

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

In the matter of an application for appeal under Section 15 of the Judicature Act No. 02 of 1978 and Section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

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

**COMPLAINANT**

**Vs**

Punehala Widanalage Namal Suranga  
No. 86, Bandaranayake Pura  
Bandirippuwa  
Lunuwila.

**ACCUSED**

**Case No. CA 69/2016**

**HC (Chilaw) Case No. HC 18/2010**

**AND NOW BETWEEN**

Punehala Widanalage Namal Suranga  
No. 86, Bandaranayake Pura  
Bandirippuwa  
Lunuwila.

**ACCUSED – APPELLANT**

**Vs**

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

**COMPLAINANT – RESPONDENT**

**BEFORE**

**: Deepali Wijesundera J.**

**: Achala Wengappuli J.**

**COUNSEL**

: Darshana Kuruppu with  
Aruna Gamage for the Appellant.  
Lakmali Karunanayake D.S.G. for  
the Respondent.

**ARGUED ON**

: 17<sup>th</sup> July, 2019

**DECIDED ON**

: 06<sup>th</sup> August, 2019

**Deepali Wijesundera J.**

The appellant was indicted in the High Court of Chilaw for the murder Sujeewa Priyanthi Kumari punishable under section 296 of the Penal Code. After trial the appellant was convicted for murder and sentenced to death. Being aggrieved by the said conviction and sentences the appellant had filed this appeal against the said judgment.

The prosecution case was that the appellant had set fire to the deceased who was his wife after a fight. Prosecution relied on the dying

declarations made by the deceased to the doctor and to witness Thamara Nandani and witness Asanka Sanjeewa to prove their case.

The defence case was that the deceased set fire to herself after a fight and that the appellant tried to douse the fire by throwing water at her.

*Witness Asanka Sanjeewa (prosecution witness number four)* who was the first to come to the scene giving evidence had said that he went to that area looking for his bicycle and heard someone shouting “මරණවෝ”. The witness had gone towards the appellant’s house and had tried to push the door open and it had opened and closed. He had heard someone say “මට ගිණි තිබ්බේ” and he has kicked the door open and the deceased had come out naked and burned and fallen on the floor. The appellant too had come out in his under wear and has told him “තෝ කට හොල්ලන්හ එපා”. The witness and the appellant had both brought water from the well to throw at the deceased. By this time the deceased had sustained burn injuries on her entire body and she had taken to hospital by the appellant.

*Witness Thamara Nandini (prosecution witness number five)* a relation of the deceased on hearing about the incident had gone to the

hospital to see her. The deceased is alleged to have told her that she was assaulted by the appellant and was asked to set fire to herself and when she did not do so he set fire to her. This witness had testified that the deceased and the appellant had constant fights and that they did not have a good relationship, and that the deceased showed her injuries inflicted by the appellant on her on a previous occasion.

Witness *Roshan Pushpakumara* (prosecution witness number three) also had testified that he heard shouting from the deceased's house and saw smoke coming from the house and saw witness Asanka going towards that house and knocking on the door, and the deceased running out of the house naked. He too has stated that the couple constantly fought.

Police evidence corroborated the evidence of Asanka and Roshan that the burning took place inside the house. *Dr. Eranga Rajapaksha* (prosecution witness number six) has testified that she examined the deceased and that she had 90% burn injuries on her body and she was capable of speech. The deceased had spoken to the doctor and told her that her husband had assaulted her and threatened her with a knife and forced her to pour kerosene oil on herself and thereafter he set her ablaze with a match stick.

*Dr. Wickremaarachige Sujeewa (prosecution witness number nine)*

who conducted the postmortem on the deceased while testifying has said death was caused by burn injuries. He has not given a clear explanation as to how the injuries were caused, whether they were self inflicted or not. The deceased before she died has told the doctor who examined her first how the injuries were caused.

The appellant had denied the allegations levelled against him and had testified that the deceased set fire to herself when he refused to do household chores.

The main argument of the appellant was that the dying declarations made by the deceased are contradictory and that the trial Judge has misdirected himself by disregarding to consider the contradictory nature of the dying declarations,

When we consider the two dying declarations the deceased has made to the doctor and her cousin although there is a slight difference in the two when you examine them the root of the declarations are the same. The appellant had forced her to pour kerosene oil on herself and after she did so had set fire to her. The declarations made by her are basically the same except for a slight difference which you can not say is

contradictory. She had sustained 90% burn injuries on her body and one can not expect a person with such injuries to have a photographic memory and explain clearly. One has to see whether the basic story tallies with the other.

The learned counsel for the appellant cited the judgments in **CA 257/2009 (2012)** and **B.G. Wasantha Kumara vs AG** these judgments are not relevant to the instant case. In the instant case medical evidence has supported the prosecution evidence.

The appellant's counsel citing the judgment in **B.G. Wasantha Kumara vs AG (CA 67/2017)** said the appellant's evidence was corroborated by the Judicial Medical Officer's evidence which said there was no evidence to say violence was used on the deceased. There is no evidence by the prosecution to tell that the deceased was beaten up mercilessly by the appellant prior to setting fire to her. This was not the prosecution evidence and one can not expect to see abrasions on a body which was 90% burnt therefore this judgment does not apply to the instant case and this argument of the appellant fails.

The appellant's counsel citing the judgments in **Athaudage Premadasa vs AG (CA 17/2017)** and **Ranasinghe vs AG (2007) 1 SLR**

218 argued that evidence of prosecution witness number five and prosecution witness number six are contradictory to the dying declaration and not consistent. This argument also fails since both their evidence was basically corroborated and the two judgments above mentioned are totally irrelevant to this case.

The other point of argument of the appellant was that the learned trial Judge failed to consider the omissions and contradictions in his judgment therefore there is no proper judgment by the trial Judge. He cited the judgment in **Pathirage Premathilake Koshena vs AG CA 268/2016** and **Asitha Godabedda vs AG CA 189/2010**. On perusal of pages 27 to 31 of the trial Judge's judgment we find that he has considered this and the counsel for the appellant is not correct on this issue and his argument on this issue too fails.

The evidence of prosecution witness number four Asanka who was the first to witness the incident has heard the deceased shouting "මම ගිණි තිබ්බේ" was not cross examined, on what he heard when he went to the house of the deceased, by the defence at the High Court trial. The learned Deputy Solicitor General cited the judgment in **Dadimuni Wimalasena and another vs AG CA 130/03** decided on 10/06/2008 where it was held;

*“Whenever the evidence given by a witness on a material point is not challenged in cross examination it has to be concluded that such evidence is not disputed and is accepted by the opponent”.*

The learned Deputy Solicitor General submitted that the evidence of Asanka alone is sufficient to convict the appellant and cited the judgment in **AG vs Wijsekera Mudiyanseelage Sirisena alias Cyril Baas CA 125/96** where it was held;

*“In the absence of contradiction and omissions the testimony of a witness can be accepted as creditworthy and truthful.*

On considering the evidence lead at the trial and the judgment delivered by the learned trial Judge we find that the appellant’s counsel has failed to establish that the conviction should be set aside on account of the dying declarations being contradictory nature. The evidence of Asanka was not properly challenged by the defence and still stands unchallenged. His evidence was corroborated by medical evidence of



prosecution witness number six. The learned trial Judge has carefully analysed the evidence by the prosecution and the defence when arriving at his finding. We are not inclined to set aside a well considered judgment on baseless arguments.

For the afore stated reasons we affirm the conviction and sentence given by the learned trial Judge on 30/05/2016 and dismiss the appeal.

Appeal is dismissed.

**JUDGE OF THE COURT OF APPEAL**

**Achala Wengappuli J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**