

**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 sec. 331 of the Code of Criminal Procedure Act No. 15 of 1979.

T.H. Anandasiri

ACCUSED - APPELLANT

Case No. CA 135/2008

HC (Matara) Case No. HC 76/2005 **VS**

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

RESPONDENT

BEFORE

: Deepali Wijesundera J.

: Achala Wengappuli J.

COUNSEL

: Indika Mallawarachchi with

K. Kugaraja for Accused-Appellant

Madawa Tennakoon DSG for the

Respondent.

ARGUED ON

: 10th September, 2018

DECIDED ON

: 21st September, 2018

Deepali Wijesundera J.

The appellant was indicted for murder under section 296 of the Penal Code and after trial was convicted and sentence to death by the learned High Court Judge of Matara. This appeal is against the said conviction and sentence.

The deceased and prosecution witness number one Hemasiri, his wife (Renuka Damayanthi prosecution witness number 7) and their child have been walking on either side of the road towards one Ajantha's house in the evening. They have been exchanging small talk while walking and suddenly the deceased had fell silent and Hemasiri has turned back to see why and had seen the appellant pulling a knife from the deceased's abdomen, the deceased had run a few feet and had fallen near Ajantha's House. The first witness for the prosecution did not shout out of fear and has gone home but told the mother of the deceased who has informed the police. Hemasiri has made a statement to the police on the following day, after the appellant was arrested.

Renuka Damayanthi in her evidence has stated that she saw the deceased being stabbed. These witnesses are the only eye witnesses to the incident. They have been cross examined and no contradictions were marked. Their evidence was corroborated by the evidence of the Judicial Medical Officer, prosecution witness number three, who said there was one stab injury on the deceased and an abrasion on the right hip bone which could be due to a fall. He has stated that death was instant in this kind of a stab injury. Doctor was shown the knife recovered by a sec. 27 recovery and he has said that it could cause the said injury.

The appellant's counsel argued that Hemasiri's statement is belated and that he failed to tell the police what he saw immediately after the incident, and that the learned High Court Judge has not taken this into consideration. Hemasiri in his evidence has stated that he did not go to the police station immediately out of fear and that his home folk prevented him from going out that night. But he has given a statement to the police soon after the appellant was arrested. Although the appellant's counsel stated that prosecution witness Hemasiri's evidence was not corroborated by other witnesses, this is not so, his wife who is also an eye witness had seen the appellant stabbing the deceased and her evidence corroborates Hemasiri's evidence.

The appellant's learned counsel argued that contradictions inter-se between prosecution witness number one and the police witness Wijegunaratne with regard to the scene of the crime throws a doubt on the prosecution case. This is not correct the scene of the crime is described as in front of the Ajantha's house which both witnesses described in evidence this does not cast a doubt on the prosecution evidence. The defence had failed to mark a single contradiction in witness number one's evidence.

The learned counsel for the appellant argued that the learned High Court Judge failed to consider the evidence favourable to the appellant and thereby denied a fair trial to the appellant. This is not so on perusal of the judgment. We find that in pages 25 and 26 he has analysed the dock statement of the accused and right throughout the judgment, he has considered both sides.

The learned counsel for the appellant cited the judgment in **Ranasinghe vs Attorney General 2007 1 SLR 218** regarding the section 27 recovery. In this case it has been held that;

"The conclusions reached by the trial Judge about the recovery of the iron club removed from a well is erroneous

since discovery is consequence of a section 27 statement only leads to the conclusion that the accused had the knowledge as to the weapon being kept at the place from which it was detected."

In the instant case the appellant on his own statement has said he can show the place where the knife was hidden. This finding does not apply to the instant case.

It was also held in **Ranasinghe vs AG**.

"The trial court must declare its reasons for the acceptance of the prosecution evidence and the rejection of the defence evidence."

This is exactly what the trial judge has done. There is no merit in the grounds of appeal urged by the appellant.

For the afore stated reasons we decide to affirm the judgment and conviction dated 02/09/2008 of the learned High Court Judge of Matara and dismiss the appeal.

Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Wengappuli J.

I agree.

JUDGE OF THE COURT OF APPEAL