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

In the matter of an Appeal made under Section 331 of the Code of Criminal Procedure Act No.15 of 1979

CA 140/2015
HC/ CHILAW/ 96/2006

Arachchi Muhamdiramlage Victor Perera

ACCUSED-APPELLANT

vs.

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

COMPLAINANT-RESPONDENT

BEFORE	:	**Devika Abeyratne J** **P. Kumararatnam J**
COUNSEL	:	**Mr Rasika Samarawickrama for the Appellant.** **Mr.A.Navavi DSG for the Respondent.**
ARGUED ON	:	**03/03/2021**
DECIDED ON	:	**01/04/2021**

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JUDGMENT

P. Kumararatnam J

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted in the High Court of Chilaw under Section 296 of the Penal Code for committing the murder of Warnakulasuriya Mahalekamlage Mariya Katherine on or about 18th April 2003.

Trial commenced before the High Court Judge of Chilaw as the Appellant had opted for a non-jury trial. After the conclusion of the prosecution case, the learned High Court Judge had called for the defence and the Appellant had made a statement from the dock. After considering the evidence presented by both parties, the learned High Court Judge had convicted the Appellant as charged and sentenced him to death on 24/06/2015.

Being aggrieved by the aforesaid conviction and sentence the Appellant preferred this appeal to this court.

The Learned Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence due to the Covid 19 pandemic.

On behalf of the Appellant following Grounds of Appeal are raised.

1. The conviction is wholly unsafe in the view of the uncorroborated and unsatisfactory nature of the evidence of the sole eye witness along with the other respective witnesses, led by the prosecution.
2. Medical evidence conflicts with ocular testimony thereby creating a grave doubt in the prosecution version.
3. The judgment does not accord with the provision of section 283 of the Criminal Procedure Code Act.

According to the eye witness PW08 Samanmali she had gone for a bath on 18/04/2003 between 10.30-11.00am with her neighbour PW07 Suneetha to Deduru Oya. While bathing the deceased had come there and requested her to accompany her to a place to give deceased's clothes for tailoring. Since PW08 was in wet clothes after the bath, both this witness and the deceased had proceeded to PW08's house to change clothes. While both were leaving the place in a bicycle ridden by the witness, the Appellant had suddenly appeared from the "Dambala Kotuwa" and dealt a blow aiming at the deceased but it struck on the bucket caried by the deceased. Due to this unexpected attack, both the witness and deceased had fallen down from the bicycle. At that time the Appellant had dealt a blow on the deceased's head with an axe. Due to fear the witness had run towards the road and the deceased had run towards a banana plantation. While running the deceased had fallen in to a ditch. At that time the Appellant had dealt 3-4 blows on the head of the deceased again with the blunt side of the axe. As a result, PW08 had noticed that the deceased was lying motionless in the ditch. When she encountered this incident, she was only 16-17 years of age.

PW09 Albert Appuhamy hearing the cries of PW08 had rushed to the spot and found the deceased had fallen on the ground and the Appellant was standing 2-3 feet away with an axe in his hand. At that time the Appellant had threatened him not to get close to him.

According to PW04 Manjula Pradeep when he went to the place of incident, he had met the Appellant and he had told him that he was going to the police. PW14 SI/Seneviratna confirmed that the Appellant had surrendered to the police on the date of the incident. An axe was recovered consequent to the statement of the Appellant.

The Appellant had confessed to PW03 Sriyalatha that he had killed the deceased when he came to her house to collect his bicycle which was parked there as usual.

There were about 10 injuries noted on the deceased by the doctor and according to him the death has caused due to Cranio-Cerebral injuries due to blunt force trauma of the head. (due to blow with a blunt weapon)

After the closure of the prosecution case, the defence was called and the Appellant opted to make a statement from the dock which had been rejected by the Learned High Court Judge.

- In the first ground of appeal the Appellant contends that the conviction is wholly unsafe in view of the uncorroborated and unsatisfactory nature of the evidence of the sole eye witness along with the other respective witnesses, led by the prosecution.

The Counsel for the Appellant argues that the PW08's evidence is not corroborated by any other witnesses. In this case the PW08 is an eye witness. She had clearly seen the incident without any disruption on that day.

The Section 134 of the Evidence Ordinance states as follows;

> *"No particular number of witnesses shall in any case be required for the proof of any fact".*

In this case PW08 had clearly witnessed the incident and gave evidence without any contradiction or omission. When the incident had happened, she was only 16-17 years of age. With reference to above mentioned section, the evidence given by the eye witness PW08 is convincing and not tainted with any ambiguity or uncertainty.

In the case of **Sumanasena v. The Attorney General** [1999] 3 Sri.L.R 137 held that;

> *"Evidence must not be counted but weighted and the evidence of a single solitary witness if cogent and impressive could be acted upon by a Court of Law"*

In the case of **Madduma Siripala and another v. The Attorney General** CA/125-126/10 decided on 27/10/2017, Justice Thurairaja held that:

> *"With reference to the above-mentioned section, there is no requisite number of witnesses needed to be called to prove a fact. In fact, the evidence of a single witness is sufficient to prove a fact provided the evidence of the witness is uncontradicted, truthful, independent and reliable to court".*

In the case of **Chacko Alias Aniyan Kunju & others v. State of Kerala**- [2004] INSC 87 (21st January 2004) held that:

> *"The provision clearly states that no particular number of witnesses is required to establish the case. Conviction can be based on the testimony of single witness if he is wholly reliable. Corroboration may be necessary when he is partially reliable. If the evidence is unblemished and beyond all possible criticism and the Court is satisfied that the witness was speaking the truth then on his evidence alone conviction can be maintained".*

With reference to above cited judicial decisions, it is abundantly clear that the trial court can act on the evidence of a single witness whose evidence is truthful and impressive to come to a correct finding.

The counsel for the Appellant referring to the evidence given by the witnesses called by the prosecution further argues that there are some deviations existing in the evidence given by them.

In this case the eye witness without any contradiction vividly explained how the Appellant had committed the murder of the deceased. Her evidence is further strengthened by the evidence of PW03 to whom the Appellant had

confessed that he had killed the deceased. At that time the witness had seen that an axe was in the possession of the Appellant. According to her she is a distant relation of the Appellant. After this she had gone to the place of incident and had seen the dead body of the deceased.

The confession made to PW03 by the Appellant is well substantiated and tallied with the evidence of the eye witness.

In the case of **State of Uttar Pradesh v. M.K.Anthony** A.I.R (1985) S.C 48 held:

> *"There is neither any rule of law nor of prudence that evidence furnished by an extra-judicial confession cannot be relied upon unless corroborated by some other credible evidence"*

PW08's evidence is further supported by the evidence of PW09. According to PW09 while watering the plants in his land he had heard the cries of PW08. When he went to the place of incident, he had seen that the deceased had fallen down and the Appellant was standing beside the body of the deceased with an axe in his hand. At that time the Appellant had threatened him not to come near him. When he accompanied PW08 to her residence she had told him that the Appellant had assaulted the deceased.

According to PW14 the Appellant had surrendered to the police on the date of the incident. Relying on his statement and acting under Section 27(1) of Evidence Ordinance an axe had been recovered by the police. The said axe was marked as P1. The said axe was identified as the murder weapon by PW08 the eye witness and she further added that the Appellant had dealt the blows on the deceased from the blunt side of the same.

In this case the learned High Court Judge had not only considered the evidence of the eye witness but also considered other corroborating evidence in his judgment.

- In the second ground of appeal the Appellant contends that the Medical evidence conflict with ocular testimony thereby creating a grave doubt in the prosecution version.

According to eye witness the incident had taken place between 10.30am-11.00am. The dead body of the deceased was lying at the crime scene until the police investigation and the scene visit of the learned Magistrate were over. According to police evidence the investigation team had left the police station around 14.10 hours on date of incident.

According to the doctor the post mortem examination was done on 19/04/2003 at about 1.30pm. He had noticed head injuries and sun burn marks on the body. The doctor had written in the relevant cage that the body was brought to the hospital on 18/04/2003 at 10.00am. Citing this discrepancy, the Appellant argues that the medical evidence conflict with ocular testimony.

According to evidence presented, the time of incident had not been contradicted by the witnesses. Further the police had left for investigation at 14.10 hours. Further the doctor has observed sun burn marks on the body of the deceased. This clearly shows that the dead body was lying and exposed to the sun for some time before it was removed to the hospital. Considering this undisputed evidence, the entry that doctor had made that the dead body was brought to hospital at 10.00am on 18/04/2003 will not create any adverse effect on the prosecution case. Further the post mortem examination was done on 19/04/2003 at 1.30pm more than 24 hours of the murder.

In the case of **Menoka Malik and others v. The State of West Bengal and others** (2018) 2 SCeJ 1390 held that:

> *"It is by now well settled that the medical evidence cannot override the evidence of ocular testimony of the witnesses- If there is a conflict between the ocular testimony and the*

medical evidence, naturally the ocular testimony prevails- In other words, where the eye witnesses account is found to be trustworthy and credible, medical opinion pointing to alternative possibilities is not accepted as conclusive".

The doctor had noted about 10 injuries on the deceased. The first three injuries had been inflicted on the head of the deceased. According to the doctor the death was caused due to Cranio-Cerebral injuries due to blunt force trauma of the head (due to blow with a blunt weapon). The medical evidence is quite consistence with the evidence given by the eye witness with regard to the assault on the deceased.

- In his third ground of appeal the Appellant contends that the judgment does not accord with the provision of section 283 of the Code of Criminal Procedure Act. He further submits that no evidence has been led before the learned High Court Judge who delivered the judgment and the evidence led already has not been formally adopted before him.

On perusal of the appeal brief at page 228, the learned High Court Judge who delivered the judgment had properly adopted the evidence and also recorded that both the parties had agreed to proceed with the case before him. Then the prosecution had led the evidence of PW18 and closed the case for the prosecution. Thereafter the learned High Court Judge had called for the defence and recorded the dock statement of the Appellant. Hence it is not true that the learned High Court Judge had not formally adopted the evidence led before his predecessor.

The learned High Court Judge adhering to the Section 283 of the Criminal Procedure Code Act No. 15 of 1979, had correctly evaluated the evidence presented by both sides and delivered the judgment. In the Judgment the learned High Court Judge had very correctly analysed the evidence presented by the prosecution and the defence.

Considering all appeal grounds advanced by the Appellant in this case, none of the grounds have any merits.

Considering the evidence led at the trial, we are of the view that there are no reasons to interfere with the judgment of the learned High Court judge of Chilaw. For the reasons stated above, we affirm the conviction and sentence imposed on the Appellant.

The appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

DEVIKA ABEYRATNE, J

I agree

JUDGE OF THE COURT OF APPEAL