

**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 CPC read with
Article 138 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

The Hon. Attorney General

Complainant

C.A Appeal No: CA 84/2009

Vs.

H.A Alocias Shelton

High Court Trincomalee

Accused

Case No: HC 02/2005

AND NOW BETWEEN

H.A Alocias Shelton

Accused-Appellant

Vs.

The Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Complainant-Respondent

BEFORE : Deepali Wijesundera J.

L.U Jayasuriya J.

COUNSEL : B.R.D Obeysekera for the Accused-Appellant

P. Kumararathnam D.S.G for the A.G

ARGUED ON : 10th March, 2017

DECIDED ON : 31st March, 2017

L.U Jayasuriya J.

The Accused-Appellant (hereinafter referred to as the Appellant) was indicted in the High Court of Trincomalee under section 364(2)(e) and section 296 of the Penal Code for committing the offences of rape and murder of a girl named Don Rupasingha Sadeepa Sevvandi. After trial, the Appellant was convicted and sentenced to 20 years of rigorous imprisonment and a fine of Rs. 25,000/- imposed for the first count. Further, the Appellant was ordered to pay Rs. 500,000/- as compensation.

Death sentence was imposed for the second count.

The version of the prosecution is that on or about 18.08.1997 the deceased was last seen alone at her home between 1515 and 1600 Hours. And on the following day, her body was discovered in the backyard of the Appellant stuffed in a gunny bag.

The Appellant in his dock statement stated that on the 19th instant when he was returning after hunting with Thilakasiri, Thilakasiri and Police

Constable Thissa got hold of the Appellant, took him to the Police Station and forced him to sign on a statement written by the Police.

The arguments urged by the counsel for the Appellant are:

- (a) That the Appellant did not get a fair trial.
- (b) That the trial court has not considered the testimonial trustworthiness of the key witness
- (c) That the trial court failed to consider the omission of the prosecution.

The first ground is raised without any merit as the Appellant was represented by a Counsel throughout the trial and he was allowed to cross-examine all the witnesses called by the prosecution.

Therefore, the first ground fails.

We find that the learned High Court Judge has properly evaluated the evidence of the main witness and that the defence has not suggested that he was wrongly implicated by the witness.

On a perusal of evidence, we find that the witness did not have any reason to wrongly implicate the Appellant.

Hence we reject the said argument advanced by the learned Counsel as-well.

Although the Counsel argued that the trial Court did not consider the omissions, we find that not a single omission was brought to the notice of the learned High Court Judge and therefore we reject this argument as-well.

It is common ground that the Appellant was in his house at the time of the disappearance of the deceased girl. Although he was present in his

house at the said time, the question arises as to whether it has been proved that it was the Appellant who committed this crime.

The Judicial Medical Officer in his evidence has stated that he could not say the exact time the victim was killed.

The main witness in his evidence has stated that the victim was last seen around 1520 H on the day in question.

Prosecution witness Somawathie stated that the Appellant came to her house to see the time and that the time was 1530 H in the afternoon.

Further, Somawathie's evidence shows that the Appellant had gone to her house at 1530 H which shows that he has been elsewhere on or around that time.

Witness Samantha in his evidence has stated that he saw the Appellant bringing a pot of water and some washed clothes but the time he saw the Appellant is not stated in his evidence.

He referred to a hut near the Appellants house from which he has seen two Police Officers coming out but he does not refer to a specific time.

The witness also says that the Appellant went hunting at Van Ela area at that time.

This is a case where the Appellant has been convicted on circumstantial evidence.

In such a case, the time factor is very important. The prosecution has failed to ascertain the probable time of death from the expert witness.

The prosecution has failed to rule-out the possibility of a third party committing the said offence.

It was held in **King V Appuhamy 46 NLR 128** that

“In order to justify the inference of guilt from purely circumstantial evidence the inculpatory facts must be incompatible with the innocence of the Accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.”

For the foregoing reasons, we find that the Appellant has been convicted on circumstantial evidence which has not been proved beyond reasonable doubt.

We set aside the conviction and the sentence dated 26.02.2009 and acquit the Appellant of both the charges.

Appeal Allowed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J. :

I Agree.

JUDGE OF THE COURT OF APPEAL