

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.

N.D.Gamage Wasantha

Accused

C. A. Case No. : 179/2014

H. C. Tangalle Case No. : 49/2007

Vs

The Hon. Attorney General

Attorney General's Department,

Colombo 12.

Complainant

And now

N.D.Gamage Wasantha

Accused-Appellant

Vs

The Hon. Attorney General

Attorney General's Department,
Colombo 12.

Complainant Respondent

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

COUNSEL : AAL Indica Mallawaratchy for the Accused-Appellant.

Rohantha Abeysuriya Senior DSG for the Attorney General.

ARGUED ON : 09th November 2016

DECIDED ON : 14th June 2017

K. K. WICKRAMASINGHE, J.

The accused appellant (hear in after referred to as the accused) in this case was indicted in the High Court of Tangalle on the following charge:-

On or about 25th of May 1999 within the jurisdiction of this court in Tangalle, the accused did commit the death of one Nambukara Dickwella Gamage Martin Singho which amounts to an offence punishable under section 296 of the Penal Code.

After trial the learned high court Judge of Tangalle found the accused appellant guilty of the Murder, sentenced him to death.

The prosecution case solely based on circumstantial evidence.

Facts of the case:-

PW1 N.D.G.Samantha who is the son of the deceased and the elder brother of the accused appellant. According to prosecution witness No.1 (brother of the Accused), both the accused and the deceased were living in the same house and on the day of the incident witness had visited his father. At the time he left the house both of them were at home, but on the following day he received a message about the death of his father.

Witness W.A.Patabendige Nilantha who was a neighbor has testified that on the day in question, the accused had come to his mill around 7 p.m., on his way home. He had informed the witness that he would serve the deceased's dinner and return back. Accordingly he had come back and slept till dawn in the mill. Following morning the accused gone back to his house and returned immediately, intimating that the doors of the house had been forcefully opened, at that point of time the witness also had accompanied the accused to the place of crime.

The witness has testified that both the rear and front had been broken and he had seen the deceased lying in bed when he looked through the window. It was his evidence that he and the accused had a cordial relationship and the accused on previous occasions too had slept in his mill stating that he was lonely.

Medical evidence reveals that the death of the deceased was due to cranio cerebral injuries due to blunt weapon trauma.

At the very outset of the argument learned Senior Deputy Solicitor General conceded the fact that it is not safe to support the conviction of this case.

Considering available circumstantial evidence we are also of the view that conviction cannot stand. Therefore we set aside the conviction and the death sentence imposed on the accused appellant by the learned High Court Judge of Tangalle.

Hereby the appeal is allowed.

Judge of the Court of Appeal

P.R.Walgama J.

I agree

Judge of the Court of Appeal