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

The Democratic Socialist Republic of Sri Lanka

Complainant

V.

Court of Appeal Case No. HCC 284/2007

High Court of Ratnapura No. 82/2002

Ananda Kuttigama Athi Ralalage Chandrasena,
Panagama, Dela,
Ratnapura.

Accused

AND NOW

Ananda Kuttigama Athi Ralalage Chandrasena,
Panagama, Dela,
Ratnapura.

Accused Appellant

V.

The Democratic Socialist Republic of Sri Lanka

Complainant Respondent

BEFORE	:	**K.K. WICKREMASINGHE, J** **K. PRIYANTHA FERNANDO, J**
COUNSEL	:	Dr. Ranjit Fernando for the Accused Appellant. Janaka Bandara SSC for the Respondent.
ARGUED ON	:	01.07.2019
WRITTEN SUBMISSIONS FILED ON	:	12.03.2019 by the Accused Appellant.
JUDGMENT ON	:	10.10.2019

K. PRIYANTHA FERNANDO, J.

01. The Accused Appellant (Appellant) was indicted in the High Court of Ratnapura on one count of murder punishable under section 296 of the Penal Code and one count of attempted murder punishable under section 300 of the Penal Code. After trial the learned High Court Judge found the Appellant guilty of both counts and sentenced the Appellant to death on count No.1 and sentenced to 10 years imprisonment with a fine of Rs. 5000/- on count No 2. Being aggrieved by the said conviction and sentence the Appellant preferred the instant appeal.

02. Counsel for the Appellant urged and pursued one ground of Appeal;

The learned Trial Judge erred in fact and in law by attaching culpability and concluding that the prosecution has established their case beyond reasonable doubt notwithstanding serious infirmity and legal shortcomings in the prosecution case.

03. Brief facts of the case are, on the day in question the deceased (Ranjani) had been helping in a house of a relative where they had a ceremony of a child attained puberty. According to the evidence of PW 1 and PW 2, in the evening at about 5.30 pm deceased had wanted to go home. PW 1 and PW 2 had accompanied the deceased. PW 1 is the brother of the deceased and PW 2 is a cousin. It was the sister of the PW 2 who had attained puberty. When PW 1 and PW 2 were accompanying the deceased who was carrying her child, they have seen the Accused behind their boutique carrying a gun. The Accused had been scolding Ranmenika and had aimed the gun towards them and had fired. Both deceased and her child had got injured. Although the injured were taken to the hospital Ranjani (deceased) had succumbed to her injuries and the child had recovered after treatment.

04. Although the counsel for the Appellant filed written submissions, counsel for the Respondent failed in his duty by not filing written submissions in spite of the fact that he was given more time to file. I have carefully considered the evidence adduced at the trial, judgment of the learned High Court Judge, ground of appeal urged, written submissions filed by the counsel for the Appellant and oral submissions made by counsel for both Appellant and the Respondent.

05. In support of the ground of appeal, counsel for the Appellant submitted that the Government Analyst report does not confirm that the pellets or the empty cartridges found had been used through the firearm given for analysis. Hence, there is no evidence that the fire arm recovered was in fact the one used to commit the offence. As the productions were not produced at the trial, the witnesses could not identify those as the items recovered. Counsel further submitted that there was no proper admissible evidence led to prove that the productions had gone missing. It was the contention of the counsel for the Appellant that the purported statement made under section 27 of the Evidence Ordinance was not in the legal form. Counsel further submitted that the eye witnesses are vested with interest and should not be relied upon.

06. Counsel for the Respondent submitted that the Government Analyst report was admitted in evidence by both parties at the trial (vide proceedings dated 23.01.2007). Productions in this case had been destroyed and a letter to that effect was produced without objection at the trial. Counsel further submitted that section 60 of the Evidence Ordinance provides for adducing oral evidence when productions are destroyed.

07. The report of the Government Analyst was produced at the trial without objection as P3. It had been recorded that the defence had no objection for producing the report (page 129 of the brief). On behalf of the Registrar, Interpreter Mudliyar had given evidence at the trial and had testified on the contents of a letter sent by the Registrar, Magistrate's Court Ratnapura stating that the productions had been destroyed (page 130). However, prosecution has not produced the said letter which is

already in the Court record. At that point in time the defence has not challenged the evidence of the Registrar, that the productions had been destroyed due to the fire in the production room of the Magistrate's Court.

08. Government Analyst has given his opinion on the weapon and the cartridges sent to him. His opinion is unchallenged. However, as submitted by the counsel for defence, there was no evidence called by the prosecution to prove that the productions analyzed by the Analyst were the productions recovered by the police at the crime scene and on the section 27 statement by the Appellant. It has escaped the mind of the State Counsel at the stage when the defence admitted the report of the Government Analyst. It is necessary for the prosecution to prove that the productions analyzed were the productions recovered by the police during investigation, if the prosecution intends to connect the productions with the Accused or the crime.

09. Now I will turn to the submission of the Counsel for the defence that the eye witnesses are vested with interest and should not be relied upon.

10. It is the contention of the counsel for the Appellant that the evidence of PW 1 and PW 2 should not be relied upon as they are close relations of the deceased. Admittedly PW 1 is the brother of the deceased Ranjani, and PW 2 is her cousin. According to the clear evidence given by PW 1 and PW 2, they had been walking along with the deceased to drop her home. Deceased had been carrying the child who is the victim in Count No.2. Appellant had aimed a gun towards them and had fired. They have clearly identified the Appellant. It had been in the evening, not in the

night. Distance between the Appellant and them had been about 30 feet according to PW1. Appellant had been a known person. Both witnesses had identified the Appellant. Both PW 1 and PW 2 had given clear evidence and they were consistent. Both witnesses had made their statements to the police the same day. In their evidence there had been no contradictions *inter se* or *per se* that run to the root of the case. As rightly concluded by the learned Trial Judge, the evidence of both PW 1 and PW 2 was reliable and could be acted upon.

11. Merely because PW 1 and PW 2 are close relatives of the deceased, Court should not reject their evidence or consider their evidence with doubt. However, Court should bear in mind that they are relatives of the deceased when considering the evidence. There is no hard and fast rule that family members never be true eye witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend on the facts and circumstances.

12. In ***Jayabalan V. UT of Pondicherry 2010 1 SCC 199***, Indian Supreme Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim.

13. Similar view was taken by Supreme Court in India in ***Ram Bharosey V. State of U.P. AIR 1954 Sc 70,*** where the Court said the dictum of law that a close relative of the deceased does not, *per se*, become an

interested witness. An interested witness is one who is interested in securing the conviction of a person out of vengeance or enmity or due to disputes and deposes before the Court only with that intention and not to further the cause of justice. The law relating to appreciation of evidence of an interested witness is well settled, according to which, the version of an interested witness cannot be thrown overboard, but has to be examined carefully before accepting the same.

14. As I mentioned before in paragraph 10 of this judgment, the evidence of PW 1 and PW 2 had been credible and consistent. Even without taking into consideration the evidence of section 27 recovery and the report of the Government Analyst in favour of the prosecution, on the evidence of PW 1 and PW 2, if accepted, is sufficient to sustain the conviction of the Appellant on both counts in the indictment.

Hence, the ground of appeal urged by the Appellant should fail. I affirm the conviction and the sentence imposed on the Appellant on both counts.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

K.K. WICKREMASINGHE, J

I agree.

JUDGE OF THE COURT OF APPEAL