

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

In the matter of an appeal under and in terms of the Section 331 of the Code of Criminal Procedure Act.

The Attorney General of the Democratic Socialist Republic of Sri Lanka.

COMPLAINANT

Vs

Hewa Heenpallage Newton Dharmawansa

ACCUSED

CA Case No. 75/2012

HC (Tangalle) Case No. 07/2002 AND NOW BETWEEN

Hewa Heenpallage Newton Dharmawansa

ACCUSED – APPELLANT

Vs

The Attorney General of the Democratic Socialist Republic of Sri Lanka

COMPLAINANT - RESPONDENT

BEFORE

: Deepali Wijesundera J.

: L.U. Jayasuriya J.

COUNSEL

: Dr. Ranjith Fernando for the

Accused – Appellant

Jude Nanayakkara SSC for the

Respondent

ARGUED ON

: 16th November, 2017

DECIDED ON

: 14th December, 2017

Deepali Wijesundera J.

The appellant was indicted in the High Court of Tangalle for the murder of K.L. Pradeep Priyantha under section 296 of the Penal Code. After trial he was convicted and sentenced to death.

The appellant had been visiting the deceased's house and was known to the members of the family. On 05th of September, 1998 he had visited the deceased at home and left with him. The appellant had returned at 7.30 p.m. on the same day and had informed the members of the family that the deceased had gone with a friend and will be returning later. Prosecution witness number one, sister of the deceased had attended a wedding and has met the appellant and he has inquired about the deceased. On the 07th the body of the deceased had been found in a lake in a decomposed state. The appellant had attended the 7 days almsgiving and later he has left with the other brother Pradeep and he too has gone missing.

The medical evidence reveals that the deceased had died due to the injuries caused to the head by a cutting weapon. Prosecution witness number two Sumithra has testified that on the 06th appellant came in the night and told her that her older brother was found drunk and at the same breath he has said that the deceased had met with an accident and is staying at Bandula's house and has asked her to come with him. She then had seen an iron rod in the van of the appellant near the front seat.

Counsel for the appellant submitted that the appellant was charged in the High Court of Matara bearing case No. HC 224/2008 for the murder

of the other brother Pradeep and was acquitted without calling the defence. He argued although it was the same witness similar facts and same accused still the prosecution witnesses have been disbelieved.

Evidence relied upon by the Learned High Court Judge to convict the appellant are evidence regarding a close friend of the family, usage of a false name on the identification papers, the van used by the appellant was a stolen van, appellant left the house with the deceased on the 05th (last seen theory), posing off as a Navy officer, after leaving with the appellant deceased did not return home and the body was found in a lake, the appellant informing the family by coming home that deceased was visiting a friend, subsequently he left with the other brother and his body was also found in the lake, subsequent conduct of the appellant. At the time of arrest, an offensive weapon and a firearm was found in the appellant's possession, personal belongings of the deceased was found in the appellant's possession, having various photographs of himself under various names and finally section 27 (1) recovery in which the weapon used to kill the deceased was found **(P1)**.

Out of the above arguments deceased was last seen with the appellant and the personal items of the deceased was recovered by the investigating officers established a strong prima facia case against the appellant. The appellant has not explained as to how the personal belongings of the deceased came into his possession which is in his personal knowledge. When one considers these two items of evidence we can't say that the conviction is bad in law.

The judgment in **King vs Appuhamy 46 NLR 128** and **Queen vs Samanasena** cited by the learned counsel are not relevant to the facts

of this case. In **Nissanka vs The State 2001 3 SLR 75** the Court of Appeal has considered the Ellenborough theory and has discussed it at length, and has referred to a series of judgments which dealt with the said principle.

A certificate issued in the name of the deceased was recovered from the possession of the appellant with the photograph of the appellant on it, this proves that the appellant wanted to pose as deceased which proves the motive for the killing.

For the afore stated reason we decide to affirm the conviction and the judgment dated 29/05/2012 and dismiss the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya J.

I Agree.

JUDGE OF THE COURT OF APPEAL