

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

Hon. Attorney General

Plaintiff

Vs

Thiruganapillai Sivakumar

Accused

Case No. CA/294/2012

HCJ/996/2006

MC/NS/2024

And now between

Thiruganapillai Sivakumar

Accused – Appellant

Vs

Hon. Attorney General

Plaintiff – Respondent

BEFORE

: Deepali Wijesundera J.

: L.U. Jayasuriya J.

COUNSEL

: Ramalingam Ranjan, N. Kodithuwakku

And Asela B. Rekawa for the

Accused – Appellant.

P. Kumararatnam DSG for the

Attorney General

ARGUED ON

: 18th March, 2017

DECIDED ON

: 19th May, 2017

Deepali Wijesundera J.

The Accused Appellant was indicted in the High Court of Jaffna under Sec. 296 of the Penal Code for the murder of Thilagaraja Jagath Janani on 02/05/2003 and also under Sec. 383 of the Penal Code for committing robbery of gold jewellery for the value of Rs. 124,000/=. The appellant was convicted for the lesser offence which is culpable homicide not amounting to murder on the first charge and also for the second charge and convicted for 10 years RI for both charges.

The grounds of appeal urged by the counsel for the appellant was that the identification parade was improperly constituted, in support of this argument the learned counsel should have produced the parade notes but he did not do so. However he argued that the parade was held 356 days after the incident and cited the judgment in **Roshan vs AG 2011 1 SLR 364**. It was held in that case by holding parade belatedly 50 days after the incident the court has failed to consider the impact on the witnesses to identify the accused after the unreasonable delay in holding the parade. This can not be applied to the instant case since the appellant had absconded after the incident.

Inspector A.H.M. Rajan has stated in his evidence that the appellant was arrested on suspicion in Jaffna eleven months after the incident. This fact clearly shows that the accused appellant was absconding for a considerable period of time.

Although the learned counsel for the appellant argued that the prosecution failed to produce circumstantial evidence to prove their case this does not arise since the accused was convicted on the evidence of an eye witness namely Anthony Yesudasen, whose evidence was not contradicted.

I find that the eye witness has seen the deceased grappling with the accused seconds before the body was recovered. The medical evidence shows that the deceased's right ear lobe was torn and this suggests that her ear rings have been removed forcibly. This establishes the second count.

The accused while giving evidence has stated on the day of the incident he was in Kytes and has set up a defence of alibi. On perusal of the brief I have discovered that he has not given notice of alibi as provided by *Sec. 126 (a) of the Code of Criminal Procedure Act*. Therefore I am not inclined to consider this argument.

Considering the totality of evidence presented by the prosecution I hold that the case for the prosecution has been proved beyond reasonable doubt and the learned High Court Judge has come to his finding after carefully considering the evidence placed before him. Therefore I see no merit in the arguments placed before this court.

I affirm the judgment and conviction given by the learned High Court Judge on 01/11/2012 and dismiss the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya J.

I agree

JUDGE OF THE COURT OF APPEAL