

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

In the matter of an Appeal against the
section 15 of the Judicature Act No. 02 of
1978 and section 331 of the Code of
Procedure Act No. 15 of 1979.

The Attorney General
Attorney General's Department
Colombo 12.

COMPLAINANT

Vs

1. Pothupitiyage Nalin Sampath
2. Pothupitiyage Ranil Royal Janaka
(dead)
3. Pothupitiyage Don Frandasious
Derrick Appuhamy (dead)
4. Pothupitiyage Tyronne Saman
Kumara

ACCUSED

Case No. CA 241/2016

HC (Chilaw) Case No. HC 28/1999

AND NOW BETWEEN

Pothupitiyage Nalin Sampath (1A)

ACCUSED – APPELLANT

Vs

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

COMPLAINANT – RESPONDENT

BEFORE

: Deepali Wijesundera J.

: Achala Wengappuli J.

COUNSEL

: Dharmasiri Karunaratne for the
Accused – Appellant

H. Jayasundera S.D.S.G. for the
Attorney - General

ARGUED ON

: 07th November, 2018

DECIDED ON

: 16th November, 2018

Deepali Wijesundera J.

The appellant along with three others were indicted in the High Court of Chilaw under section 296 of the Penal Code for murder. Before the trial commenced second and third accused have died, and the trial was against the first and fourth accused. After trial fourth accused was acquitted and the first accused was convicted for murder and was sentenced to death.

The story of the prosecution was that the deceased and the appellant were from the same neighborhood. On the day prior to the incident Jude Nishantha the sole eye witness to this incident his younger brother and pregnant mother have been watching TV around 8.30 p.m.

when the appellant and the other accused have stormed into their house looking for the deceased. As the deceased was not there the appellant had attacked his pregnant wife on the back with a club. Jude Nishantha had run out of the house and the second accused had chased him. He had returned home after making a complaint to the police to find that the neighbors have taken his mother to the Marawila hospital.

On the day of the incident Jude Nishantha along with his father had gone to see the mother in hospital and after they returned home, the deceased had asked Jude to bring food for them. When Jude Nishantha was about to leave the house, the four accused have stormed into their house armed with a swords a Katty and clubs. The appellant had attacked Nishantha with a Katty and on hearing the noise the deceased had come out of the house. The appellant had attacked the deceased with the Katty on the back after that they have chased Jude Nishantha and he had run to the police station. As he ran away he has not seen what happened after the initial attack on the deceased. When he returned he has found his father fallen on the ground a few houses away. The reason for the attack had been, their dog biting the daughter of the third accused who is also the sister of the other three. The said dog was later found in the premises killed by cutting into three pieces which is the subsequent conduct of the accused which shows the common murderous intention they had.

Witness Mary Janet a neighbor of the deceased has stated in evidence that she heard male voice shouting "මරණවා කපනවා" and when she peeped through the fence she had seen the four accused running towards the deceased's house, armed with clubs and kattys. Later she has heard the cries of the deceased's son. Sometime later the deceased had come towards her house breaking the fence and fallen inside. Later the police jeep had come and taken him to hospital. She has later heard that the dog belonging to the deceased had been cut into three pieces. This witness had identified the katty marked P1 as the katty the appellant was carrying that day.

The police witnesses have observed the trail of blood from the deceased's house to the house where he was found fallen. The postmortem report corroborated the evidence of Mary Janet who said the deceased had injuries on his back.

The appellant made a dock statement stating that the day prior to the incident the deceased came to his house and cut him with a sword and when he gained consciousness he was in hospital. The learned counsel argued that the injuries on the appellant was not considered by the learned High Court Judge and that he failed to consider his dock statement.

This point of argument of the counsel fails as they failed to put to the witness at the High Court that the appellant was injured on the previous day. It was for the first time that he mentioned this in his dock statement. The Learned High Court Judge quite correctly rejected the dock statement.

The next point of argument of the appellant's counsel was that the learned High Court Judge failed to evaluate the evidence properly. On perusal of the learned High Court Judge's judgment we find that he has carefully analysed the prosecution evidence. Mary Janet is an independent witness and her evidence on the injuries of the deceased corroborates the medical evidence.

All grounds of appeal stated by the counsel have failed. The learned High Court Judge has analysed the evidence and correctly rejected the appellant's dock statement. Which was on evidence not suggested to the witnesses at the trial.

This is not a case on circumstantial evidence as stated by the counsel for the appellant. There is an eye witness who's evidence was corroborated by Mary Janet's evidence. This appeal has no merit.

For the afore stated reasons we decided to affirm the judgment and conviction dated 24/10/2016 of the High Court of Chilaw. Appeal is dismissed.

Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Achala Wengappuli J.

I agree.

JUDGE OF THE COURT OF APPEAL