
**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 64/2016

HC/ Kuliypitiya/ 236/2007

Lekamlage Karunaratne

ACCUSED-APPELLANT

vs.

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

COMPLAINANT-RESPONDENT

BEFORE : **Devika Abeyratne J**
P. Kumararatnam J

COUNSEL : **Mr.Nayantha Wijesundera AAL for the**
Appellant.
Mr.A.Navavi DSG for the Respondent.

ARGUED ON : **05/10/2021**

DECIDED ON : **29/10/2021**

JUDGMENT

P. Kumararatnam J

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted in the High Court of Kuliyaipitiya under Section 296 of the Penal Code for committing the murder of Jayasuriya Arachchilage Dayawathie on or about 15th May 2006.

The trial commenced before the High Court Judge of Kuliyaipitiya 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 18/05/2016.

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. Also, at the time of argument the Appellant was connected via zoom from prison.

The Appellant raises an appeal ground complaining to this court that the Learned Trial Judge had failed to properly assess the weaknesses of the testimony of lay witnesses in his judgement.

Background of the Case

On the 15th of May 2006 around 3.30 - 4.00 p.m., PW01 Jayasuriya Arachchilage Nishshanka who is a brother of the deceased-Jayasuriya Arachchilage Dayawathie, heard Dayawathie shout from her house. He had arrived just then at his brother-Jayasinghe's house which was situated very close to Dayawathie's house. He immediately made his way to his sister's house and saw the Appellant standing behind the deceased, clutching her hair in his left hand and dragging a curved knife across her throat with his right hand. The Appellant had then fled the scene through the front door with the knife.

Jayasuriya Arachchilage Jayasinghe PW2 who is also a brother of the deceased saw the Appellant fleeing from his sister's house through the front door with a knife when he was making his way towards the cries he heard while attending a village co-operative society meeting (Maranadhara Samithiya) nearby. The Appellant was also present at the meeting but left immediately after the start of religious observances. While fleeing from the scene the Appellant shouted a warning to others not to approach him.

Jayasuriya Arachchilage Podi Mahaththaya PW4, also a brother of the deceased, entered the deceased's house soon after PW2 and saw only the deceased and PW1 and PW2 in the house. Immediately after the incident the deceased had uttered that Karunaratna had cut her neck. This had been heard by witnesses PW01, PW02 and PW04.

On the way to the hospital, PW1 got off at the Narammala Police Station to report the incident citing the name of the Appellant-Karunaratna as the perpetrator and the hospital authorities not long thereafter confirmed the death of Dayawathie to the Police.

The Counsel for the Appellant argued that the account given by PW01 is inconsistent with the medical evidence, and, also, the manner in which PW01

stated the incident allegedly took place is improbable. He further submitted that according to PW01 the Appellant had kept a knife to her neck and pulled/dragged it across her neck and therefore, the net outcome should be a long cut injury on the neck. But according to the Judicial Medical Officer a stab injury on the neck of the deceased had been noted.

PW01 had vividly described how he saw the incident to the court. When he entered the deceased's house from rear door, he had witnessed that the Appellant was holding the deceased from her hair, standing behind her and dragging a knife across her neck. Thereafter the Appellant had run away from the scene. Hence it is very clear that PW01 had seen the Appellant injuring the deceased on her neck. Further the deceased had uttered that Karunaratna had cut her neck immediately after the incident. This had been heard by witnesses PW01, PW02 and PW04.

Both PW01 and PW02 had said that they had seen a small, curved knife in the hand of the Appellant. After the arrest of the Appellant the police had recovered a knife upon the statement of the Appellant under section 27(1) of the Evidence Ordinance. Both witnesses had identified the knife at the trial as the murder weapon.

The Judicial Medical Officer in his evidence opined that the injury he noted on the deceased's neck could have been inflicted with the knife which had been recovered upon the statement of the Appellant. The doctor further opined that the deceased could have spoken immediately after the fatal injury to her neck.

It is very clear that PW01 had seen the Appellant causing the very injury to the deceased to her neck with a knife. As he was facing the back of the deceased, he was not in a position to correctly say the exact nature of the injury caused to the deceased's neck. But his evidence is very well

corroborated with the medical evidence with regard to causing very serious injury to the neck of the deceased.

Further on the following day the Appellant had come to the funeral house at night armed with a sword and threatened to kill all witnesses. As a result, all of the people who came to the funeral had run helter-skelter out of the premises. This clearly shows his subsequent conduct.

In this case the Learned High Court Judge had very correctly analyzed and accepted and come to the conclusion that the evidence given by the witnesses is convincing and trustworthy.

In **Kumara De Silva and 2 others v. Attorney General** [2010] 2 SLR 169 the court held that:

“Credibility is a question of fact, not of law..... The acceptance or rejection of evidence of witnesses is therefore a question of fact for the trial judge....”.

Further the counsel for the Appellant contends that the identity of the Appellant had not been properly established. In this case the identity of the Appellant had been established from the beginning. The deceased had told immediately after the incident that Karunaratna had cut her neck. PW01 and PW02 identified the Appellant at the crime scene just after the incident. Within a very short period the Appellant’s identity had been promptly revealed to the police by PW01. Further witnesses PW02 and PW04 had seen the Appellant at the village meeting and leaving the same after the initiation of religious observances. Hence very clear evidence had been led at the trial with regard to the identity of the Appellant.

The Appellant’s Counsel further contended that related witnesses to the deceased were lying under oath to frame the Appellant. Hence, he submits

that evidence of PW01, PW02 and PW04 who are bothers of the deceased should be considered with much caution.

In **Waman & Others v. State of Maharashtra** AIR 2011 SC 3327 the Supreme Court of India held that;

“There is no bar on accepting the evidence of related witnesses. Merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence”.

In **Sarwan Singh and Others v. State of Punjab** (1979) 4 SCC 369 the Indian Supreme Court further held that;

“The Evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of the interested witness has a ring of truth, such evidence could be relied upon even without corroboration.

In **Balraje alias Trimbak v. State of Maharashtra** (2010) 6 SCC 673 the Indian Supreme Court further held that;

“If after a careful analysis and scrutiny of their evidence, the version given by them appears clear, cogent and credible, there is no reason to discard the same”.

In the **Attorney General v. Sandanam Pitchi Mary Theresa** [2011] 2 SRI.L. R 292 the Supreme Court held that:

“A key test of credibility is whether the witness is an interested or disinterested witness. Rajaratnam J. in Tudor Perera v. AG (SC 23/75 D.C. Colombo Bribery 190/B – Minutes of S.C. Dated

1/11/1975) observed that when considering the evidence of an interested witness who may desire to conceal the truth, such evidence must be scrutinized with some care. The independent witness will normally be preferred to an interested witness in case of conflict. Matters of motive, prejudice, partiality, accuracy, incentive, and reliability have all to be weighed (Vide, Halsbury Laws of England 4th Edition para 29). Therefore, the relative weight attached to the evidence of an interested witness who is a near relative of the accused or whose interests are closely identified with one party may not prevail over the testimony of an independent witness (Vide, Hasker v. Summers (1884) 10 V.L.R. (Eq.) 204 – Australia; Leefunteum v. Beaudoin (1897)28 S.C.R. 89 - Canada)”.

Learned High Court Judge very correctly had given his reasons as to why he accepts the evidence of PW01, PW02 and PW04 as unbiased witnesses. These three witnesses had given evidence based on what they had seen on the date of the incident. If these witnesses are interested witnesses PW02 could have said that he too had seen the Appellant inflicting injury to her sister.

Further the Learned High Court Judge had very extensively considered the dock statement of the Appellant before rejecting it. The Appellant had taken up the position that at all relevant times he was attending a village meeting. But PW02 had seen the Appellant leaving the meeting at the commencement of religious observances.

With reference to above cited judicial decisions, it is abundantly clear that the trial court had scrutinized and considered the evidence presented by the prosecution very carefully and accepted the same as truthful and impressive to come to a correct finding.

In this case the eye witness without any contradiction vividly explained how the Appellant had committed the murder of the deceased. His evidence is

further strengthened by the evidence of PW02 and PW04. All three witnesses had heard the deceased shouting that the Appellant Karunaratne had cut her neck immediately after receiving the fatal injury.

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 and come to a correct decision.

Considering the appeal ground advanced by the Appellant in this case, it is totally devoid of merit.

Hence, we are of the view that there are no reasons to interfere with the judgment of the learned High Court Judge of Kuliyaipitiya. For the reasons stated above, we affirm the conviction and sentence imposed on the Appellant.

The Registrar is directed to send a copy of this judgment to High Court of Kuliyaipitiya along with the original case record.

The appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

DEVIKA ABEYRATNE, J

I agree

JUDGE OF THE COURT OF APPEAL