

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

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

Complainant

Ranwadana Mudiyansele Seneviratne
Dharmapala alias Ralahamy.

**Court of Appeal
Case No. CA 135/2005**

Accused

Vs.

And Now Between

Ranwadana Mudiyansele Seneviratne
Dharmapala alias Ralahamy.

Accused-Appellant

High Court of Kandy.

Case No. HCC 300/ 2003.

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 : Saliya Pieris PC with Arjuna Rathnasiri and Geeth Karunaratne Attorneys-at-Law for the Appellant.

Dappula De Livera PC, SG with P. Kumararathnam DSG and Lakmali Dissanayake SC for the Respondent.

Written Submissions : Accused Appellant- 31st October 2018.

Complainant Respondent-12th November 2018.

Argument on : 21st September and 15th October 2018.

Judgment on : 26th November 2018.

JUDGMENT

S. Thurairaja, PC. J

This is a case of Double Murder, reported at the Police Station of Kandy. After the investigation and the non-summary inquiry, Honourable Attorney General had preferred an indictment against the Accused-Appellant, Ranwadana Mudiyansele Seneviratne Dharmapala alias Ralahamy (hereinafter sometimes called and referred to as the Appellant) for committing the murder of Amitha Kumari Seneviratne and Rasika Sakuni Seneviratne which is punishable under Section 296 of the Penal Code. The Appellant was a retired Police Officer.

The prosecution has led the evidence of Ariyaratne Bandara Mawilmada (the main witness), Rajanayaka Mudiyansele Meththananda Rajanayaka (the Grama Niladhari of the No.259 Grama Niladhari Division), Professor Kohilawatta Gamage Harry Chandra Nimal Seneviratne (the husband of the deceased Amitha Kumari Seneviratne), Bethmage Don Sirisena (the servant of Professor Kohilawatta Gamage Harry Chandra Nimal Seneviratne, Godagama Widanachchilage Kamal Chandana Ariyawansa (Police Officer who received the first information), Ranaweera Mudiyansele Loku Banda (the Additional Registrar of the Kandy Land Registry), Fedrick Appuhamilage Lionel Jayasinghe (Journalist of Wijaya News Papers),

Karunaratne Wijenayake (Administrative Officer- Wijaya News Papers), Rohitha Rajapakse (Bank Assistant), Sepala Mudiyanseelage Janaka Kelum Senerath Bandara (Police Officer), Wellampulli Arachchilage Ananda (retired Police Officer), A.B. Seneviratne (Judicial Medical Officer), Hulangamuwa Gedara Sirisena, Dissanayake Mudiyanseelage Indra Kumari, Samarakoon Mudiyanseelage Sarath Samarakoon, Gurusinghe Danawardane (Chief Inspector of Police), Segu David Mohommed Farook and Registrar Pathmarajah Pathmadakshan.

According to the prosecution witnesses the Appellant was living in the same neighbourhood of the deceased persons. On the 25th July 2001, the Appellant together with the main witness, Ariyaratne Bandara Mawilmada had gone to the house of the deceased which is situated at the Prime Rose Garden, Kandy. The 1st deceased is a wife of a professor who is attached to the University of Peradeniya. The 2nd deceased was 12 years of age at the time of the incident, was a child of the 1st deceased. According to the main witness, there were some issues about draining of rain water from the land of the Appellant and the witness. On the day of the incident, the Appellant was seen approaching the 1st deceased and speaking to her. There, it was noticed that the deceased was scolding the Appellant which resulted the Appellant attacking the deceased. She was taken into the house, at that time the 2nd deceased was seen calling her mother. The Appellant bundled her up and carried her to the room. Thereafter she was found dead. The 1st deceased had 50 injuries on her. Cause of death was manual strangulation. The 2nd deceased who was 12 years old and died of ligature strangulation.

After the trial before the High Court Judge of Kandy, the Appellant was found guilty for Culpable Homicide not amounting to murder for the death of the 1st deceased and sentenced to 10 years rigorous imprisonment and a fine of Rs. 50,000/-. For the 2nd count, the Appellant was found guilty for murder of the 2nd deceased and sentenced to death.

Being aggrieved with the said convictions and sentences the Appellant preferred an appeal to the Court of Appeal and submitted following grounds of appeal.

- 1) Whether the witness namely Mawilmada is an accomplice and therefore verdict on such evidence is fatal in the absence of any independent corroboration.
- 2) Whether the witness Mawilmada is a credible witness in the light of material contradictions and the improbability of his evidence and the improbability of the Police Evidence.
- 3) Whether the Learned High Court Judge has failed to consider material contradictions.
- 4) The Learned High Court Judge should not have allowed evidence in respect of the forgery of a deed or the land dispute to be led as its connection to the prosecution version is very remote and unfair by the accused.
- 5) The Learned High Court Judge has failed to fairly evaluate the evidence of the Accused and the rejection of the evidence of the Accused and his daughter were for trifling reasons.

When the matter was taken up for argument the Learned President's Counsel confined to the following grounds of appeal for consideration.

- 1) The Trial Court erred in law that Mawilmada was not an accomplice.
- 2) Mawilmada's evidence is unworthy of credit.
- 3) Application to prove contradictions were rejected was unfair.
- 4) Court evaluation of Police evidence regarding Section 27(1) recovery was unreasonable.
- 5) Rejection of evidence of Appellant and his daughter was erroneous in Law and unreasonable.
- 6) Court allowed certain evidence which are irrelevant and prejudicial to the appellant

The 1st and 2nd grounds of appeal are taken together. According to the witness, Mavilmada he had purchased adjoining land of the deceased and there was issue of draining of rain water. It appears there were some other issues between the deceased and the appellant regarding occupation of another land in the same vicinity. On the day of the incident, the appellant had invited the main witness to come there and get to know the neighbours. When Mavilmada went together with the appellant to the house of the deceased, the appellant had entered to the premises of the deceased. The witness observed that the deceased was scolding the appellant on certain issues. The appellant was seen assaulting the deceased with a handle like stick. The deceased was 5 feet 5 inches. The appellant was a retired police officer was much built than her. When the deceased fell on the ground he had seen the appellant was kicking her on the chest area. The witness had seen the deceased was bleeding. The appellant, had asked the witness to hold her legs to carry her away. Mavilmada who claims that he was scared, obeyed to the ordered of the appellant. He held the legs to carry the deceased into the room.

At that time the 2nd deceased, who was 12-year-old was heard calling "mummy" and coming there. The appellant was seen carrying the child like a bundle of firewood to the room. The witness had not seen attacking of 2nd deceased.

The Judicial Medical Officer (JMO) who conducted the post mortem had found the weapon used on the deceased was a blunt weapon. When shown a rolling pin which was recovered on a Section 27 (1) statement, the JMO opined it is possible to cause those injuries with such instrument. The 1st deceased had fracture on her ribs; the JMO confirms that, it is possible with kick on the ribs.

There are many other materials which corroborate the evidence of the 1st witness. Therefore, the finding of the Learned Trial Judge that the witness is worthy of credits can be accepted.

The Learned Trial Judge extensively considered the issue whether this witness was an accomplice or not. He had given sufficient and tenable reasons to find that the main witness was not an accomplice.

E.R.S.R. Coomaraswamy in his book titled "The Law of Evidence" Vol. II, Book I at page 364, states as follows;

"For the purposes of section 114 (f), it may be said that an accomplice is one concerned with another or others in the commission of crime."

He cites with approval the following passage from Wharton on Criminal Evidence 11th Ed. Vol. II at page 1229 -

"An accomplice is a person who knowingly, voluntarily and with common intent with the principal offender unites in the commission."

In **Attorney General vs. D. Seneviratne [1982 - Volume 1, Page No – 302]** it was stated that,

"An accomplice is a guilty associate whether as perpetrator or as incitor or helper in the commission of criminal acts constituting the offence charged of a lesser or kindred offence of which the accused could be found guilty on the same indictment. Where there are special circumstances which only the accused can explain the accused must offer an explanation."

"From the cases three main definitions can be formulated:

(1) An accomplice witness is one who could have been convicted of the actual offence with which the accused is charged as a principal.

(2) An accomplice witness is one who could have been convicted of the actual offence with which the accused is charged whether as principal, aider and

abettor, or counsellor. This test is adopted in Sri Lanka and in some other jurisdictions. In England the House of Lords held that on the existing case law the term accomplices includes accessories after the fact and by an extended application receiver of stolen goods on the trial of the thief, and parties to other crimes (of a type identical with the crime charged against the accused) when evidence to prove system and intent and to negative accident is sought to be led..... In Sri Lanka Basnayake J (later C.J.) in Peiris v Dole and Jayatileke J (later C.J.) in The King v Piyasena adopted the definition of O'Sullivan A. J. C. in Chetumal Rekumal v Emperor that an accomplice is a guilty associate in crime or one who sustains such a relation to the criminal act that he could be jointly charged with the accused.

(3) An accomplice witness is one whose liability to prosecution arises from the same facts as that of the principal offender.

In The King V. Peiris Appuhamy (43 NLR 412) it was held that,

"The question whether a person is an accomplice is for the Jury to decide. It is the duty of the Judge to direct the Jury as to what association with the crime would constitute a person an accomplice. If a person is an accomplice it is the duty of the Judge to warn the Jury that it would be unsafe to convict without corroboration and to explain to them the law as to what constitutes corroboration.

Evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. A witness who merely assisted in the disposal of the dead body but who did not take part in the perpetration of the crime is not an accomplice. The question whether a person is an accomplice is for the Jury to decide. It is the duty of the Judge to direct the

Jury as to what association with the crime would constitute a person an accomplice "

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 carefully perused evidence before and the judgement of the Trial Judge. We are convinced that the findings of the Trial Judge is well founded hence we have no reasons to interfere with the same.

Accordingly, the 1st and 2nd grounds of appeal fail on its own merits.

The 3rd and 5th grounds of appeal were taken together for consideration. When the counsel was presenting his argument in the half way he informs Court since the contradictions are not proved properly he is not emphasizing in that ground. Anyhow we carefully perused the contradictions raised (even though most of them are not proved) and cross checked with the judgement of the Learned Trial Judge. Considering both grounds together we are of the view that the Learned Trial Judge had adequately considered all available evidence before him and reached to a reasonable finding. Hence we find that these two grounds of appeal fail on its own merits.

The 4th ground of appeal is that Section 27 (1) statement is unreasonable and untenable.

Section 27 (1) of the Evidence Ordinance reads as follows:

"Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved."

Considering this ground of appeal, we find that the police had recovered a rolling pin (a cylindrical wooden object used in kitchen to make rotti or chapatti). It is the contention of the counsel that, recovering the object after several months cannot be accepted. The council submits that in the light of two deaths in that family, alms giving and using of kitchen could have disturbed the place where it was kept.

The using of kitchen items, when the lady of house is not there will be very subjective. The husband of the deceased submits that he did not use the kitchen much. Then it's left with the visitors who used the kitchen. The main witness described the object and says it was similar to that. The JMO opined most of the injuries could have been caused with an instrument like the rolling pin. The Learned Trial Judge had comprehensively analysed the acceptability of the statement and the production. And he had come to his own conclusion. As we discussed earlier the Trial Judge is the best person to see the production, observe demeanour and deportment of witnesses. When the Judge concludes that he accepts the evidence we have no reasons before us to disbelieve the same. When we consider the submission, judgements and facts of the case, we find that there is no merit in this ground of appeal.

The last ground of appeal is that the certain prejudicial evidence against the accused-appellant are allowed. The counsel is not very specific in his submissions of this ground of appeal. Regarding the main witness, the Learned Trial Judge had given ample reasons to reject the evidence of the accused and his witnesses.

We carefully considered the judgement of the Learned Trial Judge and we observed that the entire trial was taken up before the same judge and the judgement also

delivered by him. So, he had the benefit of seeing, hearing and analysing all the witnesses, materials and facts. The Learned Trial Judge was not disturbed by any external factors. That is clearly established by the fact the Learned Trial Judge had found the death of the 1st deceased as Culpable Homicide not amounting to murder on the basis of available evidence before him. If he was influenced by any other extraneous factors as submitted by the submissions, the Learned Trial Judge would have convicted for murder. The finding of the Learned Trial Judge was after giving reasons for such conclusion. The finding regarding death of the 2nd deceased the Learned Trial Judge had ample evidence to conclude that the death of the 12-year-old child is nothing but murder. Hence I find that the Learned Trial Judge had utilized his judicial trained mind to hear, conclude and find his own findings.

As we discussed above, all grounds of appeal had failed on its own merits.

After careful consideration, we find the judgment of the Learned Trial Judge is well found and we have no reasons to disturb the same.

Accordingly, we dismiss the appeal and affirm the conviction and the sentence. We direct the High Court of Kandy to implement the sentence from today.

Appeal Dismissed.

JUDGE OF THE COURT OF APPEAL

A.L. Shiran Gooneratne, J

I agree,

JUDGE OF THE COURT OF APPEAL