

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 Code
of Criminal Procedure Act No. 15 of 1979

C.A. Case No: 213/2014
H.C. Chilaw Case No:
25/2001

Geekiyanage Kamalananda Sanath Prasanna
Padmakumara Fernando

Accused-Appellant

-Vs-

Hon. Attorney General

Respondent

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

&

N. Bandula Karunarathna J.

Counsel : Indica Mallawarachchi with K. Kugaraja for the Accused-Appellant.
Hiranjan Peiris, DSG for the Respondent.

Written Submissions: By the Accused-Appellant on 19/01/2018

By the Respondent on 17/09/2018

Argued on : 01/02/2019, 11/03/2019 and 21/03/2019

Judgment on : 13/05/2019

A.L. Shiran Gooneratne J.

The Accused-Appellant, the 1st accused (hereinafter referred to as the Appellant) and the 2nd accused were indicted in the High Court of Chilaw under Section 296 of the Penal Code, that on or about the 22/06/1994,

(1) for causing the death of Roland George De Alwis

(2) that at the same time and place and in the course of the same transaction caused the death of 2 other persons unknown to the prosecution

At the conclusion of the trial, by judgment dated 22/09/2014, the Appellant was convicted as charged and was sentenced to death. The 2nd accused was acquitted from all charges.

The prosecution case relied on the evidence of a sole eye witness who was 9 years at the time of the incident.

The Learned Counsel for the Appellant in her written submissions relied upon the following grounds of appeal to have the said conviction set aside.

- (a) Evidence of the purported eye witness is wholly contradicted by other prosecution witnesses thereby creating a serious doubt with regard to the veracity of the version of the eye witness.
- (b) The learned trial judge's justification with regards to the conflict of evidence between prosecution witnesses is factually untenable.
- (c) Conviction which hangs on the uncorroborated evidence of PW2 is wholly unsafe.

When the case was taken up for argument a further ground of appeal was raised by the learned Counsel,

- (d) The prosecution failed to establish the identity of the deceased whom the post mortem examination was conducted to that of the deceased who were alleged to have been attacked by the Appellant.

Since the first 3 grounds of appeal are connected to each other, they will be considered together.

Nishantha Fernando, (PW2), in his evidence states that while he was at the community well close to his house, he had seen the Appellant armed with a club attacking the deceased who were in the Mahawewa weekly fair (pola) premises. The witness has identified the deceased in the 1st count as a person who lived close to the pola and, the deceased in the 2nd and 3rd counts as paupers who took refuge inside the pola premises. At the time of the attack the deceased in the 1st count had been consuming food and the other two deceased had been sleeping. Soon after the attack, the witness had observed that the women pauper's eye was jutting out. The

witness was unable to give a precise distance from where he witnessed the said incident and his evidence regarding distance varied from 75 to 250 feet. PW2 had observed that the Appellant was clad in a blue denim trouser at the time of the incident.

"The recognition of clothing can be a valuable aid to identification". (R. Vs. Hickin (1996) Crim.L.R. 584 CA). The blue denim trouser worn by the Appellant was identified by the witness and was marked in evidence.

It is observed that PW2, in his evidence, has described the attack on the deceased in detail. Within a few hours after the incident, he had made a statement to the Police at the scene of crime. PW2 made a dock identification of the Appellant when he testified at the non-summary inquiry. No contradictions or omissions were marked in his testimony to the trial court.

The investigating officer D. Premaratne (PW18), visited the scene of crime within few hours of receiving information. The witness had identified the deceased in the 1st count by name from an identity card which was in his possession and had observed that all the deceased fallen on the ground were with bleeding injuries. He has made observations to the effect that the place of the attack was visible from a distance, since there was no outer enclosure to the pola, which could have obstructed clear vision of the place of incident.

The learned Counsel for the Appellant contends that the evidence of the eye witness is contradicted by the evidence of Mallika Fernando (PW5) and Sujith Dhammika (PW13) on the basis that the alleged confession made to the said

witnesses by the 2nd Accused contradicts the evidence of PW2 and therefore, the version of the sole eye witness is not credible and creates a serious doubt in the prosecution case.

It is observed that the learned trial judge in his evaluation of the said evidence at page 11 to 14 of the judgment, has given adequate reasons for rejecting to act upon the evidence of PW5 and PW13, based on absence of clarity, knowledge and acquaintance to the related narration of events testified to by the said witnesses. While rejecting the evidence given by the said witnesses the learned trial judge has relied on the evidence of the eye witness to the related events. In the circumstances, the contention of the Counsel for the Appellant is that the evidence of the eye witness, which is contradicted by 2 other witnesses for the prosecution, is not reliable to act upon.

“The chain of circumstances against an accused in a case of circumstantial evidence must be directed only towards his guilt and admit of no other hypothesis”. (G. Parshwanath v. State of Karnataka, AIR 2010 SC 2914 (2925), “whereas, in the case of evidence of an eye witness a chain of circumstances is not required and one good eye witness is sufficient to record a conviction.” (Vikram Singh v. State of Punjab, AIR 2010 SC 1007).

As noted earlier, PW2 is an independent witness who testified to having clearly witnessed the Appellant attacking the deceased. Therefore, for all the reasons stated above, we do not see any ground to reject the evidence of the said eye witness.

IP Charles Premaratne, (PW19), accompanied the chief investigating officer PW18, to the scene of crime and according to his evidence, by an order of the learned Magistrate, the post mortem examinations of the 3 deceased persons had been held at the Marawila Base Hospital on 23/06/1994, by the District Medical Officer (DMO), (PW25). The deceased in the 1st count has been identified by the deceased daughter and the body had been released to her and since there were no claimants for the two remaining bodies, they were buried with the assistance of the Gramasevaka.

Accordingly, the 4th Ground of Appeal has been raised on the basis that there is no link that the bodies on which the post mortem examinations were conducted, were that of the deceased attacked by the accused, at the crime scene.

The DMO in his evidence states that, he had performed post mortem examinations on 3 persons by an order given by the learned Magistrate. The bodies of 2 males and 1 female had been referred to him to conduct the said post mortem examinations. The body of the deceased in the 1st count had been identified, however, there had been no identification in respect of the two other bodies. According to the post mortem reports, death in all 3 instances had been caused by injuries from a blunt weapon. The investigators recovered a club on a statement given by the Appellant, in terms of Section 27 of the Evidence Ordinance, which is marked as P2. The DMO has confirmed that there is a possibility that the blunt weapon injuries found on the deceased are consistent with an attack by the said club recovered by the police.

“Where there was overwhelming evidence to show that the dead body on which autopsy was conducted was that of the victim the plea that identity of corpus delicti was not established cannot be allowed.” (State of W.B. v. M.M. Omar, AIR 2000 SC 2988 (2991-92)).

Therefore, the evidence of the DMO in relation to the bodies in which post mortem examinations were conducted clearly establish that the bodies of the persons handed over for examination by the order of the learned Magistrate were bodies of persons recovered from the scene of crime.

The aforesaid circumstances leave no ground for reasonable doubt to link the act of the Appellant to the victims, who were subject to post mortem examinations.

For all the reasons stated above, all grounds of appeal are rejected and the conviction and the corresponding sentence affirmed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna, J.

I agree.

JUDGE OF THE COURT OF APPEAL