

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

**In the matter of an appeal under and  
in terms of Section 331 of the  
Criminal Procedure Code Act No.  
15 of 1979.**

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

**Complainant**

**Court of Appeal  
Case No. 252/2016**

**Vs,**

**Rajapakse Mudiyansele Abeysekera**

**Accused**

**And Now Between**

**Rajapakse Mudiyansele Abeysekera**

**Accused-Appellant**

**High Court of Monaragala  
Case No. HC 101/2015**

**Vs,**

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

**Complainant-Respondent**

**Before : S. Devika de L. Tennekoon, J &  
S. Thurairaja PC, J**

**Counsel : Shashika Mithuna Arcachi, AAL for the Accused-Appellant  
Anoopa de Silva, SSC for the Complainant-Respondent**

**Argued on : 14<sup>th</sup> February 2018  
Judgment on : 28<sup>th</sup> February 2018**

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## Judgment

### **S. Thurairaja PC. J**

The Accused Appellant Rajapakse Mudiyansele Abeysekara (Hereinafter sometimes referred to as The Appellant), was indicted before the High Court of Monaragala for committing the Murder of Jayaweera Muhandiramalage Rashmi Yasodara Maduwanthi. After the trial he was found guilty and sentenced to death. Being aggrieved with the said conviction and the sentence the Appellant preferred an appeal to this Court and submits following grounds of appeal. (Reproduced as in the written submissions)

1. Mistrial amounting to denial of fair trial and miscarriage of justice.
2. Credibility of the sole eye witness Anandha Pushpakumara.
3. Misdirection of Law – Consistency of the witness.
4. Misdirection of Law - Corroboration.
5. Motive
6. Misdirected question of law regarding intention
7. Misdirection of Post Conduct.

The learned Senior State Counsel filed written submissions and submits that she is supporting the conviction and the Sentence.

The Prosecution led the evidence of 8 witnesses, namely, 1. Herath Mudiyansele Ananda Pushpakumara, 2. Rajapakse Mudiyansele Nimal Rajapakse, 3. Rajapakse Mudiyansele Appuhamy, 4. Inspector of Police (IP). Welikanna Mudiyansele Amarasiri Rajapakse, 5. PC. 41827 Rajapakse Mudiyansele Amarasiri Rajapakse, 6. Kapila Arachige Manjula Wasantha Fernando, 7. Dr. A.S. Sisira Seneviratne, 8. Court Interpreter D.M.N. B. Disanayake. Three of them were lay witness and 5 were official witnesses. After the case for the Prosecution was concluded the learned Trial Judge called for the defence and the Appellant made a Dock Statement and completely denied the incident.

According to the Prosecution witnesses the incident had occurred at around 10 am on the 27<sup>th</sup> April 2012, when the deceased was answering a call on her mobile phone at the front area of the home, the Accused who came there with a club had attacked the deceased by hitting her on the head. The deceased on receiving the blows, fell on the ground, bleeding from the nose and the mouth, she was taken to the Hospital and she succumbed to her injuries. It is also on evidence that the accused was the brother in law of the deceased. The Appellant, Deceased and all witnesses are related and known to each other.

First ground of appeal of the appellant is; Mistrial amounting to denial of fair trial and miscarriage of justice. When explaining this ground, the Counsel submitted that the Attorney at Law who appeared had taken up a defence of grave and sudden provocation. There was no evidence available for him to take that defence hence the appellant was denied of a fair trial which in turn results in miscarriage of justice.

Considering this ground of appeal, we observe the following, trial proceedings at the High Court was in Sinhala and the mother tongue of the appellant was also the same. The appellant was present in Court, when the trial was taken up. Presuming his family members would have attended the courts. If the Appellant found it inappropriate he could have changed his Counsel, if not he had all the opportunity to complained to the Trial Judge. As per the brief it appears the appellant was on bail, so he had all the opportunity to take steps in this regard. There are no complaints to the Court nor to the Bar Association, it was the first time such an allegation is levelled against the Counsel. We find this is not the forum for such a complaint. Any how we carefully considered the evidence before the court and we find that the Learned Trial Judge had properly considered all materials in his judgment hence, we have no reason to intervene at this juncture. Considering all we find there is no merit in this ground of appeal.

The Second ground is that; Credibility of the sole eye witness Anandha Pushpakumara. The Counsel submits that the Eye witness has contradicted himself hence he is not

credit worthy. It is submitted that the witness had said that he was inside the house at the time of the incident. When considering the evidence, it should be considered fully and not a word of a sentence in isolation. In this case we considered the testimony of the eye witness carefully and find that this witness was consistent. The portion submitted by the Counsel was an answer given is not a contradiction per - se nor inter - se.

Other submissions made in this regard were considered by us in detail and we find there is no merit in the said ground of appeal.

The 3<sup>rd</sup> and the 4<sup>th</sup> grounds of appeal are; Misdirection of Law – Consistency of the witness and corroboration. The Appellant submits that there no consistency nor corroboration by the witnesses for the Prosecution.

There are three lay witnesses, a Judicial Medical Officer(JMO), three Police Officers and the Court Interpreter gave evidence at the trial. Eye witness Pushpakumara gave evidence and said that he saw the Appellant coming towards to the deceased who was on the phone and attacked her with a wooden plank (Club/stick) on the head once and twice again, on the other parts of the body. It was corroborated by the JMO and the death was due to a blow on the head. Other lay witnesses and the Police witnesses also observed the injury on the head and other injuries. In addition to the evidence given at the High Court trial, Lay witnesses including eye witness made statements to the Police and gave evidence at the Non-summery inquiry. They were saying what they saw and heard and they were consistent in their evidence and corroborating the portions of the others consistently.

Our law does not require corroboration but it is better if there is any that's why our Evidence ordinance does not stipulate such number of witnesses to corroborate a fact. It depends on the credibility of the evidence of the witnesses it can be one or more to prove a fact. This concept is time and again accepted by our Courts.

The 5<sup>th</sup> Ground of appeal is motive; the Counsel submits that the defence counsel who appeared at the trial stage had submitted motive for the incident, but the appellant now submits that it was not his instructions. This matter was discussed already in this judgment. Motive is not an integral requirement for the prosecution to prove, but if it is proved, it will strengthen the case for the Prosecution. On a careful perusal we find that the Attorney at Law who appeared in the trial was acted for the betterment of the appellant. He was trying to break the case for the Prosecution and creating a defence. if not, at least a mitigatory circumstances for the appellant. Considering the submissions of both counsels we do not see any merit in this ground of appeal.

The 6<sup>th</sup> Ground of appeal of the appellant is; the learned High Court Judge misdirected himself on the question of murderous intention. It is mandatory for the Prosecution to prove the ingredients of the charge, if not the appellant will be acquitted. The act of the appellant as revealed by the evidence is that the appellant came there and attacked the deceased on the head with a club. And the cause of death was due to 'Cranio-cerebral injuries following blunt force application to the back of the head'. The JMO who gave evidence also stated that the force was used when the head was free i.e. not held or on the ground (Not someone holding it or she was lying on the floor.) this corroborates with the evidence of the eye witness and the other witnesses. When a person attacking another person on the head with a club like heavy object with a force to break the skull, what will be the intention other than causing the death of the later. We carefully considered the reasons stated by the learned trial Judge and we find that there is no merit in this ground of appeal.

The final ground of appeal is the trial Judge misdirected himself with the post- conduct of the appellant. Even though the counsel submitted this ground in his written submission She had not supported at the argument stage. Considering this ground, we find that the learned High Court Judge had not considered the conduct of the appellant for conviction, but it was also considered with the statement made from the

Dock for the defence case. We also perused the reasons stated in the judgment and find that there is no merit in this ground too.

After careful consideration of the submissions, evidence and written submissions we find that there is no merit in the grounds of appeal, hence we find no reason to interfere with the findings of the learned Trial Judge and dismiss the appeal.

Accordingly, we affirm Conviction and the sentence and dismiss the appeal.

**JUDGE OF THE COURT OF APPEAL**

**S. Devika de L. Tennekoon, J**  
I agree,

**JUDGE OF THE COURT OF APPEAL**