

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

Senadeera Pathiranage dauglus  
Senadheera

**ACCUSED - APPELLANT**

**CA Case No. 15/2008**

**HC (Anuradhapura) Case No. 271/2003**

**Vs**

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

**RESPONDENT**

**BEFORE**

: Deepali Wijesundera J.

: L.U. Jayasuriya J.

**COUNSEL**

: Chathura Galhena for the

Accused – Appellant

P. Ranasinghe SDSG for the

Attorney General

**ARGUED ON**

: 09<sup>th</sup> November, 2017

**DECIDED ON**

: 24<sup>th</sup> November, 2017

**Deepali Wijesundera J.**

The accused appellant was indicted in the High Court of Anuradhapura under section 296 of the Penal Code for the murder of one B.A. Karunasena. The second accused was indicted for aiding and abating the first accused to commit the offence described in the first charge. The second accused was acquitted after trial and the first accused was convicted for murder and sentenced to death.

The prosecution witness number 5 Gunadasa who has seen the dead body first in a marsh near a lake and has informed the Grama Sevaka and thereafter informed the police. He has testified that he saw trail marks from the appellant's house to the place where the dead body was found. The police officer who conducted investigations also had observed these trail marks. He has observed blood stains in the compound of the accused's house and also on the door.

Prosecution witness number 2 Waduge has gone with the appellant to dig for worms to go fishing. According to his testimony the appellant had carried a mamoty and told him some time later the following words "මමගේ

අතින් කරුණාසේන නැති උනා පණුවන් කොටන්න නෙමෙයි එයා වල දුන්න උම එක්කන් ආවේ” .We find that this amounts to a confession under sec. 17 (2) of the Evidence Ordinance. Although this amounts to a confession the learned counsel for the appellant argued that after hearing this he has neither made a complaint nor made inquiries but has gone to his uncle’s place (vide page 38 of the brief). It was revealed in cross examination that he was arrested by the police as a suspect and he was assaulted whilst in police custody. However on being questioned by the learned High Court Judge he has admitted that he told the truth to court. Therefore we see no reason to reject the aforementioned confession.

Prosecution witness number 1 Gunaratne testified that on or about 26<sup>th</sup> or 27<sup>th</sup> of March 1996 he met the deceased Karunasena at his brother in law Gunadasa’s house around 10 o’clock in the morning. After consuming alcohol with them he has again come at 3 o’clock to the said house and gone to the appellant’s house with Karunasena to consume liquor. Whilst the appellant and deceased were consuming liquor he has left for home around six in the evening. The deceased was last seen with the appellant by this witness. The following day he has got to know that Karunasena has been murdered, and he has gone to the appellant’s house and seen the blood stains mentioned by the other witness.

The grounds of appeal argued by the appellant's learned counsel were that the learned High Court Judge failed to consider that the prosecution failed to prove the charge against the appellant beyond reasonable doubt, this we have dealt with above. The next ground of appeal, absence of 'mens rea' fails when medical evidence is considered. Injury number one is described as a 'cut wound 3" x 1/2" lying oblique on right side of head' and injury number four 'deep cut wound with underlying bone 1 1/2" x 1/2" is situated on the left side of the head', these two injuries show the murderous intension of the appellant. Therefore the second ground too fails.

The third ground of appeal is that the learned High Court Judge failed to evaluate the credibility and biasness of the lay witnesses. This we find is not correct when prosecution witnesses were testifying the defence has not suggested that they had any animosity towards the appellant to implicate him. We find that the learned High Court Judge has evaluated the evidence of all the witnesses applying the several tests. Therefore above ground of appeal too fails.

Evidence reveals that the appellant has been an 'Ande' cultivator of the deceased until the last crop and that he owed some money to the appellant from the previous crop. When one considers the subsequent

conduct of the appellant there is evidence to say that he tried to conceal the body of the deceased. Police took ten days to arrest the appellant and there is a section 27(1) recovery where the police found a knife hidden in the toilet of the accused.

We find that this is a text book case on circumstantial evidence which points to the guilt of the accused and no one else.

For the afore stated reasons we decide to affirm the judgment dated 12.02.2008 and dismiss the appeal.

Appeal dismissed.

**JUDGE OF THE COURT OF APPEAL**

**L.U. Jayasuriya J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**