

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

In the matter of an appeal pertaining to
Section 331 of the Criminal Procedure
Code No: 15 of 1979

Court of Appeal Case No: CA/33/2013

Embilipitiya High Court No: HCE 48/2009

Democratic Socialist Republic of Sri
Lanka

Complainant

Vs

Herath Mudiyansele Thusitha Sampath

Accused

AND NOW BETWEEN

Herath Mudiyansele Thusitha Sampath

Accused-Appellant

Vs

The Democratic Socialist Republic of Sri
Lanka

Complainant-Respondent

Before : L.T.B. Dehideniya J. (P/C.A.)
: S. Devikac De Livera Tennakoon J.

Counsel : Anura Maddegoda PC with M. Perera for the Accused
Appellant
: Chaya Sri Namuni SC for the AG.

Argued on : 05.06.2017

Decided on : 20.10.2017

L.T.B. Dehideniya J. (P/C.A.)

The Accused Appellant (hereinafter sometimes called and referred to as the Appellant) was indicted before the High Court of Embilipitiya on a charge of committing murder of Karavita Arachchige Lalith Saman Kumara on or about 10th May 2007 at Mudunmankada in the Uda Walawa police area, an offence punishable under section 296 of the Penal Code. After serving the indictment on the Appellant, he kept himself away from Court. Thereafter evidence led under section 241 of the Criminal Procedure Code and the trial proceeded in absence of the Appellant and he was convicted and sentenced to death. Being aggrieved by the said judgment, the Appellant presented this appeal.

The grounds of appeal urged by the Appellant are,

- The prosecution had failed to prove its case beyond reasonable doubt.
- The trial judge had failed to properly evaluate the evidence.
- The trial judge had misdirected himself on the evidence pertaining to the subsequent conduct of the Appellant and placed undue reliance thereon.
- The trial judge had misdirected himself pertaining to the principles of Burdon of Proof and principles of *mens rea* and *actus reus*.
- The Appellant was denied a fair trial.

In proof of prosecution case the wife of the deceased, H.R. Deepani, was called as the first witness. According to her the deceased had rented out a newly built house to the father of the Appellant and their family lived there. This house is few feet away from the house where the deceased's family was living. After few months, the deceased had asked the Appellant's family to hand back the house. On the day of the incident, the deceased, after returning from work, had inquired from the PW 1 whether the tenants left the house and the PW 1 answered negatively. Thereafter, the deceased had gone to the house of the Appellant to inquire about not vacating the premises. The witness had followed the deceased to a point but she had to return on hearing her children crying. Since the deceased had not come back, she had telephoned her father to look for the deceased. He had come and found that the deceased was injured at the house of the Appellant. Thereafter she too had gone to the house and found that the appellant was lying in a pool of blood. Immediately he was removed to the hospital but he succumbed to the injuries.

The investigation officer I.P. Sarath Kumara said that he visited the crime scene. There was a pool of blood in the house and two blood stained mats. He further said that there were no doors or windows fixed. A tin sheet made out of a tar barrel has been used as the door. He found that the said tin sheet in the compound. Rusted pieces of tin sheet were found inside the house.

The P.S Wickramapala in giving evidence said that the Appellant came to the police station at 1.10 hrs and surrendered himself with a blood stained katty (knife) and he has taken the katty in to his custody and produced it marked P 1 in his evidence.

The JMO testified to the fact that the death was due to the cut injuries and the injuries could have inflicted by the katty marked P1.

The only eye witness to the incident is the PW1, the wife of the deceased. According to her the deceased had gone to the Appellant's house. She had seen that the deceased going in to the house. In few minutes time she found that the deceased lying on the floor in the house with injuries. The only conclusion that the Court can come into is that the injuries were received inside the house. The learned Counsel for the Appellant submits that the rusted metal pieces inside the house suggests that there was a forcible entry by the deceased and the Appellant had acted in self defence. Under normal circumstances, a door is fixed from inside of the house. This door, being one made out of a tar barrel, has to be kept from the inside of the house. If the rusted metal shattered inside the house due to the forcible entry, there must be an explanation as to how the door was on the compound without being inside the house. There is no explanation.

The Appellant surrendered to police with the katty and the JMO testified that the injuries could have inflicted by the Katty. The murder weapon was in the possession of the Appellant and he surrendered it to the police within a short period of time. The Appellant has not explained as to how the murder weapon came to his possession.

The evidence in this case leads only to one conclusion. The deceased went in to the house of the Appellant and in few minutes it was found that he was lying in the floor with the injuries. The Appellant surrendered to police with the katty and the JMO confirms that the injuries could have inflicted by the said katty. Only the Appellant knew what happened inside the house and without any explanation, the only conclusion that the Court can come into is that the Appellant had committed the murder.

As I pointed out earlier, that the Appellant had failed to explain as to what happened inside the house. The only conclusion that the can come into is that the Appellant inflicted the injuries with knowledge that they could cause the death of the deceased in the ordinary cause of nature.

The Appellant kept himself absent from the trial knowing that the case is fixed for trial. The indictment was served on the Appellant. Before taking up the trial in absentia the Court inquired under section 241 of the Criminal Procedure Code and satisfied itself that the Appellant is absconding from the trial proceedings. Therefore the Appellant cannot complain that he was denied a fair trial.

I see no reason to interfere with the findings of the learned High Court Judge.

The conviction and the sentence is affirmed.

Appeal dismissed.

President, Court of appeal

S. Devika De Livera Tennakoon J.

I agree.

Judge of the Court of appeal