

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

Thangavelu Padmanadan

ACCUSED - APPELLANT

Court of Appeal No: CA 38/2013

HC Badulla No: 100/2002

Vs.

Hon. Attorney General

Attorney General's Department

Colombo - 12.

RESPONDENT

Before : P.R. Walgama, J

: K.K. Wickramasinghe, J

Counsel : Indika Mallawarachchi for the Accused - Appellant.

: P. Kumararathnam DSG for the A.G.

Argued on : 11.11.2016

Decided on : 24.03.2017

P.R. Walgama, J

The instant appeal is arising in pursuant to a conviction of the Accused - Appellant for the murder of one Ramaiya Paramajothi, on or about 05.05.1994. After a protracted trial the Learned High Court Judge convicted the Accused - Appellant for the said charge of murder and imposed a death sentence accordingly. Being aggrieved by the said conviction and sentence the

Accused – Appellant, appealed to this court for the vacation of the same.

As per indictment the Accused – Appellant, (the 1st Accused) and his father Arumugam Thangavelu, (the 2nd Accused) were charged for committing murder of Ramaia Paramajothi punishable under Section 296, read along with section 32 of the Penal code.

At the conclusion of the trial the Learned High Court Judge acquitted the 2nd Accused and convicted the 1st Accused – Appellant of the above charge of murder and imposed a death penalty on him.

The prosecution has unfurled the following facts;

That on this fateful day the deceased was stabbed and was lying fallen near the line room when witness Jayaram (PW 1) saw the deceased, and had rushed to the place where the deceased was lying, and when questioned as to what happened the deceased had uttered that; “Thangavelu Dhobi and his son attacked me with a knife.” The testimony of this witness in court was that the said Thangavelu Dhobi has three sons and Thangavelu Pathmanadan is his eldest son, and he was identified as the 1st Accused standing in the dock. Nevertheless it is alleged by the counsel for the Accused – Appellant that the said witness has deviated from the above version and stated that the deceased uttered that “ Thangavelu

Dhobi and his son attacked me with a knife." But in the statement in the non summary inquiry it is said that this witness has stated that "Thangavelu Dhobi and his son Padmanadan attacked me with a knife,"

The bone of contention and the primary ground of appeal is that there has been contradictory versions in the dying declaration made by the deceased to this witness. Nevertheless it is seen from the versions of two witnesses what the deceased had uttered and implicated Thangavelu Dhobi and his son Pathmanadan. According to the version of one witness the deceased has not mentioned the name of the Tangavelu Dhobi's son namely, Pathmanadan.

Therefore it is contended by the counsel for the Accused - Appellant that the conviction cannot be sustained since the evidence of the witnesses who testified in court has given different statements as to the dying declaration supposed to have been made by the deceased. But it is worthy to mention that the Learned High Court Judge after the conclusion of the trial has acquitted the 2nd Accused and convicted only the 1st Accused - Appellant. A cursory glance at the statements made by the witnesses as to the culprit or the perpetrator of the alleged crime it is established that the Thangavelu Dhobi's son has committed the crime. It is been noted

that in the dying declaration no other outsider's name was mentioned. If there was a discrepancy to that extent it would have been a difficult task to the Learned High Court Judge to enter a conviction against the Accused - Appellant. As observed by this court there is no doubt as to the identity of the culprit who committed the heinous crime.

Besides the Counsel for the Accused - Appellant had alleged that the Learned High Court Judge has dealt with the recovery under section 27 of the Evidence Ordinance and had arrived at conclusion that the Accused - Appellant's complicity in the commission of the crime.

In dealing with the dying declaration the Learned Trial Judge has analysed the statements of the witnesses in the correct perspective and accepted the statement and had attached sanctity to the said dying declaration made by the deceased. It was observed by the Learned Trial Judge, that the defence had not suggested that the deceased had not made a dying declaration. Then the fact remains that the deceased did make a declaration wherein the name of the Accused - Appellant had transpired. Further it has been commented by the Learned Trial Judge that the defence has not suggested that the deceased was not in a position to make any statement. Therefore in the said back

drop it is abundantly clear that the evidence of the above witnesses remained unimpeached as to the material particulars.

It is also being observed that the witness Jayaram, has made a statement to the police within a short period as to the alleged incident of stabbing and dying declaration. Therefore it is seen these witnesses had proved the clinching circumstances against the Accused – Appellant.

Further there is no allegation of concoction of the genesis or the origin of the alleged incident. The above witness's statement was spontaneous.

Thus taking overall view of the matter, we are of the considered opinion that the finding of guilt recorded against the Accused – Appellant by the Learned High Court Judge is unexceptionable and does not warrant any interference.

Accordingly appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

K.K. Wickramasinghe, J
I agree.

JUDGE OF THE COURT OF APPEAL