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

In the matter of an Appeal made in terms of Section 331(1) of the Code of Criminal Procedure Act No. 15 of 1979.

Democratic Socialist Republic of Sri Lanka

Complainant

Vs.

C.A. Case No: **CA 68/2014**

H.C. Kegalle Case No: **2603/2007**

Wahum Purayalage Dias Lal Chandrasiri

Accused

AND NOW BETWEEN

Wahum Purayalage Dias Lal Chandrasiri

Accused-Appellant

Vs.

The Attorney General
Attorney-General's Department,
Colombo 12.

Complainant-Respondent

BEFORE	:	K. K. Wickremasinghe, J. K. Priyantha Fernando, J.
COUNSEL	:	AAL Sunil Abeyratne for the Accused-Appellant Anoopa De Silva, SSC for the Complainant-Respondent
ARGUED ON	:	19.06.2019
WRITTEN SUBMISSIONS	:	The Accused-Appellant – On 03.07.2019 & 15.03.2018 The Complainant-Respondent– On 21.02.2019 & 27.06.2019
DECIDED ON	:	04.09.2019

K.K.WICKREMASINGHE, J.

The Accused-Appellant has filed this appeal seeking to set aside the judgment of the Learned High Court Judge of Kegalle dated 11.06.2014 in case No. 2603/2007.

Facts of the case:

The accused-appellant (hereinafter referred to as the 'appellant') was indicted in the High Court of Kegalle for committing the offence of Murder. At the trial, the prosecution called 4 witnesses including an eye witness-the daughter of the deceased (PW 01) and the JMO who conducted the post mortem examination (PW 07). The appellant made a dock statement.

After concluding the trial, the Learned High Court Judge convicted the appellant and imposed the death sentence. Being aggrieved by the said judgment, the appellant filed this appeal.

The Learned Counsel for the appellant submitted following grounds of appeal in the written submissions;

1. Failure to evaluate the contradictory evidence relevant to the appellant's meeting of the deceased and assault to her, as stated by PW 01
2. The PW 01 has given false evidence as to she saw the weapon used by the appellant
3. There is a serious doubt as to whether 'P1' had been really handed over by the appellant to the Police
4. The dock statement has created a reasonable doubt on the prosecution's case

The daughter of the deceased (hereinafter referred to as the 'PW 01') was an eye witness in this case. As per the evidence of the PW 01, the incident was narrated as follows;

The PW 01 was with her mother (the deceased), her younger brother and a neighbour in their newly built house, in the morning of the date of the incident i.e. on 05.01.2006. The appellant was the brother in law of the deceased and the 'bappa' of the PW 01. The deceased was with the said neighbor in neighbour's garden when the appellant arrived with a black colour polythene bag in his hand and uttered the words "Kanthi, I came to meet you". The deceased had therefore, invited the appellant to come inside their house. At this point, the appellant pulled out a knife from the black colour bag and attacked the deceased. Thereafter, the deceased had fallen on to the road ('ivura') and the appellant had stabbed her continuously.

The PW 01 testified that she was standing within 20-30 feet from the deceased and the appellant and took up the position that the appellant stabbed the deceased more

than once. She had described the knife to be a large curved knife. The knife was marked as P1.

The deceased succumbed to her injuries while taking to the hospital and her body was identified by her husband and the daughter, prior to the post mortem examination.

After the PW 01, the JMO was called to testify as PW 07. The JMO had identified 5 external injuries in the body of the deceased. There had been 3 injuries to the head and 2 injuries to the left hand. The JMO was of the opinion that the cause of death was due to excess bleeding owing to the cut injuries in the head and hand. The injuries were identified as being sufficient to cause death in the ordinary course of nature.

As per PW 08, the appellant had surrendered himself to the Police Station, Pindeniya, on 05.01.2006 at 8.25am. The appellant handed over a curved knife to PW 08 and accordingly, he registered it under PR No. 164. The PW 08 identified the said knife at the trial. Further, the PW 08 had observed that there were stains similar to blood on the shirt and vest of the appellant and therefore, the PW 08 had taken the same into his custody. Thereafter, he had taken the appellant into custody and notified the same to OIC of Pindeniya Police Station (PW 10) and recorded a statement from the appellant. The PW 10 testified that he left to visit the scene of crime subsequent to the arrest of the appellant. The PW 10 had observed 4 stains like blood at the scene of crime and observed that the place of incident was located within a distance of 30 feet from the house of the deceased. He had taken a black colour bag into his custody which was found at the scene of crime.

Subsequently, the Police station had received a telephone message from the police post of Kegalle Hospital at 9.30am about the death of the deceased, in which the suspect was referred to as one 'Dias'.

In the dock statement, the appellant stated that he is innocent and he received a message from the Police to surrender to the police.

Now I wish to consider 1st and 2nd grounds of appeal. The Learned Counsel for the appellant contended that the prosecution has failed to prove its case beyond reasonable doubt and the entire case is based on the evidence of PW 01. It was argued that the PW 01 has given false evidence because she described the weapon to be not too long; short knife (Page 44 of the brief). However, the JMO was of the opinion that the weapon should have been a sharp weapon with a long blade (page 72 of the brief). It was further submitted that the only eye witness called by the prosecution was the PW 01 even though there had been number of other witnesses listed in the indictment.

In reply to the above contention, the Learned SSC for the complainant-respondent (hereinafter referred to as the 'respondent') submitted that there is no material contradictory evidence in existence with regard to the appellant meeting the deceased and assaulting her.

It is noteworthy that section 134 of the Evidence Ordinance states that *"no particular number of witnesses shall in any case be required for the proof of any fact."*

In the case of **Vadivelu Thevar V. State of Madras [1957 AIR 614]**, it was held that,

"On a consideration of the relevant authorities and the provisions of the Indian Evidence Act, the following propositions may be safely stated as firmly established:

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character...

(3) ***Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes****. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act has categorically laid it down that "no particular number of witnesses shall in any case be required for the proof of any fact." The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses..."* (Emphasis added)

In the case of **The Attorney General V. Devunderage Nihal [SC Appeal 154/2010 – decided on 03.01.2019]**, it was held that,

"This court is mindful of the fact that the witnesses testify before the trial judge and it is the trial judge who would have the benefit of observing the demeanour and the deportment of the witnesses. It is the trial judge who would have the benefit of observing the manner in which a witness faces the cross examination. Hence, in the absence of any other infirmities, having

considered all these matters, if the trial judge forms the opinion that the witness is credible, I do not think the trial judge has any other option other than to accept the evidence and to act on it."

In the case of **Devunderage Nihal (supra),** his Lordship Justice Aluwihare referred to the case of **King V. Chalo Singho [42 NLR 269]**, in which it was held that,

"It must, therefore, be regarded as well-established law, that a prosecutor is not bound to call all the witnesses on the indictment or to tender them for cross-examination. That is a matter in his discretion, but in exceptional circumstances, a judge might interfere to ask him to call a witness or to call a witness as a witness of the court..."

In light of above, it is to be understood that it is not mandatory for the prosecution to call all the witnesses listed in the indictment and a Trial Judge may even rely on a testimony of a single witness if he is satisfied that the witness is creditworthy. I observe that the Learned High Court Judge in the instant case was of the view that there can be contradictions in the testimony of the PW 01 and minor matters could be forgotten since she was testifying after 8 years of the incident. The Learned High Court Judge further held that even though the PW 01 mentioned about the answers given by her brother, it was not a reason to reduce the value of evidence of PW 01. I observe the following conclusion made by the Learned High Court Judge;

"...අනෙක් අතට වසර 08 පමණ පසු සාක්ෂි දෙන විට තමා දුටු බරපතලම සිද්ධිය වන මවට පිහියෙන් කෙටීම යන කාරණය හැර ඊට අදාළ අවශේෂ කරුණු නිශ්චිතව මතකයේ නොරැඳීම නිසා මෙවැනි පරස්පරතා ඇති වීමටද ඉඩ ඇත... විශේෂයෙන්

සාක්ෂිකාරිය සාක්ෂි දුන් විලාශය තුළ ඈ අවිශ්වසනීය සැක කටයුතු සාක්ෂිකාරියක ලෙස මා හට පෙනී ගියේ නැත..." (Page 142 of the brief)

It appears that the Learned High Court Judge was satisfied that there was no reason to disbelieve PW 01 considering the way she testified.

In the case of **Chaminda V. Republic of Sri Lanka (2009) 1 Sri L.R. 144**, it was held that,

> *"Court of Appeal will not lightly disturb the findings of a judge who had come to a favourable finding with regard to the testimonial trustworthiness of a witness whose demeanour and deportment had been observed by the trial judge. This view is supported by the judicial decision in Alwis Vs. Piyasen Fernando(3) wherein G.P.S. de Silva CJ remarked thus: "It is well established that findings of primary facts by a trial judge who hears and sees witness are not to be lightly disturbed on appeal."..."*

In the case of **Dharmasiri V. Republic of Sri Lanka [2010] 2 Sri LR 241,** it was held that,

> *"Credibility of a witness is mainly a matter for the trial Judge. Court of appeal will not lightly disturb the findings of trial Judge with regard to the credibility of a witness unless such findings are manifestly wrong. This is because the trial Judge has the advantage of seeing the demeanour and deportment of the witness..."*

Therefore, it is trite law that the appellate Court will not disturb the findings of the Trial Judge who has a better opportunity of observing the witnesses and the case as a whole, unless such finding of the Trial Judge is manifestly wrong.

I further observe that the JMO was of the opinion that there was a possibility of causing the injuries to the deceased using the knife marked as 'P1' (Page 73 of the brief). The PW 01 testified that it was a 'quite big knife which was curved" (Page 44 of the brief). She further identified the knife. Therefore, I do not see any contradiction in the description of the knife, as contended by the Learned Counsel for the appellant. Considering above, I am of the view that the Learned High Court Judge was correct in relying on the evidence of PW 01 since she was a credible witness and there are no merits in the above two grounds of appeal raised on behalf of the appellant.

The Learned Counsel for the appellant argued that there is a serious doubt as to whether the knife marked as 'P1' had been really handed over to the Police, by the appellant. The said doubt is established since the P1 weapon or the clothes taken from the appellant were not sent to the Government Analyst to identify blood on the same. However, I am of the view that, the mere fact that the weapon was not sent to the Government Analyst does not create a doubt about the handing over of the weapon to the Police, since the evidence of PW 08 was not challenged. Therefore, I see no merits in this argument.

It was further argued that the dock statement has created a reasonable doubt on the prosecution case. The Learned Counsel for the appellant submitted the case of **Udagama V. Attorney General (2000) 2 Sri L.R 103**. However, I observe that the said case is quite different from the case before us. In the said Udagama case, there were some serious infirmities in the evidence of the witnesses and the High Court Judge had failed to consider the dock statement. I observe, in the instant appeal, the appellant had made a dock statement consisting about 5 sentences which was a complete denial of the commission of the offence. The Learned High Court Judge in his judgment has evaluated the whole dock statement and came to

the conclusion that the said dock statement cannot be believed since the appellant had surrendered even before the Police Station, Pindeniya received the relevant message from the Hospital Police post, Kegalle. Therefore, I see no merits in the above argument as well.

Considering above, I am of the view that the Learned High Court Judge came to the correct conclusion after a careful consideration of all the evidence that was placed before him. Therefore, I do not wish to interfere with the conviction and the sentence imposed on the appellant, by the Learned High Court Judge and I affirm the same.

This appeal is hereby dismissed.

JUDGE OF THE COURT OF APPEAL

K. Priyantha Fernando, J.

I agree,

JUDGE OF THE COURT OF APPEAL

Cases referred to:

1. Vadivelu Thevar V. State of Madras [1957 AIR 614]
2. The Attorney General V. Devunderage Nihal [SC Appeal 154/2010]
3. King V. Chalo Singho [42 NLR 269]
4. Chaminda V. Republic of Sri Lanka (2009) 1 Sri L.R. 144
5. Dharmasiri V. Republic of Sri Lanka (2010) 2 Sri LR 241
6. Udagama V. Attorney General (2000) 2 Sri L.R 103