.

The story of the prosecution in respect of the alleged murder unspools the following;

That on this fateful day the Accused - Appellant had strangled the deceased (his wife) to death. The said dreadful incident was witnessed by their son Dilan Athukoralage, and incidents thereafter were witnessed by the father of the Accused - Appellant and another neighbour namely Pabawathi.

It is to be noted that the main ground of appeal has been that the Learned Trial Judge has acted purely on

the evidence of the son who made a statement to the police only after one and half years later. The said contention has to be considered in the perspective of the facts of this case. It was transpired in the course of the trial that the above witness was living with his grand mother, after his mother was killed. Therefore it is the position of the counsel for the Accused – Appellant that the said witness would have been tutored by the grand mother.

Regarding the second issue raised as a ground of appeal is that the evidence of the above witness is contrary to the medical evidence. The said position has been resolved by the Supreme Court of India in a recent judgment dated 07.03.2017 in the case of MOHAN RAI .VS. STATE OF UTTRA PREDESH wherein it has been held that “where the expert evidence is obscure and oscillating it is not proper to discredit the testimony of the eye witness on such uncertain evidence.” It was further held even although there are contradictions in the ballistics and medical reports if there is reliable ocular evidence the court should act upon such evidence.

It was the testimony of the said witness that he saw the father the Accused – Appellant assaulting the mother the deceased with the wire, which production was marked as P1 and was identified by this witness at the trial. Further he has also vouched to the fact that after the deceased fell on the ground the Accused – Appellant had hung her by a cloth, which was produced at the trial and marked as P2, and the same was identified by this witness. It was the evidence of Pabawathi that she rushed to the house of the Accused – Appellant and found the father of the Accused – Appellant holding the deceased legs and screaming for help to cut the cloth. The said ligature was cut by her son Gamage Ananda. It was the position of the Accused – Appellant that the deceased had on a previous occasion attempted to commit suicide by drinking poison. But this fact was never proved.

The counsel for the Respondent had adverted court to the medical report which has given a vivid description of the injuries, where it has been observed some abrasions in the neck caused by nails, and linear contusions caused by a thin rope. Further it was the observation of the

JMO that the cause of death was due to a squeezing the neck by hand and by a thin cord on the neck.

It was transpired at the trial that there had been constant quarrels and the relationship between the deceased and the Accused – Appellant was acrimonious and inimical and as such the prosecution has established motive for the alleged murder.

Therefore in the light of this cogent evidence court see no reason to interfere with the conviction and the sentence.

Accordingly we affirm the conviction and sentence and dismiss the appeal.

Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

K.K. Wickramesinghe, J

I agree,

JUDGE OF THE COURT OF APPEAL