

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

In the matter of an application for leave to appeal and an Appeal to the Court of Appeal in terms of s.331 of the Criminal Procedure Act read with ss.15 and 16 of the Judicature Act.

The Hon. Attorney General
Hulftsdorp
Colombo 12

COMPLAINANT

CA Case No. 244/2008

HC Negombo Case No. 259/2003

Vs

Warnakulasuriya Mahawaduge Rohan
Prasanga Peiris

ACCUSED

Sundara Arachchige Lalith Rajapakshe
Vivekasthan Road, Kapuwatte
Ja-Ela.

AGGRIEVED PARTY

AND NOW BETWEEN

Sundara Arachchige Lalith Rajapakshe
Vivekasthan Road, Kapuwatte
Ja-Ela.

AGGRIEVED PARTY –

APPELLANT – PETITIONER

Vs

Warnakulasuriya Mahawaduge Rohan
Prasanga Peiris
Sub-Inspector of Police
C/o The Inspector – General of Police
Police Head Quarters
Colombo – 01.

ACCUSED – RESPONDENT

The Hon. Attorney General
Hulftsdorp
Colombo – 12

COMPLAINANT - RESPONDENT

BEFORE

:Deepali Wijesundera J.

:L.U. Jayasuriya J.

COUNSEL

:Dr. Sunil Cooray with A.W.D.S.Rodrigo
For the Aggrieved – Party – Appellant-
Petitioner.

Ranil Samarasooriya with
Manjula Ranasinghe for the
Accused – Respondent

S. Susaithan S.S.C. for the
Attorney General

ARGUED ON

: 30th March, 2017

DECIDED ON

: 06th April, 2017

Deepali Wijesundera J.

The accused respondent was charged under sec. 2 of the *Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment Act no. 22 of 1994*. After trial the accused was acquitted and the aggrieved party has filed this appeal against the said acquittal.

The accused has taken the suspect aggrieved party (hereinafter referred to as petitioner) into custody for an allegation of theft on the 18/04/2002 this was not in dispute. The petitioner after being assaulted has fallen unconscious inside the cell and was admitted to the Ragama Hospital by the respondent. The petitioner stated that due to torture inflicted on him he got a fit.

The Judicial Medical Officer giving evidence in the High Court has stated that there were 10 life threatening injuries on the petitioner, as well as wounds on the feet and soles of the feet which the petitioner's counsel stated were not considered by the High Court Judge. The High Court Judge has stated in (p.12) the judgment that there were no wounds on the feet according to the medical evidence which amounts to a misdirection on the part of the High Court Judge.

The petitioner's counsel argued that the learned High Court Judge's analysis of the evidence of the Judicial Medical Officer regarding the injuries on the feet of the petitioner is erroneous. The High Court Judge has stated (vide page 09 of the judgment) that the two persons who were at the petitioner's house were not called as witness to corroborate the petitioner's evidence. These two persons are not listed as witness in the indictment. Therefore calling them as witness does not arise. This is a clear misdirection and we find that the learned High Court Judge is not mindful of the provisions of **sec. 134 of the Evidence Ordinance**.

134 provides this;

"No particular number of witnesses shall in any case be required for the proof of any fact".

On perusal of the petitioner's evidence we find that he has identified the person who assaulted him. The learned High Court Judge has failed to see that the aggrieved party's evidence is enough to identify the person who assaulted him. It was decided in **AG vs Mohamed Saheeb Mohamed Ismath CA no. 87/97 and S.C. appeal 154/10 AG vs Devandorage Nihal** that the evidence of a sole eye witness is enough to prove a charge against an accused provided he has given cogent evidence.

It is a well known principle of law that reliance can be based on the solitary statement of a witness if the court comes to the conclusion that the said statement is the truth. And it was held in **Raja vs State (1997) 2 Crimes 175 (Delhi)**.

“the courts are concerned with the merit of the statement of a particular witness. They are not concerned with the number of witnesses examined by the prosecution.”

In state of Maharashtra vs Suresh Nivsutti Bhaunare (1997) 2 Crimes 257 (Bom) it was held;

“The law of Evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the court may classify the oral testimony of a single witness, the court may classify the oral testimony into three categories, namely (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court as to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon testimony of a single witness.”

The learned High Court Judge has also failed to consider that the injuries to the petitioner were caused while he was in police custody.

The learned President Counsel for the respondent argued that the High Court Judge has considered as to whether the prosecution has discharged the duty of proving the charge. We are not inclined to agree with this argument on consideration of the judgment.

After considering the evidence placed before the High Court, the judgment of the High Court and the submissions made, we decide to send back this case for a retrial. The judgment dated 09/10/2008 is set aside and the appeal is allowed. The learned High Court Judge is directed to dispose this case expeditiously.

Registrar is directed to send back the case record to the High Court of Negombo.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya J.

I agree.

JUDGE OF THE COURT OF APPEAL