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

In the matter of an Appeal under Section 331of the Code of Criminal Procedure Act No.15/1979 .

C.A.No.407/2017

H.C. Tangalle No.13/2006

Ragamunige Kularatne alias Ananda alias Punchi Malli

Accused-Appellant

Vs.

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

Respondent

****

BEFORE	:	**DEEPALI WIJESUNDERA, J.** **ACHALA WENGAPPULI J.**
COUNSEL	:	K. Kugaraja for the Accused-Appellant. Parinda Ranasinghe (Jnr.) A.S.G. (P.C.) for the respondent.
ARGUED ON	:	30th October 2018
DECIDED ON	:	01st February, 2019

****

ACHALA WENGAPPULI J.

The Accused-Appellant (hereinafter referred to as the "Appellant") was indicted before the High Court of Tangalle for committing the murder of *Peduru Arachchige Premaratne* on or about 3rd January 2001.

At the end of the trial, the Appellant was convicted for murder and was sentenced to death. Being aggrieved by the said conviction and sentence, the Appellant challenged its validity on the basis that the trial Court had failed to consider his lesser culpability upon the evidence of the prosecution that he was intoxicated at the time of committing the offence he was charged with.

Learned Counsel for the Appellant relied on the judgment of ***Jayathilake v The Attorney General*** (2003) 1 Sri L.R. 107 where it has been held that " ... *even though the accused had not taken up the defence of intoxication, if such defence arises on the evidence it is the duty of the jury to consider the same*" in support of the solitary ground of appeal of the Appellant.

The case presented by the prosecution is based on the eye witness testimony of the wife *Kanthi* and *Sampath,* the son of the deceased. According to them, the deceased was having his meal at about 5.30 p.m. after returning from a funeral house. He was seated at the rear entrance of his house. The Appellant, who was well known to the witnesses had entered the house through the front entrance, walked up to the deceased. He then has held the deceased's head by grabbing his hair and dealt a blow on his neck with a *Katty.*

The evidence in relation to intoxication came from witness *Shantha* who had met the Appellant sometime before the incident at a nearby *Chena.* According to the witness, the Appellant had consumed some intoxicant in the company of another and by then he was staggering. They decided to disperse. The witness, having followed the Appellant at a distance up to a certain point had thereafter lost track of him. Few minutes later he heard the cries raised by the other witnesses from the direction of their house.

It is stated by the witness that he ran towards the deceased's house and saw the Appellant there with a *katty* in his hand. Upon seeing the witness the Appellant told him "සාන්ත අයියේ මම බාල අයියට කැත්තෙන් ගහල මැරුවා". He then looked at the deceased who was lying on the ground at that time and noticed the deep cut on his neck.

The medical officer who had performed the post mortem examination on the body of the deceased stated in evidence that he observed three cut injuries on the neck area of the deceased and each of them would have resulted in the death of the deceased instantly. Injury No. 1 was an 8 inches long and 4 inches wide cut injury which had severed his thyroid cartilage, trachea, blood vessels and neck muscles. The other 5 inches long deep cut injury was located above right ear. It had cut in to the skull with corresponding internal damages to the brain tissues. The third injury is also a 4 inches long cut injury and was located about one inch above the right ear. He expressed his opinion that these three injuries could have been caused by a sharp cutting weapon such as a *Katty.*

The trial Court was mindful of the intoxication of the Appellant at the time of his attack on the deceased. In convicting the Appellant for murder, the trial Court has considered the factual situation at the time of the attack and was satisfied that the Appellant had entertained murderous intention.

In view of the ground of appeal raised by the Appellant, this Court must consider whether the said conclusion reached by the trial Court is justified or not when considered in the light of the principles of law enunciated in the relevant judicial precedents.

The authority cited by the Appellant, the judgment of ***Jayathilake v The Attorney General*** (supra) has reiterated the principle of law that had been laid down in ***King v Rengasamy*** 25 N.L.R. 438. In delivering the said judgment which dealt with Sections 78 and 79 of the Penal Code, Bertram CJ, has held that:-

> *" In my opinion the "knowledge" meant is the knowledge which is the subject of discussion in the connected section, namely, "knowledge of the nature and consequences of the act". The law does not allow a drunken man to say that owing to intoxication he did not know that a particular blow or a particular stab with a particular instrument would be likely to cause the death of a human being. But if in the fact that degree of intoxication was such that the man imagined that what he was striking was not a man but a log, proof of this circumstance would not be excluded."*

In referring to the specific statutory provisions contained in Sections 78 and 79 of the Penal Code, their Lordships were of the view that:-

" The intoxication contemplated in Section 79 is the same degree of intoxication as that in Section 78, that it to say, which renders the accused incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

The consideration of the fact that the Appellant had consumed some intoxicant at the time of the commission of the act resulted in the death of the deceased, is warranted as per the judgment of ***Jayathilake v The Attorney General*** (supra), irrespective of its degree, as it states that *" ... the effect of section 79 applies to all cases of self-induced intoxication in any degree when the offence in question specified some definite knowledge or intent as an essential ingredient"*.

However, if the Appellant has taken up voluntary intoxication as a defence then the principles that had been laid down in ***Dayaratne v Republic of Sri Lanka*** (1990) 2 Sri L.R. 226 should be applied. In the instant appeal, however the Appellant maintained a total denial of any involvement. The contention of the Appellant is that he was entitled to the benefit of lesser culpability on account of the evidence of the prosecution itself that he was intoxicated at the time he attacked the deceased.

In ***King v Rengasamy*** (supra) his Lordship also held:-

" ...the question whether an intoxicated person is guilty of murder depends upon whether he has formed what I may describe as a murderous intention. that is a question of fact.

For the purpose of determining that question of fact, the jury must attribute to him the knowledge of the nature and consequences of his act that would be attributed to a sober man. If they consider that the degree of intoxication was such that he could not have formed a murderous intention or any intention at all they must acquit him of murder and consider the question of culpable homicide."(emphasis added)

The judgment of the Court of Criminal Appeal in ***Charles Silva v The Queen*** 55 N.L.R. 502, also an instance where the dying declaration of the deceased revealed that the appellant in that appeal was "staggering". Their Lordships were of the opinion that "... *when one regards the totality of the evidence it cannot be said that the jury could not possibly infer that the appellant by reason of intoxication was in such a condition that he was incapable of realising the natural and probable consequences of the violence he used on the deceased."*

In the instant appeal, the three fatal deep cut injuries located on the neck area of the deceased causing instantaneous death of the deceased itself justifies an inference that the attacker had the necessary mental intention to cause death and physical ability to carry out the repeated attack on a vulnerable part of the intended victim. His immediate admission of the attack on the deceased further cements the validity of the already drawn inference that he had the requisite mental alertness to form the murderous intention.

The evidence is clear that the Appellant, having entered the house through its main entrance, had thereafter calmly walked up to the deceased who was having some bread whilst seated on the floor. He held the deceased by his hair and inflicted three deep cuts on the deceased's neck with the *katty*. He then waited till the arrival of witness *Shantha*. Having clearly identified the witness, the Appellant told him that he killed the deceased by slashing him with a *katty*. This admission clearly indicates the mental alertness of the Appellant for he knew who he had attack and with what he attacked. He knew that the deceased has died due to attack. The word "මැරුවා" is a clear indication of his murderous intention the Appellant had entertained just prior to the attack since he could have used the word "මැරුණා" if he had only the knowledge of the consequences of his act.

The facts of the instant appeal before us are clearly distinguishable to that of ***Charles Silva v The Queen.*** In the said appeal the only evidence in relation to intoxication was the deceased's statement made to a witness prior to his death. The deceased had merely indicated that the appellant was "drunk and staggering" at the time of stabbing. There was no other evidence as to his degree of intoxication or of any prior animosity among the parties. It is in these circumstances; their Lordships have altered the verdict accepting the proposition of lesser culpability.

As already noted that the Appellant before us had the mental alertness to form the murderous intention and he had the control over his body to carry out his intention effectively and accurately.

In view of this conclusion, we hold that the conclusion reached by the trial Court that the Appellant had entertained murderous intention is amply justified and the absence of a specific reference to the consideration of lesser culpability on voluntary intoxication had not resulted in any substantial miscarriage of justice.

Therefore, the conviction and the sentence imposed on the Appellant is affirmed.

The appeal of the Appellant is accordingly dismissed.

JUDGE OF THE COURT OF APPEAL

DEEPALI WIJESUNDERA, J.

I agree.

JUDGE OF THE COURT OF APPEAL