

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

C.A. Case No: 09/2015  
H.C. Matara Case No:  
83/2011

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

**Complainant**

-Vs-

Lokuthota Hewage Ajith Somasundara alias  
Jothy Shantha

**Accused**

-And Between-

Lokuthota Hewage Ajith Somasundara alias  
Jothy Shantha

**Accused-Appellant**

-Vs-

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

**Complainant-Respondent**

**Before : A.L. Shiran Gooneratne J.**

**&**

**K. Priyantha Fernando J.**

**Counsel :** K.A. Upul Anuradha Wickramaratne for the Accused-Appellant.

Janaka Bandara, SSC for the Respondent.

**Written Submissions of the Accused-Appellant filed on:** 09/01/2018

**Written Submissions of the Complainant-Respondent filed on:**13/03/2019

**Argued on :** 26/02/2019

**Judgment on :** 02/04/2019

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

The Accused-Appellant, (hereinafter referred to as the Appellant) was indicted in the High Court of Matara under Section 296 of the Penal Code for causing the death of A.M. Rani Manel, (hereinafter referred to as the deceased) and upon conviction the Appellant was sentenced to death.

The case for the prosecution relied entirely on circumstantial evidence.

When this case was taken up for argument, the Counsel for the Appellant confined himself to the following ground of appeal that is,

*“has the learned trial judge erred in law by concluding that prosecution witness No.7 is a legally competent witness.”*

The contention of the Counsel for the Appellant is that Enderage Priyanthi (PW7), is married to the Appellant and therefore her evidence based on an alleged confession made by the Appellant was adduced in breach of Section 120 (2) of the Evidence Ordinance which is inadmissible in law.

The case for the prosecution is that the deceased was the estranged spouse of the Appellant and mother of 5 children fathered by the Appellant. Due to the said estrangement with the deceased, PW7 was living with the Appellant for over a year, prior to the death of the deceased. The learned Magistrate had ordered the Appellant to pay maintenance to his children.

According to the evidence of PW7, a day prior to the incident, the deceased had come in search of the Appellant to his house and in his absence had given a letter to PW7 to be given to the Appellant. By this letter the deceased had wanted money to be paid to her children as ordered by the Magistrate. Annoyed by her presence, the Appellant had left the same night to the house of the deceased stating that the deceased would regret for her actions. The Appellant had returned home after midnight and had told PW7, that he strangled the deceased, wrapped the body in a cloth and buried it in the lagoon. The police were unable to recover the body of the deceased.

The prosecution has led evidence to confirm the presence of the Appellant at the house of the deceased the night, she went missing. There is also evidence to support that the Appellant has attempted to mislead the investigation by writing a letter, which is marked and produced in evidence as P1.

Section 120 (2) of the Evidence Ordinance states,

*“in criminal proceedings against any person the husband or wife of such person respectively shall be a competent witness if called by the accused, but in that case all communications between them shall cease to be privileged.”*

*“In a criminal case, the accused’s spouse is always competent to testify for the accused but restrictions are placed on the competence of the accused’s spouse to give evidence for the prosecution. The general principle is that the accused’s spouse cannot testify in support of the case for the prosecution.”*

*(G.L. Peiris, The Law of Evidence in Sri Lanka, at page 553)*

The prosecution contends that, there was no marriage between the Appellant and PW7 and insists that the only marriage that prevailed was that of between the Appellant and the deceased and therefore, PW7 is a competent witness and the evidence given by her is admissible in law. PW7 in her evidence has admitted that the Appellant was married to the deceased. There is no evidence

to the contrary and the evidence that the Appellant was married to the deceased was not unchallenged by the defence nor has the defence questioned PW7 regarding her relationship with the Appellant. We observe that the Counsel for the Accused-Appellant has questioned PW7, on the premise that the letter marked P1, was given by the Appellant to be given to his wife.

In *Rex Vs. Veloo (XXIV) vol. C.L.W. 119*, it was held;

*“that a women’s evidence is not excluded by section 120 (2) of the Evidence Ordinance unless there is proof that she is the wife of the deceased. The mere fact that there was a marriage ceremony and celebrations of some sort and that the two lived as man and wife is not sufficient”*

There is no proof that PW7 was married to the Appellant and therefore, we do not see any reason to hold that her evidence is in breach of Section 120 (2) of the Evidence Ordinance.

We have carefully gone through all available circumstantial evidence against the Appellant, relied upon by the learned High Court Judge, and we are satisfied that in the totality of the evidence, the only inference that can be drawn in the circumstances is that the accused is guilty of the offence charged.

Therefore, we see no reason to set aside the conviction and the sentence passed against the Appellant and therefore, the Appeal is dismissed.

Appeal dismissed.

**JUDGE OF THE COURT OF APPEAL**

**K. Priyantha Fernando, J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**