

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

In the matter of an Appeal under Articles 138 read with Article 154 (P) (6) the constitution of Sri Lanka and the Court of Appeal (Appeal from High Court) Rules 1988 against the order of the High Court Badulla.

The Hon. Attorney General

COMPLAINANT

Vs

Mudiniyalingam Manoharan

ACCUSED

Case No. CA 122/2011

HC (Badulla) Case No. 117/03

AND NOW BETWEEN

Mudiniyalingam Manoharan

ACCUSED – APPELLANT

Vs

Hon. Attorney General

COMPLAINANT – RESPONDENT

BEFORE

: Deepali Wijesundera J.

: L.U. Jayasuriya J.

COUNSEL

: Ranjith Meegaswatte for the
Accused – Appellant.

Chethiya Goonasekera D.S.G. for
the Respondent.

ARGUED ON

: 23rd January, 2018

DECIDED ON

: 02nd February, 2018

Deepali Wijesundera J.

The accused appellant was indicted in the High Court of Badulla for the murder of Puarumbu Meenachchi under section 296 of the Penal Code and also under section 380 for robbery and under section 315 of the Penal Code for causing hurt to Periyasampulle Pushparajah. After conviction he was convicted on all 3 charges and sentenced to death.

According to the case for the prosecution the appellant who is a nephew of the deceased has come to the deceased's house around 4.30 in the evening on 07/03/2001. He has borrowed a sarong from prosecution witness number one, Pushparajah and they have watched television till 1.00 a.m. and gone to sleep. While sleeping prosecution witness number one had felt a blow on his head and had woken up to hear his wife shouting and then he has fallen unconscious. Around 7 a.m. on the following day he has gained consciousness and seen his wife fallen on the floor from the bed in a pool of blood. He had noticed that the 'Thali' and another necklaces she was wearing was missing. He has looked for the appellant and found that he has gone without telling them. He has raised cries and the neighbors have come and taken the deceased and the witness to the hospital. Pushparajah has categorically stated that when the doors are closed nobody could come in without

breaking the doors. In his evidence the police officer too has stated that no outsiders could enter the house when the doors are locked. Only the deceased, witness number one and the appellant have been in the house on that night.

S.I. Priyadharshana in his evidence has stated that after recording a statements of one Ratna Indrakumara on 08/03/2001 he has visited the scene of the crime and has viewed the body of the deceased and recovered a knife from the scene of the crime and has noticed two stainless steel bowls with blood on them and has summoned an officer from the Registrar of Finger Prints. They have observed a number of finger prints and the expert witness has testified that one finger print had matched the appellant's finger prints.

The investigating officers have arrested the appellant on 12/03/2001 at Kotchchikade, Negombo. Consequent to a statement made by the appellant under Section 27 (1) of the Evidence Ordinance police have recovered the jewellery from the Hatton National Bank where he has pawned them. Prosecution Witness number 4 an officer from the said bank had testified that the said jewellery was pawned after submitting the National Identity Card bearing the number 750291708V which is the appellant's National Identity Card Number.

An officer from the National Identity Card Office has testified that the said National Identity Card bearing no. 750291708V was issued to the appellant. The jewellery recovered by the police was shown to Pushparaja and he has identified them as the necklaces worn by his wife.

The appellant in his Dock statement has stated that he borrowed the jewellery. In his Dock statement he has not denied that the jewellery was pawned at the Hatton National Bank and how his National Identity Card was given to pawn the jewellery to the Hatton National Bank Officer. He does not explain why he left the deceased's house without telling them.

The points of argument of the learned counsel for appellant was that the learned High Court Judge has misdirected herself but did not say on what. He also said that the Bank Officer did not identify the appellant in court, this is not required as his National Identity Card was proved by the prosecution. He also stated that out of four finger prints only one matched with that of the appellant. This is more than enough to establish that the appellant was present at the scene of the crime. Moreover in his Dock statement he admits the fact that he came to the deceased's house on the day in question. The last ground of argument was that the learned High Court Judge has not considered the Dock statement made by the

accused. We find that the learned High Court Judge has analysed the Dock statement and has stated that the Dock statement does not create a doubt on the prosecution case.

In Nissanka vs The State 3 SLR (2001) p.75 it was held;

“The attendant circumstances of this case S. 27 statements, consequent to which productions were discovered not only embrace the knowledge of the first accused and accused appellant as to these items, being hidden in the places from which they were detected but that it was evidence connecting them with the murder.”

For the afore stated reasons we decide to affirm the judgment dated 06/12/2011. The judgment and conviction affirmed.

Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya J.

I agree.

JUDGE OF THE COURT OF APPEAL