

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 Code of Criminal
Procedure Act No. 15 of 1979.*

Court of Appeal Case No:

CA 189-190/2013

HC Kegalle

Case No: HC 2399/2006

1. Katulanda Arachchilage Ranjith
Gunasekara
2. Ranasinghe Wickrama Arachchilage
Roshan Darmapriya Wickramarachchi
3. Kiribandalage Indika Chaminda
Kumara
4. Mihindukulasuriya Mandappalage
Nishantha Kulasooriya

ACCUSED

Vs.

State

AND NOW

3. Kiribandalage Indika Chaminda
Kumara

4. Mihindukulasuriya Mandappalage
Nishantha Kulasooriya

ACCUSED – APPELLANTS

Vs.

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

RESPONDENT

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

Counsel : Amila Palliyage for the 2nd Accused – Appellant.
: Jagath Abeyanayake for the 3rd Accused –
Appellant.
: Anoop de Silva, SSC for the A.G.

Argued on : 02.03.2017

Decided on : 08.05.2017

P.R. Walgama, J

The Judgment of the Provincial High Court, holden at Kegalle, dated 29.10.2013 has given rise to this appeal. The Accused – Appellants were tried on an indictment charging them with having committed murder by causing the death

of one Chamila Samarasinghe, punishable under Section 296 of the Penal Code.

The trial court, on a scrutiny of evidence adduced, held the Appellants herein, to be guilty of the charge levelled against them and sentenced them as herein before mentioned.

The genesis and the origin of the prosecution case reveals thus;

That on this fateful day at about 8.30 p.m. the alleged intruder came to the house of the deceased, while the mother of the deceased was watching the Accused - Appellants, when one of the Accused - Appellant opened fire of a gun wherein the deceased was killed. The only eye witness to the said incident was the mother of the deceased, who watched the dreadful incident at a distance of 10 to 11 feet from the place where the deceased met his doom.

It transpired from the testimony of the mother of the deceased that she was able to identify the Accused - Appellants from their features viz. from the forehead and the nose although the face was covered with a black cloth. It was categorically stated by the above witness that further she observed that the 3rd Accused - Appellant was a short and dark in complexion and 4th Accused - Appellant was tall and fair in complexion. It is salient to note that the said witness had identified these Accused - Appellants in the identification parade as well as in the dock.

It is contended by the counsel for the Accused – Appellants that the said witness did identify the Accused – Appellants in the identification parade as they were shown to the witness by the police when the Accused – Appellants were arrested and was in remand. But said position was vehemently denied by the witness. Further it is salient to note that this position was taken up by the Accused – Appellants only in the statement made in the dock. The above position was never suggested to the witness in the course of the cross examination. Besides it is pertinent to note that the statement made in an identification parade is not substantive evidence and the determination of the culpability of the Accused will only depend on the evidence transpired in court. It was so held in the case of KIRTHEE BANDARA .VS. AG (2000) 2 SRI L.R. 247. Hence this court has taken serious note of the fact that the above witness identified the Accused-Appellants from the features and the said identification was not effected in difficult circumstances and conditions.

It emanates from the deposition of the above witness that she witnessed the alleged incident from the light that was burning and observing the Accused – Appellants nearly for 3 minutes. Therefore in the above circumstance there cannot be a mistake as to the identity of the Accused – Appellants.

The principle ground of appeal of the Accused – Appellants was that the above witness had identified them at a fleeting glance which is unsafe for the court to act in

the event of a conviction. Therefore the conviction and sentence of this case is challenged on the ground of the identification at a fleeting glance which is highly improbable in this given situation.

As per contra the counsel for the Respondent, has urged in confutation that considering the plinth of the case of REGINA .VS. TURNBULL (1976) 3 ALL E.R. 549, wherein an identification of Turnbull was effective by a single detective constable who was in a moving car had identified Turnbull when he turned his head who was also in a moving car. Nevertheless the court held that they could rely on this glimpse, which was a fleeting glance.

Therefore it was the categorical position of the counsel Respondent that at the time of the incident there was sufficient light which was confirmed by the officer who visited scene of crime, and thus the Accused – Appellants were identified although their faces were covered exposing the eyes and the forehead, which was sufficient for the witness to identify the Accused – Appellants. In the said back drop the Accused – Appellants were not identified at a fleeting glance, but it was a clear identification of the culprit or the perpetrator. Hence the argument put forth by the counsel for the Accused – Appellants is not tenable and stands rejected.

The counsel for the Accused – Appellants also raises the issue of probability. It was the position of the counsel for the Accused – Appellants that it is not possible to identify

the culprits who were with half covered faces, and to identify with the remaining uncovered parts of the face.

It is intensely relevant to note that in the instant matter the witness had specifically stated that how she identified the Accused – Appellants, which is probable as per observation of the Trial judge. Hence it is seen that the testimony of the sole eye witness is definitely beyond reproach.

For the foregoing reasons, we see no merit in this appeal and therefore we proceed to dismiss the appeal and we affirm the finding, conviction and the sentence imposed on the Accused – Appellants.

Accordingly appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

K.K. Wickramesinghe, J

I agree

JUDGE OF THE COURT OF APPEAL