

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

In the matter of an Appeal against an order of the High Court under Section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

Raveenthiran Suresh

**ACCUSED – APPELLANT**

**Case No. CA 36/2014**

**HC (Jaffna) Case No. HC 1484/2011**

**VS**

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

**RESPONDENT**

**BEFORE**

: Deepali Wijesundera J.

: Achala Wengappuli J.

**COUNSEL**

: Indika Mallawaarachchi for the  
Accused – Appellant

P. Kumararatnam D.S.G. for the  
Attorney - General

**ARGUED ON**

: 16<sup>th</sup> May, 2018

**DECIDED ON**

: 25<sup>th</sup> May, 2018

**Deepali Wijesundera J.**

The appellant was indicted in the High Court of Jaffna for the murder of his wife Amirthalingam Suya punishable under section 296 of the Penal Code. After trial he was convicted and sentenced to death on 06/03/2014. This appeal is against this said conviction and sentence.

The learned counsel for the appellant submitted that the circumstantial evidence placed before the High Court by the prosecution was not adequate to convict the accused and that the Learned High Court Judge failed to apply the principles governing the evaluation of evidence. The appellant's counsel also stated that the Learned High Court Judge erred when applying the principle relating to section 27 of the Evidence Ordinance and also applying the last seen theory and Ellenborough principle.

The story of the prosecution is that the appellant and the deceased were husband and wife and the deceased was 9 months pregnant at the time of the incident. There had been a cyclone in the area and residents of the area have taken refuge in a nearby church and temple. The appellant has made a complaint to police to say the deceased his wife

has gone missing. The father and the brother of the deceased along with the appellant and some others have gone in search of the deceased. Both the brother and father have given evidence to say that the appellant prevented them from going towards the place where the deceased's body was later found.

The father of the deceased has given evidence to say that when he asked about the deceased from the appellant he has said she was at home whereas when he went there she was not there. Thereafter the appellant had said that she had gone to her brother's house. It has also transpired in evidence that the appellant had constant quarrels with the deceased over her jewellery. The gold chain and bangle was recovered after the appellant's statement was recorded by the police under section 27 of the Evidence Ordinance. The jewellery was identified as the deceased's jewellery by the father and brother. The medical evidence revealed that the deceased had died due to strangulation, and not due to drowning. The body had been dumped in water after being strangled. The appellant had remained silent after the prosecution case was closed.

The jewellery of the deceased was recovered by the police after the appellant made a statement and showed the place they were hidden, this has been done under section 27 of the Evidence Ordinance.

The argument of the appellant's counsel was that the finding that the deceased was last seen with the appellant is a factual misdirection of the learned High Court Judge. And also submitted that the last seen theory can not be considered as an incriminating item of circumstantial evidence as they were married. It was also stated that the prosecution failed to prove there was no third party present, at the time of the incident.

Learned counsel cited the judgment in **Don Sunny vs The AG (1998) 2 SLR 1, R vs Clarke (1995) 98 A Crim R 226, R Akpan vs State (2001) FW1R (pt.56) 735** and argued that the Learned High Court Judge has failed to apply the principles governing the circumstantial evidence and has burdened the appellant to explain the disappearance of the deceased.

When the prosecution has proved its case and a finger is pointed at the accused appellant accusing him of the charge it is a requirement of the accused to give the court an explanation. The appellant had chosen to remain silent.

The learned Deputy Solicitor General argued that the appellant had a burden to explain to court the whereabouts of his wife since she was last seen with him. The respondent cited the judgment in **Dissanayake Appuhamilage Amarasiri Dissanayake vs The AG S.C. appeal 232/14** and stated that it is a reasonable and justifiable conclusion that the appellant refrains from explaining because the by doing so it would have adversely operate to his interests.

**In Dissanayake Appuhamilage Amarasiri vs The AG it was stated thus;**

*“the appellant in his short dock statement had not offered any explanation with regard to the strong and incriminating evidence led against him. When a strong prima facie case has been made out by the prosecution the appellant has, though he has not been bound by law to offer any explanation, failed and omitted to explain the strong circumstantial evidence let against him.”*

In the instant case the evidence placed before the High Court clearly showed that there had been constant arguments between the deceased and the appellant and that he wanted the deceased's jewellery. The said jewellery was recovered after a statement was made by the appellant and section 27 recovery was made by the police. Had he not known about the deceased's whereabouts' how he did get hold of her

jewellery? It had also transpired at the trial that he tried to mislead the search party who went in search of the deceased. He had told two different stories to the deceased's father when he inquired about the deceased. This shows that he had tried to divert his attention from the deceased.

On perusal of the learned High Court Judge's judgment and the evidence placed before the High Court it is evident that the prosecution has proved its case beyond reasonable doubt that the appellant has caused the death of the deceased and the Learned High Court Judge had correctly evaluated the evidence placed before the High Court.

For the afore stated reasons we are not inclined to set aside a well considered judgment. We affirm the judgment dated 16/03/2014 and the sentence of the High Court. We accordingly dismiss the appeal.

Appeal is dismissed.

**JUDGE OF THE COURT OF APPEAL**

**Achala Wengappuli J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**