

**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

Randunupura Dewayalage Jayadewa.

**Court of Appeal
Case No. CA 36/2017**

Accused

Vs.

And Now Between

Randunupura Dewayalage Jayadewa.

Accused-Appellant

**High Court of Kurunegala.
Case No. HCC 024/ 2009.**

Vs,

The Attorney General of the Democratic
Socialist Republic of Sri Lanka

Complainant-Respondent

**Before : S. Thurairaja PC, J &
A.L. Shiran Gooneratne J**

**Counsel : Nihara Randeniya Attorney at Law for the Appellant.
H. Jayasundara SDSG for the Respondent.**

**Written Submissions : Accused Appellant - 19th October 2017.
Complainant Respondent-19th October 2017.**

Argument on : 20th July 2018.

Judgment on : 26th July 2018.

JUDGMENT

S. Thurairaja, PC. J

The Accused-Appellant (hereinafter sometimes referred to as the Appellant) was indicted before the High Court of Kurunegala for committing Murder of Sakraye Muthunayake Wickramasinghe an offence punishable under Section 296 of the Penal Code. After the trial the Appellant was found guilty and sentenced to death. Being aggrieved with the said conviction and the sentence the Accused-Appellant preferred an appeal to the Court of Appeal and submitted following grounds of appeal. It is placed on record that the original appeal and the written submission has different grounds of appeal. But the Counsel at the time of argument submitted that he will be confining to the following grounds of appeal.

- I. Prosecution did not prove the case beyond reasonable doubt.
- II. Learned Trial Judge failed to consider principles of Circumstantial Evidence.
- III. Dock statement of the Appellant was not properly considered.

The prosecution led the evidence of Parayalage Gedara Wickramasinghe, Marasinghe Dewage Gunathilake, Judicial Medical Officer, Sunil Piyasena Angampola Hewage, Chief Inspector of Police Muthukuda Walawwe Gunarathna Bandara Ekanayake and Sub Inspector of Police Rangana Ralalage Gunasekera.

It will be appropriate to mention about facts of the case. According to the 1st witness for the prosecution P.G. Wickramasinghe says that the Accused had told him, “මුත්ත මරලා වැළඳුලා කාටවත් කියන්න එපා” (Muththa is killed and buried. Don't tell anybody).

Then he had asked why are you telling this to me. In reply the Appellant had told him, “ඊට පස්සෙ ගඩොල් කපන්න කපපු වලට දාලා වැළඹුවා කිව්වා” (I have buried it in the pit of which, you dug up for making of bricks).

The witness did not take it serious but he had gone and told this to cousin Marasinghe Dewage Gunatillake. Thereafter he had gone and inspected the pit, of which he had dug up on the river bed of the dried river (මළ ඇල). There he had found the pit was newly filled with earth. He had checked in the village of the where about of the deceased. He understood that the deceased was missing for some time. Thereafter witness Wickramasinghe and his cousin had decided to inform this to the Police. Police received the complain and visited the place of which was pointed out by the witness. There they have observed a pit which has been filled and closed with earth and few fingers were jutting out and covered with ground flies. Police got alerted and conducted proper investigations, examined the body and subjected the deceased to a post-mortem. Judicial Medical Officer had found the deceased had received an injury on the head which resulted a depressed comminute fracture situated on the left parietal bones. The cause of the death was due to a head injury by a blunt weapon.

The Appellant was arrested by the Police and mamoty with a long handle was recovered on a Section 27(1) statement made by him.

Considering the 1st and 2nd grounds of appeal together, we find that there is no eye witness to the incident. It is the Appellant who voluntarily told this incident to the 1st Prosecution witness. Further the Appellant had revealed where the body was buried.

The Witness Wickramasinghe neither a Police Officer, nor person in authority, also he is not a person who had interrogated the appellant. It is revealed that the witness had no interest on the deceased. Further he has not induced the Appellant to reveal any information about the deceased. It appears that the Appellant independently and voluntarily confessed the information to the witness Wickramasinghe. We have

no reason to disbelieve the said witness. His evidence was tested and proven to be accurate.

Considering the entire case we find that the Appellant had told the deceased was killed and buried at a pit at the river bed. The witness went and found that the pit was newly filled with earth and the deceased was not to be seen in the village. The JMO is of the view that the death was due to an injury caused to the head and that said injury would have been caused by a blunt weapon. The Appellant made a Section 27(1) statement to the Police and a marmot with a long handle was recovered. Considering the above facts it points at the Appellant that he had committed this offence or he owes an explanation of his conduct. The Appellant had not explained nor offered a valid explanation. It is noted that the Appellant has made a dock statement with a facts denial.

In **Padala Veera Reddy vs. State of AP and others [1989 Ind law SC 31]** it was laid down that when a case rests upon circumstantial evidence such evidence must satisfy the following tests.

1. *The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;*
2. *Those circumstances should*
3. *be of a definite tendency unerringly pointing towards the guilt of the accused;*
4. *The circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and;*
5. *The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."*

In **Samantha vs. Republic of Sri Lanka [2010 SLLR 236]** the Court stated that,

"In a case of Circumstantial Evidence, if an inference of guilt is to be drawn against the accused such inference must be the one and only irresistible and and inescapable inference that the accused committed the crime"

Considering the facts of this case, evidence and the defence version there is no merit on the 1st and 2nd grounds of Appeal.

The last ground of appeal by the Appellant is that dock statement was not properly considered by the Learned Trial Judge. The Prosecution closed their case and the defence was called on the 2nd of April 2015. The Appellant had more time to put forward in his defence. Time granted till 25th June 2015. On that date the Defence Counsel moved further time. Time granted till 25th of August 2015. On that date also further date obtained and time granted till 12th November 2015. Once again a date was moved and time was granted till 19th May 2016. Further date moved till 2nd of June 2016. On that date the Appellant made a statement from the dock,

"මම මෙම සාක්ෂිකරුවන්ට කිසිම දෙයක් කියලත් නැ. මම දන්නෙත් නැ. මම චෝදනාවට නිවැරදිකරා ඔව කියා සිටිනවා. මට කිමට ඇත්තේ එපමණයි."

(Translation of this is: He denied saying anything to the witnesses he doesn't know anything about it. Further he said that he is not guilty).

The Learned Trial Judge had analysed his Dock Statement in the light of the strong cogent evidence produced by the prosecution at the Trial. She had come to a conclusion that the Dock Statement had not caused any doubt in the case for prosecution. Further she had considered and disposed the acceptability of the Dock Statement.

Accordingly this ground of appeal also fails on its own merits.

We carefully considered evidence, written and oral submissions of the Counsels. We are of the view that the Prosecution had proved, the Case beyond reasonable doubt. We

have no reason to interfere with the said findings. Accordingly, we dismiss the appeal
affirm the conviction and sentence.

Appeal Dismissed.

JUDGE OF THE COURT OF APPEAL

A.L. Shiran Gooneratne, J

I agree,

JUDGE OF THE COURT OF APPEAL