

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

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

C.A.No. 116/2009

H.C. Trincomalee No.HCT/139/2006

Hayathu Mohamed Abdul Azeez  
Accused-Appellant

Vs.

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

Respondent

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BEFORE : DEEPALI WIJESUNDERA, J.  
ACHALA WENGAPPULI J.

COUNSEL : Dushantha Kularatne (Assigned Counsel) for the  
Accused-Appellant.  
P. Kumararatnam D.S.G for the respondent

ARGUED ON : 10.07.2018

DECIDED ON : 31<sup>st</sup> August, 2018

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ACHALA WENGAPPULI J.

The Accused-Appellant (hereinafter referred to as the "Appellant") is indicted for committing the offence of murder on *Mohammed Kadeeja Umma*. After a trial without a jury, the High Court of Trincomalee found him guilty of murder and was sentenced to death. In preferring this appeal, the Appellant seeks to set aside said conviction and sentence.

The prosecution presented a case based on circumstantial evidence against the Appellant.

In support of the appeal, learned Counsel for the Appellant submitted that the trial Court had erroneously convicted his client since the items of circumstantial evidence are insufficient to establish his guilt. He relied on principles laid down in the judgment of *King v Appuhamy* 46 N.L.R. 128, which are applicable to prosecutions presented on circumstantial evidence.

This ground of appeal requires an examination of the items of circumstantial evidence led by the prosecution before the trial Court.

The evidence presented before the trial Court reveals that the deceased is married to the Appellant and at the time of her death was living with him and their married daughter. The house they lived in consists of the front part and the hall with two rooms. The front part was used by the Appellant to run a boutique and the other section of the house was occupied by them. Only the Appellant, the deceased and their daughter were living in that house and the doors are locked from inside.

On the night of 11.04.2003, the deceased's daughter woke up from her sleep as she felt thirsty. She went to the front part of the house to drink some water and saw her mother fallen on the ground, just outside of the front door, facing up. She noted blood where the deceased was fallen. She then shouted for her father the Appellant who was sleeping on a mat close to the place where the deceased was. She had to wake him up from his sleep. Then the Appellant carried the deceased and cried. She states that her mother was stabbed but did not know who stabbed her.

When she raised cries, her brother and neighbours have gathered around and took the deceased to Hospital where she was pronounced dead. The post mortem examination revealed that she has suffered a single stab injury above her right breast which penetrated 12 centimeters into her

chest cavity with a downward slant causing injuries to her lung and heart. Her death was due to excessive bleeding and damaged heart. The medical officer was of the opinion that her death would have been instantaneous considering the injury to her heart. He further expressed opinion that the knife recovered upon the Appellants pointing to it could have caused the single stab injury which resulted in the death of the deceased.

When the Police visited the house of the Appellant the next morning after the death of the deceased was reported by the Hospital to them, investigating officer observed that the hall of the house had been washed just before he arrived, and he took charge of several items of male clothing either washed or soaked in soapy water. These clothing had stains like blood on them and the Appellant pointed out the knife in the kitchen. He also noted blood like stains in the walls of the hall in which the Appellant slept at the time of discovery of the deceased by her daughter.

When the trial Court ruled that the Appellant had a case to answer, he made a statement from the dock. He denied any involvement with the death of the deceased. He stated that the deceased was sad that her daughter's marriage was heading for trouble and repeatedly claimed she would commit suicide. He claimed that "when I looked, my wife was fallen on top of the knife and she was bleeding".

The trial Court correctly rejected his statement from the dock. It is clear that the claim of falling on the knife to commit suicide is almost a near impossibility and is clearly an afterthought since it was not suggested either to the medical officer or to his daughter. The daughter's evidence was that she woke him up. But the Appellant claims that his wife fell onto a knife, implying that he had witnessed the alleged act of suicide/accident.

The trial Court had itemised the several items of circumstantial evidence presented before it by the prosecution. When the prosecution evidence is considered in its entirety, as the trial Court correctly did, it satisfies the criterion laid down in *King v Appuhamy* (supra) as it was held,

*" ... in order to justify the inference of guilt from purely circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt."*

In a more recent judgment of *Karunaratne v Attorney General* (2005)2 Sri L.R. 233, this Court re-emphasised the following principles;

*"In the case of State of V.P. vs Dr. Ravindra Prakash Mittal (1992) 2 SCJ 549, it was held that the essential ingredients to prove guilt of an accused person by circumstantial evidence are:-*

1. *The circumstances from which the conclusion was drawn should be fully proved;*
2. *The circumstances should be conclusive in nature;*
3. *All the facts so established should be consistent with the hypothesis of guilt and inconsistent with innocence;*
4. *The circumstance should; to a moral certainty, exclude the possibility of guilt of any person other than the accused.*

*In the case of Podi Singho vs. King 53 N.L.R. 49 it held that "in a case of circumstantial evidence it is the duty of the trial judge to tell the jury that such evidence must be totally inconsistent with the innocence of the accused and must only be consistent with his guilty. In the case of King Vs. Appuhamy 46 N.L.R. 128, Keuneman J. held that in order to justify the inference of guilt purely on circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. "In the case of State of Tamil Nadu vs Rajendran 1999 Cri. L.J. 4552, justice Pittanaik observed that" In a case of circumstantial evidence when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstance to make it complete"*

The Apex Court, in its judgment of S.C. Appeal 232/2014 - S.C. M. of 11.07.2017, quoted the same passage from the judgment of Supreme

Court of India in *Tamil Nadu v Rajendran* (1999) Cr. L.J. 4552 as the Court of Appeal did in *Karunaratne v Attorney General*.

The prosecution evidence clearly points that only the Appellant, the deceased and their daughter was in their house that night. The doors were locked from within. When the witness got up in the night, the deceased had already received her fatal injury and was lying outside the house on the steps. The Appellant was apparently fast asleep as she had to wake him up. The medical evidence establishes that the stab injury could not be self-inflicted. When the deceased was rushed to hospital, the Appellant remained behind. He did not reveal to any of the persons who gathered around that the deceased fell on the knife. In fact, his daughter claims her mother was "stabbed".

The blood like stains in the hall clearly points to the inference that the deceased had received her stab injury inside the house. However, the body was found outside of the house. There was no challenge by the Appellant that the knife produced by the prosecution is not the one which caused the stab injury. Appellant knew where the knife was and in fact it is his claim in cross examination of the investigating officer. The dentures worn by the deceased was found lying on a table broken and soiled.

All these circumstances points to the position that the deceased was stabbed inside the house and was placed outside by someone. That

someone is the Appellant who pretended to be fast asleep, when his daughter came out in the night. The Appellant has lied in his dock statement by introducing a fiction that she fell on the knife. This is after the medical witness clearly excluded suicide by self-inflicted stab wound.

It is obvious that almost all the lay witnesses were reluctant witnesses who provided evasive answers in relation to the conduct of the Appellant. Despite their reluctance, sufficient items of circumstances were elicited by the prosecution, justifying an inference of guilt against the Appellant. When he lied in Court, that fact provided "*an additional link in the chain of circumstances*" as per *Tamil Nadu v Rajendran*.

In view of the above considerations, we are of the firm view that the conviction and sentence imposed on the Appellant should be affirmed. His appeal is accordingly dismissed.

JUDGE OF THE COURT OF APPEAL

DEEPALI WIJESUNDERA, J.

I agree.

JUDGE OF THE COURT OF APPEAL