

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

In the matter of an Appeal
Against an order of the High
Court under Sec. 331 of the
Code of Criminal Procedure
Act No. 15 of 1979.

Rajapakshe Gedera Susantha Palitha
Rajapakshe

Accused

C. A. Case No. : 155/2015

H. C. Kandy Case No. : 283/2013

Vs

The Hon. Attorney General

Attorney General's Department,

Colombo 12.

Complainant

And now

Rajapakshe GederaSusantha
Palitha Rajapakshe
Bogambara Prisons

Accused-Appellants

Vs

The Hon. Attorney General

**Attorney General's Department,
Colombo 12.**

Complainant Respondent

**BEFORE : P.R. Walgama, J &
K. K. Wickramasinghe, J**

COUNSEL : AAL Niranjan Jayasinghe for the Accused-Appellant.

Chethiya Goonasekera DSG for the Attorney General.

ARGUED ON : 14th February 2017

DECIDED ON : 30th May 2017

K. K. WICKRAMASINGHE, J.

The accused appellant (hereinafter referred to as the accused) in this case was indicted in the high court of Kandy on the following charge:-

On or about 27th of August 2008 within the jurisdiction of this court in Kandy, the accused did commit the death of one Galathiyawa Gedera Piyasena which amounts to an offence punishable under section 296 of the Penal Code.

After trial the learned high court Judge of Kandy found the accused appellant guilty of the culpable homicide not amounting to murder on the basis of Knowledge and accordingly, sentenced him for 10 years rigorous imprisonment, a fine of Rs. 25000/= and a default sentence of 2 ½ years.

Facts of the case:-

According to Prosecution witness No.1 Galathiyawe Gedera Sriyananda (brother of the deceased), on the day of the incident there was a house warming dinner party at the Grama Seveka's residence. Many villagers had come to the function and consumed liquor. The witness had gone to the party around 7.30 pm and the deceased had already left the party by then. When the witness was on his way home with some friends he was told that his brother was lying in front of the boutique possibly under the influence of liquor. This witness had then rushed to the boutique which was situated 15ft away from his house on the Main road. Witness had noticed a cut wound on the deceased head, he had taken the deceased to the Peradeniya hospital. Doctor had pronounced his death.

The witness stated that the accused was also at the party. The witness knew the accused for a long time and the accused lived 4-5 houses away from the witness's house. There was no argument or issue at the party and the witness had no animosity with the accused. The accused had left the party before the witness. The accused and the accused's brother Priyantha were heavily under the influence of liquor and they had left in a trishaw owned by a neighbor. The deceased had left the party before the accused.

Evidence of PW-12-Kumarathne Abeya Kankanamge Hagoda was that the first information regarding the incident was received on 27.08.2008 at 10.45pm from Sriyananda (PW-1). This witness had then gone to the crime scene at 11.30pm with 3 other police officers.

There was a boutique with an annexed house 2ft away from the crime scene which was owned by a relative of the deceased. There was a large blood stain on the drain which was in between the place where the deceased was and the boutique. There were more blood stains on the plants near the boutique.

The witness had gone to the house of the accused on the 28th around 8.30 a.m. the accused was lying in bed pretending to be unwell. The witness had noticed certain scratch wounds on the accused's hands. The witness felt suspicious of the behavior of the accused and checked under the mattress. He had found a black denim trouser and a t-shirt with blood stains. These two items were taken into police custody. The witness stated that it was raining on the previous night (the night of the incident). (pg.58) The accused was arrested on 28th of August 2008 at 8.30 am at No.16, Piligama, Pilimathalawa.

The witness identified the accused in the dock (pg.61). He further identified the abovementioned Black denim pant and the Adidas t-shirt (pg.65).

PW13, Udahabowala Gedera Hinbandara was a police officer attached to the Davulugala police station and he had participated in the post mortem of the deceased on 28.08.2008. The witness had also taken down statements of witnesses. The judicial medical officer, Dr. M. Abeysinghe had given following items to the witness;

- Blood sample of the deceased;
- The deceased hair sample;
- The clothes worn by the deceased

Evidence of JMO-Dr. M.M.C. B. Abeysinghe (Pgs. 89-109)

This witness (Doctor) was attached to the Kandy National Hospital during the time of the incident. He had conducted the postmortem of the deceased on 28.08.2008. at 1.45pm. The witness had identified 8 wounds on the deceased body (pg.92). The Postmortem Report is at page 307. JMO had noted eight wounds on the body of the deceased.

- Wound No. 01- (6cmx2cm) vertically placed on the left side of the scalp. This injury had caused damage to the brain. The underlying skull bone showed a depressed comminuted fracture. The bone was embedded into the brain tearing a Dura. This injury had caused the death of the deceased.
- All other wounds on the body are cut injuries.

The doctor further stated that injuries No. 01, 03, 05, 06 and 07 were inflicted by a sharp but a heavy weapon used with intense force. The Axe marked "P1" was shown to the doctor and he stated that based on the approximate size of the wounds on the deceased (5.5cm-6cm) the abovementioned injuries could have been caused by the axe shown by the prosecution. (pg.100). The doctor had given a blood sample of the deceased to police custody.

Evidence of PW-16-Jayashantha Eleperuma (pg.136)

This witness was a scientist from Genetech and he had conducted the DNA analysis of this case following a court order dated November 23rd 2010. He stated that a sealed parcel labeled as B5821/08 was received by their Department on October 3rd 2008. This production was delivered by Sub Inspector of Police Mr. P.L.Priyantha. This contained;

- P1- small axe with stains
- P2- a T-shirt worn by the Accused which contained a blood stain.
- P3- blood sample of the deceased

- P4- hair sample of the deceased

On November 25th 2010 two blood samples were collected from 2 suspects, the accused and one Gunerathne alias Suminda. The witness stated that two suspects were referred to their department by the police.

The finding by Genetech

- The DNA stain obtained from the T-shirt of the accused, Palitha Rajapaksha matched with the DNA profile of the deceased. this indicated that the DNA contained in the tested stain belonged to the deceased (Pg.311)

Hence, the report concluded that the biological material in the tested stain on the T-shirt of the Accused (P2) originated from the deceased person (P3).

Evidence of PW-14-Ranjith Sumanathilaka (110)

This witness was attached to the Daulugala police station. He had visited the crime scene on 2008.08.28 with the K9 squad. (Police dogs) Police had got the K9(dog) to sniff the axe. The witness had not searched the crime scene. The axe was in the possession of SOCO officers. The Axe was found 195m away from the crime scene. The witness identified the axe which was marked "P3" (122).

Evidence of PW-33-Shriyantha Kumara Edirisinghe (164)

This witness was attached to the police K9 Division. The witness had visited the crime scene with the police dog at 8.45 am. There was an axe located 195m away from the crime scene. According to this witness the dog had sniffed the axe and gone to the house of the accused. This indicated that someone from this particular house or a person who had visited this house had committed this crime. This process was repeated again at 11.50 where the K9 had sniffed the axe from where it was found and gone to the accused person's residence and sat outside the front door.

Evidence of PW-18- Arambe Gedera Wimalarathne (pg.188)

This witness was attached to the Davilugala police station. The witness had taken some items given by Sub Inspector Bandara to his possession on 28.08.2008 at 17.10 pm. According to the witness it was a parcel which was sealed and he did not know what was inside. The parcel was signed by SI Bandara.

Evidence of PW-17-Basnayaka Mudhianselage Upul Kumara Basnayaka (pgs.193-205)

This witness was attached to Davilugala police station in the year 2008. The witness had taken certain evidence marked P.R. 3708 to his custody from Officer Hagoda. The parcel was sealed. However, the witness was told that there was a T-shirt inside the parcel.

After the prosecution case was closed, the learned high court judge called for the defense. Rights of the accused were explained. There after the accused gave evidence and also called his wife to give evidence.

Defence evidence:-

The accused and his wife, Purawathhe Gedera Shriyani gave evidence.

The evidence of the accused- Rajapaksha Gedera Susantha Saliya

The Accused stated that he attended the house warming party at 5 pm on the day of the incident with Suminda, his friend who lived next door. The party venue was half a kilometer from his house. The Accused stated that he had not seen the deceased at the party (pg.211).

However, according to him, he had seen the deceased person's brother Shriyananda at the party. The accused older brother and younger brother had also attended the party.

The accused had consumed an excessive quantity of liquor and had dinner at the party. The accused had left the party at 7.30 pm with his two brothers in a trishaw. The trishaw was parked near the Kumbuk tree close to the Accused's house and he was helped to get home by his brother as he was struggling to walk. After he got home, the accused had fallen asleep as he was drunk.

Based on what he could remember, his wife had taken his pants and put it in a basin. The accused had gone to sleep with the same t-shirt which he wore to the party with a sarong. The police had come to his house early dawn and woken him up. His wife had been there and his children were asleep. He was confused and still severely intoxicated (pg.218). The police had told him that he was under arrest. The accused stated that the police had not checked under the mattress and the police had not taken any clothes to their custody (pg.220). According to him his T-shirt was taken to police custody after two days and not at the time of his arrest. He stated that there was no blood stain on his t-shirt. The next day after his arrest, he was assaulted by the police during the interrogation when he denied any involvement to the incident (pg.222).

He was in police custody for 2 days. Statements were recorded by the police and he was asked to sign. The recording was not read to him and on the second day he was produced before the Magistrate. His finger impressions were obtained he stated that no blood sample was taken from him. In summing up his testimony the Accused contended that he had not met the deceased on the day of the incident hence he had not murdered the deceased. (pg.225)

In cross-examination by the State, it was suggested to the accused that he was making a false statement that the police forcefully got him to sign his statement without reading it to him. (pg.227). It was further suggested that the accused was giving false evidence to the Magistrate (pg.235). In summing up of the cross-examination the State suggested

to the accused that he had concocted a novel story during the examination in chief to conceal the murder he had committed. (pg.247)

Defence witness-Wife of the Accused – Purawathhe Gedera Shriyani (pg.250)

This witness stated that her husband went to the house warming party at around 7.00pm on the day of the incident and returned home by 9.00pm. She was at home with her two children. When the accused came home he was severely intoxicated and was unable to change his clothes.

The witness had given him a sarong to wear and put his pants in a basin. The accused had then gone to sleep wearing the same T-shirt he wore to the party. She stated that police came to her house at 1.30 am. Police had searched her house. The officer had told her to awake the accused and that there was a crowd outside. One more person was under arrest when the police came to her house (pg.255). The two officers had then arrested the accused. The police had searched the bed room of the accused where he was sleeping. She says nothing was found under his mattress (pg.256). She had no knowledge about a police K9 searching her property. When she went to the police she was informed that a police dog had come to her property. She stated that the police had told her that there was no need to record a statement from the witness even though she attempted to make a statement. The witness stated that after the accused came home the front door had been closed. The police had entered the house through the front and back doors. The witness woke up and her children were also waked up as the police were loud. She further stated that there was no animosity between the accused and the deceased prior to the incident.

In cross-examination by the State, it was suggested to the witness that the witness was making a false testimony stating that the Accused had been highly intoxicated to the extent that he was unable to change his clothes by himself in order to protect him.

(pg.261). The witness stated that she had not visited the police station again after she was denied the opportunity to make a statement. She further stated that she had attempted to speak to a senior officer and she was rejected again. The Prosecution challenged the truthfulness of this statement.

Analysis of evidence:-

Learned counsel for the appellant submitted to court that the chain of productions was not properly established, but he was unable to succeed. The evidence of the defence was unable to create a reasonable doubt in the prosecution. The doctor's evidence established that the injuries were caused by axe and the expert evidence (DNA) linked the blood stains and the accused and without a reasonable doubt. The learned counsel submitted that the t- shirt was introduced by the police, but failed to establish that fact in evidence.

By citing two cases namely **Queen Vs Sumanasena 66 NLR 350** and **Gunawardena Vs The Republic of Sri Lanka 1981 2 SLR 15** learned counsel for the accused appellant submitted that it was only a suspicious circumstance, but the learned DSG demonstrated the sequence of events taken place and proved how the accused has become responsible for the crime.

In the light of above mentioned evidence it is clear that the prosecution had proved the guilt of the accused appellant beyond reasonable doubt and that the learned trial judge had come to the correct finding.

It was clear from the DNA evidence that the biological material in the tested stain on the t-shirt of the accused originated from the deceased person. Furthermore, the sniff dog had gone to the accused's house after sniffing the axe which was used in the commission of this crime. Every case is not proved with eyewitnesses.

It is inevitable that when there is adequate evidence, those cases are proved on circumstantial evidence. Hence, it is evident that the guilt had been established and no errors have been made by the learned trial judge.

Therefore, the learned trial judge had not made any errors that caused prejudice to the accused appellant.

Considering above, I see no reason to interfere with the finding of the learned high court judge. Hence the conviction and the sentence affirmed.

Appeal is hereby dismissed.

Judge of the Court of Appeal

P.R.Walgama J.

I agree

Judge of the Court of Appeal