# 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 333(1) of the Criminal Procedure Code Act No. 15 of 1979 read with Article 138(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka.**

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

**Complainant**

Welegoda Don Premasiri.

**Court of Appeal**
**Case No. CA 116/2016**

**Accused**

**Vs,**

**And Now Between**

Welegoda Don Premasiri.

**Accused-Appellant**

**High Court of Kuliyapitiya**
**Case No. HC 238/ 2004**

**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** : Weerasena Rana Hewa Attorney-at-Law for the Appellant.

ASG Ayesha Jinasena PC with Lakmali Dissanayake SC for the Respondent.

**Written Submissions** : Accused Appellant - 8th November 2018.

Complainant Respondent- 20th February 2018.

**Argument on** : 25th October 2018.

**Judgment on** : 21st November 2018.

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**JUDGMENT**

**S. Thurairaja, PC. J**

This is an appeal by the Accused – Appellant, Welegoda Don Premasiri (hereinafter sometimes referred to as the Appellant), against the convictions on double murder. The Appellant was indicted at the High Court of Kuliyapitiya by the honourable Attorney General for committing the murders of Sandara Sadaralage Rupika Chandani and Upasaka Lekamlage Wijewardene. After the trial the Accused-Appellant was found guilty on both counts and sentenced to death.

Being aggrieved with the said conviction and sentence the Appellant had preferred this appeal to the Court of Appeal and submitted following grounds of appeal. In the original appeal he had submitted the following grounds of appeal (the following are re-produced from the petition of appeal of the Accused-Appellant).

1) Trial conducted without a jury is unfavourable.
2) The evidence given by the PW1 in the non-summary inquiry cast a reasonable doubt in the prosecution case.
3) Learned High Court Judge misdirected himself by not considering the material inter se contradictions of the prosecution version.

4) Prosecution does not proved the case beyond reasonable doubt
5) To prove the innocence of the Appellant with the assistance of eminent Attorney-at- Law before the Court of Appeal.

The Counsel for the Appellant filed a written submission; regrettably there are no specific grounds of appeal submitted by the Appellant. Counsel who argued this case had submitted two (2) grounds of appeal and confined his argument to those grounds of appeal.

1) Dying deposition was uncorroborated and acting on the said deposition is wrong.
2) The dock statement was not considered by the Learned High Court Judge.

The prosecution led the evidence of Judicial Medical Officer (JMO) Dr. Mathurawa Mudiyanselage Ajith Jayasena (JMO), Wickramanayake Pathiranalage Anulawathie Menike, Edirimanne Arachchilage Chandima Wijewardane, Thennakoon Mudiyanselage Dayani Dhammika Rupasinghe, Kumaragamage Chandrani, Judicial Medical Officer (JMO) Asarappulige Dayapala, Edirimanne Arachchilage Chanaka Wijewardhana, Sub Inspector of Police Widana Gamage Kithsiri Walter Ethiliyagoda, Nishshanka Arachchilage Josapin Nona and Interpreter of Court Manesha Jeewanthi Alahakoon.

It will be appropriate to consider the facts of the case before we proceed to analyse grounds of appeal.

According to the prosecution, the Appellant, who was a married person, had an affair with the 1st Deceased. Due to some reasons it was discontinued and the 1st deceased was living with the 2nd deceased. On the 17th March 2002 the main witness had seen the 1st deceased was coming out of the room with flames and crying, "Premasiri poured petrol and set fire". She had seen the 2nd deceased also burning in the same room. Both deceased were taken to the Kuliyapitiya Hospital. From there, they were

transferred to the National Hospital, Colombo for treatment. Subsequently, both succumbed to their injuries.

Considering the 1st ground of appeal, that Dying deposition was uncorroborated and acting on the said deposition is wrong. According to the evidence available, the deceased was residing at the residence of the 1st witness, Wickramanayake Pathiranalage Anulawathie Menike. She gave evidence at the trial and revealed the entire incident. According to her, the 1st deceased was married earlier and her husband died in 1991. Thereafter 1st deceased had gone to Kuwait in 1998. In the meantime, she had an affair with the Appellant, who was married earlier to another woman. The 1st witness, Wickramanayake Pathiranalage Anulawathie Menike, on the day of the incident heard a cry of "අම්මෝ..... අම්මෝ....." (Ammo.. Ammo...) at around 6.00-6.30 in the morning. There, she saw the deceased was in flames running out and crying "premasiri poured petrol and set fire." (ප්‍රේමසිරී පෙට්‍රල් දාලා ගිනි තිබ්බා.). this witness was attending to both deceased persons. She made a statement to the Police on the same day when Police started investigation. Since she made a statement 6 ½ hours after the incident of which, the Counsel submits a delay statement. Considering the facts of the case, the deceased was taken to Hospital and transferred to Colombo and the witness to attend many other matters making a statement after 6 ½ hours cannot be taken as a belated statement under any circumstances.

The daughter of the 1st deceased revealed the fact that her mother told at the Hospital that, Premasiri, did this to her. She had made the statement after receiving burn injuries.

Considering Section 32(1) of the Evidence Ordinance, the prosecution is to prove the fact that, the deceased had made the statement anticipating the death. Further it can be orally or verbally.

In **Somasundaram v. The Queen (76 NLR 10)** the learned trial Judge in the course of his summing up to the jury had explained the law relating to dying depositions in the following manner:

> *"This is a very vital matter for the reason that under our law a statement made by a man who is very seriously injured is considered with great sanctity, because the law assumes that a person in that position will not unnecessarily implicate an innocent man."*

In **Perera Vs. Jirasinghe ( S. I. Police ),(48 NLR 17),** it was held that,

> *"Statements made by a person who is dead are inadmissible in evidence under section 32 (1) of the Evidence Ordinance when they do not refer to the cause of his death or when they do not relate to any of the circumstances of the transaction which resulted in his death."*

In **Sigera Vs. Attorney General (**2011 - Volume 1 ,Page No – 201) it was held that,

> *"Under our law a dying declaration can be admitted in evidence under Section 32 of the Evidence Ordinance. One of the salient features discernible in this section is that the declaration may be written or oral. Even a sign made by a person who is unable to speak is caught up in this phrase.*
>
> *First and foremost a judge must apply his mind and decide whether the dying declaration is a true and accepted statement - in doing so he must be mindful of the fact that the statement was not made under oath, that the statement of the deceased person has not been tested in cross examination and that the person who , made the dying declaration is not a witness at the trial.*
>
> *An accused can be convicted for murder based mainly and solely on a dying declaration made by a deceased, - without corroborating under certain circumstances. It would not be repugnant or Obnoxious to the law to convict an accused based solely on a dying declaration. "*

And further stated that,

> *"The principle on which this kind of evidence is admitted in certain cases is that they are declarations made in the extremity when the party is at the point of death; when every hope of this world has gone; when every motive to falsehood is silenced; and the mind is induced by the most powerful considerations to speak the truth."*

In **Arumuga Tevan v. Emperor [ A. I. R. 1931 Mad. 180 ]** Jackson J. held that

> *" when a man who is dead has left a statement throwing light upon the cause of his death, that statement is relevant evidence under section 32 (of the Indian Act) but it is not entitled to any peculiar credit . . . . It is incumbent upon the Court before it accepts the statements as true to see how far it is corroborated ".*

Considering all, we find that, the dying deposition made by the deceased is well acceptable under our law. Hence I find that this ground of appeal fails on its own merits.

The 2nd ground of appeal is that, the dock statement was not considered by the Learned High Court Judge. It is appropriate to re-produce the Dock statement and its translation.

> *"මම පොලිසියට අරන් ගියාට පසු ඉස්සරලාම අයි පී මහත්තයා මගේ කම්බුලට ගැහුවා. මා එක්ක ඇවිත් සවස උඩහ ගෙදරට මගේ ඇඳුම් ඔක්කෝම ගලවලා අතපය බැඳලා කඹයක් දමා එල්ලුවා. ඊට පසුව මට ගැසුවා. යකඩ කුරකින් ගැසුවා. ඊට පසුව මගේ විල් එකක් ගැන ඇසුවා. මට ගොඩක් ගැසුවා. ඊට පසුව මම බුදු අම්මේ කියා ගැසුවා. ඊට පසුව මම බොරු කියන්න ඕනිද කියා ඇසුවා."*

> *(They took me into the Police and at first the IP sir slapped on me. Then they took me to a house which was situated above to my house, all my clothes were removed. My hands and feet were tied, and hanged me on a rope. Then they*

*assaulted. Then they assaulted me with an iron rod. Then I asked, "You want me to tell lies"?)*

In **Gunasiri and two other vs Republic of Sri Lanka 2009 (1) Sri L.R 39**. It was held that,

*In evaluating a dock statement the trial judge must consider the following principles:*

*(1) If the dock statement is believed it must be acted upon.*

*(2) If the dock statement creates a reasonable doubt in the prosecution case the defence must succeed.*

*(3) Dock statement of one accused should not be used against the other.*

On mere reading of the Dock Statement, it shows that the Appellant has not denied of any charges. He only says that, he was assaulted by the Police. The Learned Trial Judge had considered all these and delivered an order which contains of 41 pages. He adequately considered the case for the defence, especially the Dock Statement of the Appellant. After careful consideration the Learned Trial Judge found the Appellant is guilty.

In **The Queen v. Kularatne [1968] [71 NLR 529]** stated that,

*"we are in respectful agreement, and are out of the view that such a statement must be looked upon as evidence subject to the infirmity that the accused had deliberately refrained from giving sworn testimony".*

Acceptance of Dock Statement is discussed in many cases.

After careful consideration we find that there is no merit in this ground of appeal.

Even though the Counsel for the Appellant avoided the grounds of appeal set out in his original petition of appeal, we considered all five grounds of appeal and find that those grounds have no merits; hence we dismiss all those grounds of appeal.

Considering all, we find that the findings of the Learned Trial Judge is well founded and well supported by the evidence. Hence we dismiss the appeal and affirm the conviction and the sentence for the 1st and 2nd counts.

**Appeal Dismissed.**

**JUDGE OF THE COURT OF APPEAL**

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

I agree,

**JUDGE OF THE COURT OF APPEAL**