

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 and in terms
of Article 138 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.

The Hon. Attorney General

Attorney General's Department,
Colombo 12.

Complainant

Vs

(1) Baviyage Damith Jayalal
(2) Bavi Premasir
(3) Senanayake Danny Saman

Accused

C. A. Case No. : 24 1/2010

H. C. Balapitiya Case No. : 208/1997

And Now between

(1) Baviyage Damith Jayalal
[1st Accused Appellant]
(2) Senanayake Danny Saman
[2nd Accused Appellant]

Accused-Appellants

Vs

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

Respondent

BEFORE : **K. K. Wickramasinghe, J &**

M.M.A. Gaffoor, J

COUNSEL : AAL Dr. Ranjith Fernando for the 1st Accused- Appellant.

AAL Indika Mallawaratchy for the 2nd and 3rd Accused
Appellants

Rohantha Abeysooriya Senior DSG for the Attorney General.

ARGUED ON: 15th November 2016

WRITTEN SUBMISSIONS: 07/02/2017, 13/07/2017

DECIDED ON : 3rd October 2017

K. K. WICKRAMASINGHE, J.

The Accused AppellantS (herein after referred to as the AppellantS) were indicted in the High Court of Balapitiya for committing murder of one Hakkini Vijitha Veera De Silva which is an offence punishable under section 296 of the Penal Code. When the indictment was read over to three Accused they had pleaded 'not guilty' to the indictment and accordingly the trial was commenced before the learned High Court Judge.

The Accused Appellants were convicted for the above mentioned charge and sentenced to death. Being aggrieved by the said conviction and sentence, the Appellants made the instant appeal to this court for the vacation of the same.

At the trial the prosecution led the evidence of mainly the following witnesses:-

1. Hakkini Suseema De Silva (PW3)- Eye Witness
2. Thewahandi Gilbert De Silva - (Husband of PW3)
3. Ramegei Osman De Silva- (PW9)-Police Officer
4. Jagoda Arachchige Sirisoma- (PW10)- ASP

The prosecution case:-

According to witness Hakkini Suseema De Silva (PW3) there was a quarrel between the accused and another named Dunstan near the house of the witness. Eventually, these people have crossed the boundaries and entered the land where the house was situated. At that point the witness, her husband, the sister of the witness and the deceased requested them not to quarrel in their premises. At the same time a pet dog had come barking towards the accused and one of the accused had hit the dog with a club which resulted the death of the dog. There after the intruders left the place. The husband of Suseema Gilbert De Silva has taken the carcass to the Police Station to make a complain regarding this. At the mean time all the accused have returned to the said premises and they have entered the house from the rear side of the house and dragged the deceased out of the house to the well and stabbed him to death.(The injuries corroborate with the medical evidence)

The eyewitness demonstrably explained how the accused acted together in furtherance with common intention to commit murder of the deceased. According to the evidence of Suseema, when the 4th accused was stabbing the deceased, the 2nd accused was holding the deceased. She further said that the 2nd accused was carrying a club and others were carrying knives. Evidence of the eyewitness reveals that there was no provocation e by the deceased to the accused party.

The injuries of the deceased were compatible with medical evidence.

The Learned Counsel for the Accused Appellants submitted the following contradictions marked by the defence in the evidence of the eyewitness led by the prosecution:-

Names of the accused were not mentioned in the complaint regarding killing of witness's pet dog. Therefor there was no reason for the accused to return to their premises and commit murder. It was suggested by the defence that the reason to

commit murder of the deceased was making a complaint regarding the death of the dog. When considering evidence, it is abundantly clear that the death of the dog was not the reason, but the earlier altercation.

The trial judge has very correctly considered the possession that, as suggested by the defence if the virtual complainant has not mentioned about the accused there would not have been a sudden provocation. Thereby It was a clear case of murder.

The trial judge has held that the witnesses have given evidence after 15 years and therefor one cannot expect them to have a photographic memory with regard to an incident.

Further, by perusing judgement it is evident that the Learned Trial Judge has adequately considered the contradictions and the omissions submitted by the Learned Counsel for the Appellants and given reasons accordingly. Also the evidence of the eyewitness is consistent with the evidence of other witnesses including PW10 who recovered the club and the dead body near the well.

According to PW9 the 2nd Accused Appellant was absconding and later arrested after four months of the incident.

Considering above there is no reason to interfere with the findings of the Learned High Court Judge. Hence the conviction and the sentence affirmed.

The Appeal is hereby dismissed.

Judge of the Court of Appeal

M.M.A.Gaffoor, J.

I Agree

Judge of the Court of Appeal