

**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 read with Article 138(1)  
of the Constitution of the Republic  
of Sri Lanka.**

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

**Complainant**

Yogarajah Sathees alias Jeagan

**Court of Appeal  
Case No. CA 26/2016**

**Accused**

**Vs.**

**And Now Between**

Yogarajah Sathees alias Jeagan

**Accused-Appellant**

**High Court of Jaffna  
Case No. HC 1622/ 2013**

**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 : R.H. Weerasena Attorney-at-Law for the Appellant.  
P. Kumararatnam SDSG for the Respondent.**

**Written Submissions** : Accused Appellant - 28<sup>th</sup> February 2018.  
Complainant Respondent-8<sup>th</sup> June 2018.

**Argument on** : 11<sup>th</sup> October 2018.

**Judgment on** : 9<sup>th</sup> November 2018

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## **JUDGMENT**

### **S. Thuraija, PC. J**

The Accused- Appellant, Yogarajah Sathees alias Jeagan (hereinafter sometimes called and referred to as the Appellant) was indicted by the honourable Attorney General for committing the murder of Kandasamy Ithayan. After the trial the Appellant was convicted and sentenced to death. Being aggrieved with the said conviction and the sentence the Appellant preferred this appeal to the Court of Appeal and submits the following grounds of appeal.

- 1) Medical evidence does not support the injury on the deceased.
- 2) The prosecution witness no.2 evidence was uncorroborated.
- 3) Dying deposition is not accurate.
- 4) Prosecution witness no.2 and 4 are contradicting each other.
- 5) The High Court Judge misled himself using untold evidence of the doctor (sic).
- 6) Confessionary part of the accused's statement was not considered.
- 7) Evidence of the Appellant was not properly analysed and considered.

The prosecution led the evidence of Judicial Medical Officer, Eswary Somasundaram, Thangarasa Nilan, Inspector of Police Kankanige Nimal Perera, Chief Inspector of Police Mahinda Padmakumara Waidyathilaka, Chief Inspector of Police Arampola Mudiyanseelage Priyantha Ajith and Nishantha Tennakoon (Mudliyar of the Court).

According to the prosecution the incident had occurred on the 5<sup>th</sup> of January 2011 between 1.30 p.m. to 2.00 p.m. (noon). Prosecution witness no.2 Eeswary Somasundaram, who was the tenant of the deceased, had gone to the washroom. When she was returning, she had seen the Appellant clad in a black coloured jacket, armed with a knife, leaving the house. There she had seen the deceased was lying in a pool of blood with bleeding injuries. When she rushed to him the deceased had said, "Aiyo, Jegan stabbed me..". She knew that the Accused who was in the same neighbourhood and the deceased was the brother in law of the accused.

Considering the 1<sup>st</sup> ground of appeal that, Medical evidence does not support the injury on the deceased; the main witness had seen the accused near the scene of crime with the knife in hand. The said knife was recovered under Section 27(1) statement and shown to the Judicial Medical Officer (JMO). The JMO had clearly opined that the fatal injury could have caused with that type of weapon. Carefully perusing the evidence before the Court and the evidence of the JMO strongly supported the version of the deceased, main witness and the others. Therefore I find that there is no merit in this ground of appeal.

The second ground of appeal is that the prosecution witness No.2 evidence was uncorroborated. The prosecution witness No.2, Eeswaran Somasundaram gave evidence and revealed to court what she heard and what she saw. She was under extensive cross-examination and not contradicted on any material facts. Further her evidence was amply corroborated by the Judicial Medical Officer and the police investigators.

Under Section 134 of the Evidence Ordinance the prosecution does not require to prove a fact with certain number of witnesses. It can be even proved with one witness. In **King vs N.S.A. Fernando (46 NLR 255)** this principle affirmed and stated that, "*testimony must be weighed and not counted*".

In **Sumanasena v. Attorney General [1999 SLLR (3) 137]** held that,

*"Evidence must not be counted but weighed and the evidence of a single solitary witness if cogent and impressive could be acted upon by a Court of law.*

In **Welimunige John v. State (76 NLR 488)** , G.P.A. De Silva J. observed that,

*"No particular number of witnesses shall be required for the proof of any fact. The adequacy of one witness to prove a fact in terms of Section 134 of the Evidence Ordinance will hold good in a case where only one witness is available to the party desiring to establish a fact, and where only one witness is called even though others are also available."*

I agree with the above judgments and re-iterate that the evidence must be weighed and not counted. Considering the above facts, I found that the 2<sup>nd</sup> ground of appeal also fails on its own merits.

The 3<sup>rd</sup> ground appeal is that dying deposition was not accurate. Prosecution witness No.2 is the one who heard the dying declaration of the deceased. The wordings were not contradicted at any point. The counsel submits to Court that it cannot be accepted because the others did not hear that.

It is evidenced before the Trial Court that prosecution witness No.2 went first and her son prosecution witness No.4 (Thangarasa Nilan) came later. So, what she heard would not have been heard by the others. Further this witness was consistent throughout and never contradicted at any time.

The 4<sup>th</sup> ground of appeal is that the prosecution witness No.2 and 4 are contradicting each other. Prosecution witness No.2 and 4 are mother and son respectively.

Prosecution witness No.2 was at home at the time of the incident. Prosecution witness No.4 was outside of the house and he came after a little while. On careful perusal of the evidence of both witnesses, I do not find any contradictions *per se* and *inter se* with these two witnesses. Further this was never substantially raised before the Trial Judge. After carefully considering the evidence before the court, I find that there is no merit in this ground of appeal.

The 5<sup>th</sup> ground of appeal is that the High Court Judge misleads himself using untold evidence of the doctor. At the argument stage perusing the original brief in Tamil and the translations. The Learned Counsel for the appellant withdrew this ground of appeal.

The 6<sup>th</sup> ground of appeal is that the confessional part of the statement of the Appellant was considered. The knife was recovered with the help of a Section 27 (1) statement. According to the evidence it says "*I took the knife to home it is there in the box in the room of my house. I can show it to the police*". When we read this portion of the statement we do not see any confession directly or indirectly. The Learned Trial Judge had discussed the acceptability of this and come to his own findings and he had given reasons in the judgement. I do not find any inappropriateness of the decision of the Learned Trial Judge. Further considering statement and other materials before the Court I find there is no merit in this ground of appeal.

The last ground of appeal is that the evidence of the appellant was not properly analysed and considered. The Learned Trial Judge had given reasons for his findings in 44 pages. He had carefully analysed the evidence given by the appellant. I do not see there is any merit in this ground of appeal since the Learned Trial Judge had adequately considered the evidence of the appellant; I find that there is no merit in this ground of appeal.

We carefully perused the submissions and the evidence before the Court. We do not want to disturb the findings of the Learned Trial Judge. On a careful scrutinization of the evidence before the trial judge, we are convinced that there is sufficient material for the trial judge to come to a conclusion.

G.P.S. de Silva, C.J. in **Alwis vs. Piyasena Fernando [1993 (1) SLR 119]** held that,

*"it is well established that findings of primary facts by a trial Judge who hears and sees witnesses are not to be lightly disturbed on appeal."*

In **King vs. Rankira (42 NLR 145)** held that,

*"the Court of Appeal will not interfere with the judicial discretion of a judge in passing sentence unless that discretion has been exercised on a wrong principle."*

We find that the findings of the Learned Trial Judge has warranted in the given circumstances. Therefore, we conclude that there is no merit in all these grounds of appeal. Accordingly, we dismiss the appeal and affirm the conviction and the sentence.

**Appeal Dismissed.**

**JUDGE OF THE COURT OF APPEAL**

**A.L. Shiran Gooneratne, J**

I agree,

**JUDGE OF THE COURT OF APPEAL**