

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

In the matter of an Appeal made under section 333 (1) of the Code of Criminal Procedure Act No. 15 of 1979 read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka and Act No. 19 of 1990.

The Democratic Socialists Republic of Sri Lanka

**Vs**

Halwithana Athukoralalage Niroshan Chaminda

No. 64, Arukgoda,

Danovita.

**ACCUSED**

**Case No. CA 124/2011**

**HC (Gampaha) Case No. 42/2002**     **AND NOW**

Halwithana Athukoralalage Niroshan Chaminda

**ACCUSED – APPELLANT**

**Vs**

Hon. Attorney General

Attorney General's Department

Colombo. 12.

**RESPONDENT**

**BEFORE** : Deepali Wijesundera J.  
: L.U. Jayasuriya J.

**COUNSEL** : Sumith Senanayake for the  
Accused – Appellant  
Wasantha Bandara A.S.G. for the  
Respondent

**ARGUED ON** : 17<sup>th</sup> November, 2017

**DECIDED ON** : 14<sup>th</sup> December, 2017

**Deepali Wijesundera J.**

The accused appellant was indicted in the High Court of Gampaha under Section 296 of the Penal Code for the murder of one Halwithana Athukoralalage Cyril alias Raja. After trial he was convicted under Section 297 of the Penal Code for culpable homicide not amounting to murder. A jail term of 10 years RI and a fine of Rs. 10,000/= was imposed.

According to Prosecution Witness no. 1 Karunaratne when the deceased informed him that there was a love affair between his wife and the appellant has gone to the appellant's house to inquire. On being questioned by the appellant he has informed him he got to know from the deceased who was his brother. Later, on the same day Karunaratne had gone to meet the deceased and the door had been close and he had observed blood seeping through the door gap, and he had peeped in and

had seen the deceased lying on the floor inside the house. He had observed a drawer of the cupboard had been broken. He had run out calling for help.

Karunaratne had gone to the police station to make a complaint and while going he has met the appellant and told him about the deceased, and the appellant also had gone to see the deceased.

Prosecution Witness No. 2 son of the deceased in his testimony had stated that one day prior to the murder the appellant had asked the deceased for some money. His father had said he had no money and the appellant had threatened the deceased saying "නැති සල්ලි ගන්නමි". The witness says that the deceased used to keep his money in a drawer in the Almyrah, which had been broken subsequently. The deceased had been lying near this Almyrah. Prosecution Witness No. 7 retired C.I. Bandara who visited the scene of the crime had observed the broken down Almyrah. Therefore the fact that the cupboard was broken open had been established by police evidence.

Prosecution Witness No. 2 has further testified that the appellant had quarreled with his father about a week prior to the incident, and that his father had no enemies other than the appellant.

Prosecution Witness No. 3 in his evidence had testified that on the day in question he heard a yell while he was in his vegetable plot close to the deceased's house. Later he had heard that the deceased had been killed.

Prosecution Witness No. 6 the Judicial Medical Officer testified that he found 20 wounds on the victim. He had observed a wound on the neck as a serious injury which is capable of causing death in the ordinary course of nature. Further he had stated the injuries observed on the body could have been caused by the knife marked **P2**.

Prosecution Witness No. 7 C.I. Bandara testified that the appellant was apprehended at the Wilwatte Railway Station on information received. The appellant had started running after seeing the police. He was apprehended after giving chase. The appellant in his dock statement has not denied this position. This shows the subsequent conduct of the appellant which is relevant under *Section 8 (2) of the Evidence Ordinance*.

Subsequent to the appellant's statement to the police a *Section 27 (1) of the Evidence Ordinance* recovery was made. A blood stained knife was found, which was sent to the Government Analyst who reported that it is human blood. This was not challenged by the defence at the trial and

the report of the Government Analyst had been admitted under section 420 of the Criminal Procedure Code.

The appellant's counsel argued that the learned High Court Judge had relied on two items of evidence namely the appellant threatening the deceased on a previous occasion regarding some money and the *Section 27 (1)* recovery. If one takes the above statement in isolation it may not have a grave effect but when it is taken with the act that followed the statement it shows the murderous intention of the appellant.

The *Section 27 (1)* recovery when considered with the circumstances of the case establishes the guilt of the appellant. The other ground urged by the appellant was that the learned High Court Judge erred by referring to the inquest proceedings recorded by the Magistrate. Although there is no provision in place to refer to such evidence we find that there is no prejudice caused to the appellant by referring to those statements. Therefore this ground too fails.

In the instant case the learned High Court Judge had convicted the appellant on circumstantial evidence.

In the case of **King vs Abeywickrema 44 NLR 2554** it was held that 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.

In **King vs Appuhamy 46 NLR 128** it was held 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 than that of guilt.

In **Podisingho vs King 53 NLR 49** it was held that in the case of circumstantial evidence it is the duty of the trial judge to tell the Jury that such evidence must be totally inconsistent with the innocence of the accused and must only be consistent with his guilt.

In **Emperor vs Brown 1917 18 Cri.L.J. 482** court held that the Jury must decide whether the facts proved exclude the possibility that the act was done by some other person, and if they have doubts the prisoner must have the benefits of those doubts.

In **Don Sunny vs Attorney General 1998 2 SLR 1** it was held that the charges sought to be proved by circumstantial evidence the items of circumstantial evidence when taken together must irresistibly point towards the only inference that the accused committed the offence.

Considering the evidence and arguments brought forward by the respective counsel our considered view is that the prosecution has proved the case beyond reasonable doubt in the High Court.

Now the question arises as to why the learned High Court Judge convicted the appellant under *Section 297 of the Penal Code*. An accused can be convicted under *Section 297* only if the evidence falls with the four provisos of *Section 294 of the Penal Code*. In the instant case I'm of the view that the evidence presented does not fall under the provisos set under *Section 294 of the Penal Code*. Therefore I decide to set aside conviction and the sentence dated 14/12/2011 and convict the appellant under *Section 296 of the Penal Code*, for murder. The learned High Court Judge is directed to impose the death sentence adhering to *Section 280 of the Criminal Procedure Code*.

The appeal is dismissed.

**JUDGE OF THE COURT OF APPEAL**

**L.U. Jayasuriya J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**