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

The Democratic Socialist Republic of Sri Lanka

Complainant

CA 151/2014

Vs.

H.C. Colombo – HC:2358/2005

A. Mudiyanselage Ananda

Accused

AND NOW BETWEEN

A. Mudiyanselage Ananda

Accused – Appellant

Vs.

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

Complainant – Respondent

BEFORE: **S. DEVIKA DE LIVERA TENNEKOON J.**

S. THURAIRAJA, PC, J

COUNSEL:	**Accused – Appellant – Indica Mallawarachchi with Upul Dissanayake**
	Complainant – Respondent – DSG Dilan Rathnayake
ARGUED ON -	**20.09.2017**
WRITTEN SUBMISSIONS –	**Defendant – Appellant – 02.10.2015**
	Complainant–Respondent – 22.09.2014
DECIDED ON:	**24.11.2017**

S. DEVIKA DE LIVERA TENNEKOON J.

The Accused Appellant (hereinafter sometimes referred to as the Appellant) was indicted in the High Court of Badulla for the offence of murder for causing the death of Herath Mudiyanselage Nilanthi Malini Herath on or about 25.09.1995.

The prosecution led the evidence of Sinnamuttu Devendran (PW1), A.M. Premadasa (PW2), R. Pathmanadam (PW3), H.M. Guneratne (PW5), Dr. Mahinda Wijesekara (PW7), IP Somapala Wanasinghe (PW9), PS 17343 Samarasinghe (PW10) and closed its case. The defence was by way of a Dock Statement made by the Appellant.

The learned High Court Judge by his judgment dated 01.10.2014 convicted the accused on the charge of murder and sentenced him to death.

The case for the Prosecution in brief was that the deceased was a 19 year old girl who was married to the Appellant. The deceased was only 16 years old when she married the Appellant and they have one child from the marriage. Their matrimonial home was situated in a remote location and the Estate Hospital was the closest in proximity to their home. It was contended by the prosecution that the Appellant had severely assaulted the deceased and further withheld medical attention from her, which ultimately lead to her death. This proposition was based on circumstantial evidence as there is no eye witness to the alleged incident.

PW 1, who was the dispenser attached to the dispensary at the Estate Hospital testified that the Appellant had come to him and asked for medicine for his wife who was supposedly ailing from a headache and wounds on her legs. PW1 had issued some medication (Paracetemol and Amoxycilin) on the understanding that the Appellant would show her to the Doctor subsequently. Thereafter, PW1 had met the Appellant at the bus stand who had informed PW1 that the medicine he prescribed earlier had helped his wife and therefore requested for medicine. PW1 had acceded to the request and accompanied the Appellant to the pharmacy and issued medication. After about 3 – 4 days the Police had come and recorded a statement from PW1, informing him that the Appellant's wife had died.

PW 5 ,who was the father of the deceased testified that the marriage between the Appellant and the deceased was not a happy one with constant quarrels. One day he had visited the deceased to find her locked up in a room. PW5 had then taken her to the hospital. In his evidence, PW5 states that the Appellant had thereafter come to the hospital and taken her back home. His testimony reveals

that the deceased was constantly subject to abuse by the Appellant and that Police complaints were made in this regard.

PW2 gave evidence that he lived about ¼ km away from the Appellant's house and that on the night in question the Appellant had sought his assistance to transport his wife to the Hospital as she was unconscious. PW2 had taken the deceased in his lorry with the help of PW 3. PW2 had thereafter learnt that the Appellant's wife had died.

As per the evidence of PW7, who prepared the Post-mortem Report there were 33 injuries found on the body of the deceased and 17 of them were on the back of her body. The cause of death as stated by PW7 was due to bleeding in the brain and spinal cord from the injuries caused by a blunt object. He further states that most of the injuries found on her body were likely to cause the death of the deceased. PW7 had further observed that injuries on the neck of the deceased were consistent with a person strangling her from behind.

The Appellant, in his dock statement denied the charge levelled against him and stated that he had returned home on the day in question and he had seen the deceased washing her wounds near the well. The Appellant had then asked her what happened, to which she had replied that she had been attacked by a cow. The Appellant further states ,that the deceased had refused to seek medical treatment therefore he had gone to the pharmacy to bring medicine. He states further that he does not know what may have happened before he came home and whether someone else had troubled her in his absence.

The learned Counsel for the Appellant raises two grounds of Appeal;

a) The items of circumstantial evidence are wholly inadequate to draw a necessary, inescapable and irresistible inference of guilt against the Appellant, and

b) In any event medical evidence and the findings of the learned High Court Judge do not support a conviction for murder but for culpable homicide not amounting to murder.

On perusal of the impugned Judgment of the learned High Court Judge it is clear that from the outset the learned Trial Judge has been cautious to first discuss required standard of proof in a criminal case especially in cases where circumstantial evidence is produced against an Appellant. The learned Trial Judge refers to the case of Pantis Vs. The Attorney-General 1998 (2) SLR 148 which held that;

> "As the burden of proof is always on the prosecution to prove its case beyond reasonable doubt and no such duty is cast on the accused and it is sufficient for the accused to give an explanation which satisfies Court or at least is sufficient to create a reasonable doubt as to his guilt,
>
> As the trial Judge was a trained Judge who would have been aware that the burden of proof was on the prosecution to prove its case beyond reasonable doubt if a reasonable doubt was created in his mind as to the guilt of the accused he would have given the benefit of that doubt to the accused and acquitted him."

He also refers to the case of Queen Vs. Sumanasena 66 NLR 350 which held *inter alia;*

> "In our opinion the learned Judge's direction is wrong. Suspicious circumstances do not establish guilt. Nor does the proof of any number of suspicious circumstances relieve the prosecution of its burden of proving the case against the accused beyond reasonable doubt and compel the accused to give or call evidence. We are unable to reconcile what the learned Judge said earlier in his summing-up with what he said in the passage to which exception is taken. The burden of establishing circumstances which not only establish the accused's guilt but are also inconsistent with his innocence remains on the prosecution throughout the trial and is the same in a case of circumstantial evidence as in a case of direct evidence."

It is with this understanding the learned Trial Judge commences the evaluation of the evidence placed before him.

With regards to the injuries sustained by the deceased the prosecution's version is that they were caused by the Appellant. The Appellant denies this and states that they were caused by a cow (allegedly this is what the deceased had told him). The independent medical evidence (PW7) confirms that these injuries are inconsistent with the version of the defence. The evidence of PW5 revealed that the deceased was constantly subject to abuse by the Appellant, therefore this Court is inclined to hold that the learned High Court Judge was correct in finding that it was the Appellant who caused the injuries to the deceased.

PW7 further observes that the injuries caused to the deceased were few days old. The Appellant admits that he requested for medicine from PW1. PW1 states that the Appellant requested medicine for a headache and leg wounds. The medical evidence reveals that the deceased was injured far beyond what the Appellant had disclosed to PW1. It is also clear that the Appellant has failed to seek medical treatment for the deceased for about 3 days prior to her been found unconscious, by which time it was too late. The learned DSG submits that as per Section 30 of the Penal Code an 'Act' also includes an omission.

As the learned DSG submits that the injuries caused to the deceased was through a systematic assault. Thereafter, it seems that she was gravely neglected by her Husband, the Appellant, which ultimately led to her death. The learned High Court Judge has considered all relevant circumstances and determined that the Appellant's actions / inactions established the offence of murder.

In the case of Ariyadasa Vs. Attorney General 2012 (1) SLR 84 it was held *inter alia* that;

> "Court of Appeal will not lightly disturb a finding of a Judge with regard to the acceptance or rejection of a testimony of a witness, unless it is manifestly wrong, when the trial Judge has taken such a decision after observing the demeanour and the deportment of a witness. The contention that the eye witness was not a credible witness is rejected."

It was further held in the said case that;

"The prosecution must prove the following facts before it can bring a case under Section 294.

(i) It must establish quite objectively that a bodily injury is present.

(ii) The nature of the injury must be proved. These are purely objective investigations.

(iii) It must be proved that there was an intention to inflict that particular bodily injury, that is to say that it was not accidental or unintended or some other kind of injury was intended.

Once these elements are proved to be present, the Inquiry proceeds further.

(iv) It must be proved that the injury is sufficient to cause death in the ordinary course of nature.

This part of the inquiry is purely objective and inferential and has nothing to do with the intention of the offence.

Once these four elements are established the offence is murder under Section 294

It does not matter that there was no intention to cause death. This part of the inquiry is purely objective and inferential and has nothing to do with the Intention of the offence.

It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature.

Once the intention to cause bodily injury actually found to be present is proved, the rest of the inquiry is purely objective and the only question is whether, as a matter of purely objective Inference, the injury is sufficient in the ordinary course of nature to cause death."

This Court finds that the ingredients required to establish the offence of Murder discussed in the above case are relevant to the instant Appeal and further that the prosecution has established these ingredients against the Appellant, beyond reasonable doubt.

The learned Trial Judge has been mindful of the nature of evidence against the Appellant by referring to the case of King Vs. Appuhamy 46 NLR 128 in which it was held *inter alia* that;

> "In order to justify the inference of guilt from purely circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable-hypothesis the that of his guilt."

The impugned judgment further refers to the case of King Vs. Abeywikrama 44 NLRe 254 in which it was held *inter alia;*

> "In order to base a conviction on circumstantial evidence the Jury must be satisfied that the evidence was consistent with the guilt of the accused and inconsistent with any reasonable hypothesis of his innocence."

It is evident therefore that the learned Trial Judge, after a careful evaluation of the evidence placed before him and giving due regard to the nature of the evidence has concluded that the circumstantial evidence against the Appellant is consistent with his guilt and not of his innocence. Having considered the submissions of both parties, this Court finds that the only inference that can be drawn is that the Appellant's actions / inactions had caused the death of the deceased.

In light of the corroborated circumstantial evidence against the Appellant, this Court finds no reason to disturb the findings of the learned Trial Judge and therefore, we affirm the conviction and sentence dated 01.10.2014 and dismiss the instant Appeal.

Appeal Dismissed.

Judge of the Court of Appeal

S. THURAIRAJA, PC, J

I Agree.

Judge of the Court of Appeal