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

In the matter of an appeal in terms of section 331 of the Code of Criminal Procedure Act No: 15 of 1979 and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Number: CA 217/2014

High Court of Kalutara : HC 711/2006

Democratic Socialist Republic of Sri Lanka

Complainant

Vs

Vithana Kankanamge Ajith Kumarasiri alias Molla

Accused

And Now Between

Vithana Kankanamge Ajith Kumarasiri alias Molla

Accused- Appellant

Vs

Hon: Attorney General

Attorney General's Department

Colombo -12.

Respondent

Before: **N. Bandula Karunarathna J.**

&

R. Gurusinghe J.

Counsel: Saliya Pieris PC with Susil Wanigapura for the accused – appellant

Dileepa Pieris SDSG for the Complainant-Respondent

Written Submissions: By the accused – appellant on 21.05.2018

By the Complainant-Respondent on 31.07.2018

Argued on : 28.07.2021

Decided on : **15.11.2021.**

N. Bandula Karunarathna J.

The accused-appellant (hereinafter referred to as the appellant) namely Vithana Kankanamge Ajith Kumarasiri alias Molla was indicted before the High Court of Kalutara for causing the death of Hewage Don Dayananda, on or about 28.06.2002 at Ellamulla, Kalutara, an offence punishable under section 296 of the Penal Code.

The trial against the appellant was commenced before the High Court Judge of Kalutara without a jury and at the conclusion of the said trial, the learned High Court Judge had convicted the appellant, and sentenced to death. Being dissatisfied with the said conviction and sentence, the appellant had preferred this appeal to the Court of Appeal seeking to set aside the conviction and sentence imposed upon him.

At the trial, 7 witnesses gave evidence on behalf of the prosecution namely Ellahewage Karunawathi (PW 01), Vithana Kankanamge Lionel (PW 02), Preethika Kumarage (PW 03), Dr. Anura Hettiarachchi (PW 07), Priyanka Pushpalatha (PW 05), R.M. Gunawathi Rathnayake (PW 09) and Chandra Padmalal, Chief Inspector of Police. The prosecution mainly relied upon the evidence of the witnesses namely, Ellahewage Karunawathi (PW 01), Priyanka Pushpalatha (PW 05) and Chief Inspector Chandra Padmalal (PW 08) who was the main investigating officer to prove the charge levelled against the accused.

At the trial Ellahewage Karunawathi (PW 01) stated that at about 4.30 pm to 5.00 pm on the date of the incident, the deceased Dayananda suddenly came to her house saying “Ajith stabbed” him with a knife. Then she went near the door, she saw the accused coming with a knife in hand towards the house. Then the witness closed the door. She further stated since the accused banged several times on the door, she asked the accused not to bang on the door and then the accused threatened "if anyone gives evidence, they all would be killed."

Witness Karunawathi giving evidence stated in the cross- examination that “Dayananda was a known person”. But at the post mortem inquiry she had stated that the deceased was known as “Nandasena's cousin” but not by name. This contradiction was marked as 1 වි 1 at the trial.

ප්‍ර : දැන් තමුන් මරණ පරීක්ෂණයේදී මෙහෙම කිව්වද? “ එක පාරටම එක්කෙනෙක් ගෙට පැන්නා අනේ නැන්දේ කියාගෙන” එහෙම කිව්වද?

උ : ඔව්.

ප්‍ර : සාලය හරහා ගේ ඇතුලට දිව්වා හරිද?

උ : ඔව්.

ප්‍ර : එයා නන්දසේනලාගේ මස්සිනා බව දැක්කා හරිද?

උ : හරි

ප්‍ර : තමුන් කිව්වේ නම කියන්න දන්නේ නෑ කියා?

උ : දන්නේ නෑ කියා කිව්වේ නෑ.

සාක්ෂිකාරිය විසින් මරණ පරීක්ෂණයේදී දී ඇති සාක්ෂියේ 4, සහ 5 පේළිවල එයා නන්දසේනගේ මස්සිනා බව දන්නවා නම කියන්න දන්නේ නෑ යන කොටස 1 වී 1 ලෙස ලකුණු කිරීමට අවසර ඉල්ලා සිටිනවා.

Thereafter, the witness was questioned with regard to the conduct of the accused, after she closed the door. The witness said at the trial before the High Court, that once the door was closed, the accused banged on the door and uttered that if you give evidence, you all would be killed. However, she had taken a contrary position at the non-summary inquiry. There she had stated that nothing was said by the accused after the door closed. That contradiction was marked as 1 වී 2. It is as follows;

ප්‍ර : තමා මෙහෙම කිව්වද? "දොර වැහුවාම අජිත් ගියා යන්න" කියලා?

උ : කිව්වා.

ප්‍ර : පල්ලෙහා පැත්තට ගියා, මට මොකුත් කිව්වේ නැහැ කියා කිව්වද?

උ : මට මොකුත් කිව්වේ නැහැ කියා කිව්වේ නැහැ. පල්ලෙහා පැත්තට ගියා කිව්වා.

"මට මොකුත් කිව්වේ නැහැ" යන කොටස වී 2 යනුවෙන් ලකුණු කරයි.

The witness further giving evidence stated that she knew the name of the deceased whereas in the police statement she stated that she did not know the name of deceased. This contradiction was marked as 1 වී 3.

ප්‍ර : තමා පොලීසියට මෙන්න මෙහෙම කිව්වද?

ප්‍ර : එම අවස්ථාවේ එකවරටම නැන්දේ කියාගෙන මියගිය අය ගෙට පැන්නා, එහෙම කිව්වද?

උ : කිව්වා.

ප්‍ර : මම ඔහුගේ නම දන්නේ නැහැ, තමා එහෙම කිව්වද?

උ : නම දන්නේ නැහැ කියලා කිව්වේ නැහැ.

("මම ඔහුගේ නම දන්නේ නැහැ" යන කොටස 1 වී 3 ලෙස පරස්පර විරෝධීතාවයක් ලෙස ලකුණු කිරීමට අවසර පතයි).

The learned President's Counsel argued that the above contradictory evidence given by the witness creates a reasonable doubt as to whether the witness was trying to implicate the accused, with the incident by fabricating a story. When the contradictions marked 1 වී 1 and 1 වී 2 are considered together, it demonstrates that the witness had tried to somehow implicate the accused with the incident by taking two different versions at two stages.

The learned President's Counsel further says that discrepancies of the evidence were not considered by the learned Trial Judge. In the evidence of Karunawathi (PW 01), she had given contrary evidence at several crucial points of the case. The witness Karunawathi stated in her evidence-in-chief that when she saw the accused there was a knife in the accused's hand. However, in the cross-examination she had taken a different position and stated that she did not see a knife properly.

In the evidence-in-chief, she has stated as follows;

ප්‍ර : තමුන් කියන්නේ දයානන්ද ඇවිල්ලා ගෙට ආපු ගමන්ම තමුන් උලුවස්ස ලඟට ගියා?

උ : ඔව්, ගෙට එනකොටත් මම උලුවස්ස ලඟට ගියා බලන්න. ඒ යනකොට අජිත් පිහියකුත් අරගෙන ආවා.

Contrary to the above she stated the following in the cross-examination;

ප්‍ර : තමුන් කිව්වා විත්තිකරු අතේ පිහියක් තිබුණා කියා?

උ : ඔව්

ප්‍ර : තමුන්ට එය විස්තර කරන්න පුළුවන්ද?

උ : මම හරියට දැක්කේ නැහැ.

It is my view that witness Karunawathi must have seen the knife but she couldn't explain what sought of a knife that was, as she had not seen it very clearly. When she says that "මම හරියට දැක්කේ නැහැ", it doesn't mean that she has not seen at all. It was a positive answer, as she has seen the knife in the hand of the accused-appellant.

Karunawathi (PW 01) admits that her daughter was married to the brother of the accused. Both the accused and the deceased were her neighbours. There were several contradictions marked in the evidence of this witness. But it is pertinent to note that the said contradictions are trivial in nature and does not go into the root of the matter. The defence suggested that the witness was at enmity with the accused. It was suggested that the accused gave a tip-off to the police against the witness's family, about their illicit liquor business. As a result, the witness had an ill feeling towards the accused.

K.K. Priyanka Pushpalatha (PW 05) is the daughter-in-law of the PW 01. She corroborates the evidence of her mother-in-law. She took her child inside a room when the deceased came into the house. She heard the accused uttering foul language on the road. She saw the accused armed with a knife at the said instance.

The defence suggested that this witness was giving false evidence due to the animosity between the accused and her husband's family. But it was denied by the witness.

Preethika Kumarage (PW 03) is the wife of the deceased. She had accompanied her injured husband to the hospital in a trishaw. She denies having any knowledge of an enmity between the accused and the deceased. The defence suggested that her brother and husband had many enemies. But it was not proved.

Anura Hettiarachchi (PW 07), DMO Matugama District Hospital had conducted the post mortem. As per the post-mortem report, there was a deep stab injury which had resulted a penetrating cardiac wound on the deceased. The cause of death was haemorrhagic shock following stab injury to chest.

IP, Padmalal (PW 08) conducted the Police investigations. He observed the bike the deceased pedalled fallen on the ground closer to the accused's house. There were blood stains at Karunawathi's residence. PW 08 says that the accused was absconding soon after the incident. Accused was arrested on 03.07.2002 at around 7.25 p.m. A knife was recovered subsequent to the statement given by the accused. It was a recovery under section 27. The knife was concealed underneath a fallen concrete slab.

There were blood stains on the knife. However, the witness had not taken steps to send the knife to the Government Analyst.

At the trial the witness PW 08 identified the knife he recovered at the investigation conducted by him. It cannot be linked with the accused with regard to the crime, as it was not sent to the Government Analyst.

Chief Inspector Chandra Padmalal (PW 08) giving evidence stated that the accused was arrested on 03.07.2002. The incident had taken place on 28.06.2002 according to the information he received on the road close to the gate of Danistern Estate. He further gave evidence that the accused came close to the police jeep and asked whether it was him, they were looking for. Thereafter, the accused was arrested by PW 08.

It is important to note that Karunawathi (PW 01) stated that at the time of the incident she and her daughter-in-law, Priyanka (PW 05) with her child were inside the house. In the cross-examination she stated that her son came to her house and was in the room immediately after the time of the incident. It is very clear when Dayananda came running to Karunawathi's house her daughter Priyanka (PW 05) and Priyanka's small child were only staying inside the house. Karunawathi's son came inside the house after Dayananda had fallen with stab injuries.

Priyanka (PW 05) giving evidence stated that the accused was on the road uttering abusive words with a knife in his hand at the time of the incident. However, she admitted the fact that she has not given this evidence in the Magistrate's Court, where she has stated in the Magistrate's Court that someone was uttering filthy words out side of the house. The learned President's Counsel for the accused-appellant argued that, it is clear that the witness tried to convince to court that she saw the accused at the time of the incident. However subsequently she had taken the position that the accused was identified by the voice of the accused.

In cross-examination Priyanka (PW 05) very clearly said that she saw the accused-appellant Ajith with a knife in his hand.

(Vide pages 150 and 151 of the appeal brief is as follows:)

ප්‍ර : සාලයට ආවාම මොනවත් දැක්කද?

උ : අජිත් පාරේ කුණුහරප කියනවා දැක්කා.

ප්‍ර : පිහියක් අරන් ඉන්නවා දැක්කද?

උ : ඔව්.

ප්‍ර : කොයි පැත්තටද ගියේ විත්තිකරු?

උ : අපේ ගෙයි උඩ පැත්තට.

The learned President's Counsel further argues that Ellahewage Karunawathi (PW 01) and Priyanka Pushpalatha (PW 05) are relatives, namely the mother-in-law and daughter-in-law respectively. The evidence further shows the existence of animosity between the witnesses and the accused till the incident took place in relation to the tipping off to the police by accused pertaining the illegal liquor business carried out by Priyanka Pushpalatha (PW 05) and her husband Ajith Kumara who is the son of Ellahewage Karunawathi (PW 01).

When considering the following portions of evidence led by Ellahewage Karunawathi (PW 01), it reveals that there had been an animosity between the family of witnesses and the accused.

ප්‍ර : තමුන් කිව්වා විත්තිකරු අතේ පිහියක් තිබුණා කියලා?

උ : ඔව්.

ප්‍ර : ----

උ : ----

ප්‍ර : මේ විත්තිකරු ඊට කලින් පිහියක් අරගෙන යනවා දැකලා තියෙනවාද?

උ : .ඉනේ ගහගෙන ඉන්නවා හැමතිස්සෙම වාගේ.

ප්‍ර : පිහියෙන් විත්තිකරු වරදක් කරනවා දැකලා තියෙනවද?

උ : දවසක් කතාවෙලා අපේ ගෙදර ඉස්සරහා පාරට ඇවිල්ලා අපේ දුවටයි මටයි දුවගේ පුතාටයි පිහියෙන් අනිනවා කිව්වා.

Learned President's Counsel further says that, in the cross-examination the witness gave evidence with regard to the animosity as follows;

(Vide Page 75, 78 and 79 of the Appeal Brief)

ප්‍ර : තමාගේ පවුලේ අයත් මේ විත්තිකරුත් එක්ක මොනවත් ප්‍රශ්න තියෙනවද?

උ : සෑහෙන කරදර තියෙනවා, නිකම් සෑහෙන කරදර තියෙනවා. ඒ දිනවල අපිට බැන්නා හොඳටම.

ප්‍ර : මේ සිද්ධියට ඉස්සෙල්ලද? පස්සෙද?

උ : මේ සිද්ධියට ඉස්සෙල්ලා ඉඳලම අපිට බනිනවා.

ප්‍ර : මේ සිද්ධියට කලින් ඉඳලම තමා මේ විත්තිකරු එක්ක හොඳ නැහැ නේද?

උ : කතා කරනවා, කතා කරාට අපිට බනිනවා සෑහෙන්න, පිහියක් අරගෙන එනවා.

ප්‍ර : ----

උ : ----

ප්‍ර : මේ අජිත් කියන පුද්ගලයා දෙතුන් වතාවක් පොලීසියට ඔත්තු දීලා තියෙනවා කියලා මම යෝජනා කරනවා තමාගේ දුව, බෑනා සම්බන්ධයෙන්?

උ : ඔව් එහෙමනම් ආරංචි.

ප්‍ර : ----

උ : ----

ප්‍ර : පොලීසියට ඔත්තු දුන්නා කියලා මේ විත්තිකරු තමනුත්, දුවත්, බෑනත් සමග පරණ කෝන්තරයක් තියාගෙන සිටියා කියලා මම තමන්ට යෝජනා කරනවා.

උ : එහෙම තරහක් තිබුණේ නැහැ.

For the accused-appellant it was argued that above portions of evidence reveal that there had been an animosity between Karunawathi's family and the accused, in connection with incidents of tipping off to police. The above circumstance is confirmed by the defence of the accused taken in dock statement at the trial. I do not agree with the said argument of the accused-appellant, considering the evidence revealed at the trial.

Whilst internal contradictions or discrepancies would ordinarily affect the trustworthiness of the witness' statement, it is well established that the Court must exercise its judgment on the nature and tenor of the inconsistency or contradiction and whether they are material to the facts in issue.

It was decided in Bharwada Boghinbhai Hirjibhai v State of Gujarat. AIR (1983) SC 753, discrepancies which do not go to the root of the matter and assail the basic version of the witness cannot be given too much importance.

Witnesses should not be disbelieved on account of trifling discrepancies and omissions. When contradictions are marked, the judge should direct his attention to whether they are material or not and the witness should be given the opportunity of explaining that matter.

It was decided in A.G. v. Visuvalingam 47 NLR 286 that it is dangerous to presume or assume that because two witnesses contradict each other, one of them must be a false witness and reject the testimony in its entirety. The judge has a duty to probe into whether the discrepancy occurred due to a lack of observation or defective memory or a dishonest motive.

In State of UP v. M.K Anthony; AIR 1985 SC 48 the Indian Supreme Court stated that 'while appreciating the evidence of a witness, the approach must be whether the evidence... read as a whole appears to have a ring of truth', The Court went on to elaborate further that 'Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit, rejection of the evidence as a whole'.

Basnayake CJ in Queen v. Julius 1980 (2) SLR. 1 observed 'that in applying the maxim of *Falsus in uno, falsus in omnibus* (he who speaks falsely on one point will speak falsely upon all) it

must be remembered that all falsehood is not deliberate. Errors of memory, faulty observation or lack of skill in observation upon any point or points, exaggeration, or mere embroidery or embellishment must be distinguished from deliberate falsehood.'

It was argued by the learned President's Counsel that the instant case is entirely depending on circumstantial evidence where none of the witnesses have given evidence saying that they saw the deceased being stabbed by the accused-appellant during the incident. Therefore, it was the duty of the learned High Court Judge to consider whether the prosecution has adduced sufficient evidence to establish that it is the accused and no one else who had committed the alleged murder. These discrepancies and improbabilities of the main witnesses upon whose evidence the prosecution relied upon, the prosecution has failed to discharge their burden of proof. With the absence of direct evidence to establish the guilt of the accused, it is the burden of the prosecution to establish the sole irresistible inference which can be drawn from the evidence led, as to the guilt of the accused and not otherwise.

I do not agree with the said argument of the learned President's Counsel on behalf of the accused-appellant. PW 01 and PW 05 clearly indicated that the crime was committed by non-other than the accused-appellant.

The important items of evidence available with the prosecution, are as follows;

a) deceased came and stated that he was stabbed by "Ajith".

b) Two witnesses stating that the accused came with a knife and threatened them not to divulge anything.

c) Recovery of a knife upon a statement of the accused.

The learned President's Counsel for the accused-appellant says that the prosecution has failed to establish that the accused is the person referred to by the deceased, whereas there are several others named as Ajith. The witness No 1 admitted that the name of her son is also "Ajith". The evidence led at the trial reflects that the son of PW 01 Karunawathi is also called Ajith.

ප්‍ර : චිත්තිකරුට මියගිය දයානන්ද කතා කරන්නේ කොහොමද?

උ : අජිත් කියලා.

ප්‍ර : දයානන්ද තමුන්ගේ පුතාට කතා කරන්නේ කොහොමද?

උ : රාළහාමි කියලා.

It is the duty of the prosecution to establish beyond reasonable doubt that the person, the deceased allegedly referred to as Ajith is the accused-appellant and none other person having the same name. The above evidence clearly shows that the person deceased Dayananda mentioned as Ajith was the accused person Ajith. Karunawathi's son Ajith was called by Dayananda as "රාළහාමි". Therefore, no doubt arises as to whether the person the deceased referred to as "Ajith" who stabbed him, is the accused-appellant.

When PW 01 Karunawathi was questioned about description of her family members, she stated as follows;

ප්‍ර : ඒ කාලේ කව්ද හිටියේ?

උ : මායි ලේලියි.

ප්‍ර : ලේලි කියන්නේ?

උ : මගේ පුතාගෙ පවුල.

ප්‍ර : මොකද්ද ලේලිගෙ නම?

උ : ප්‍රියංකා

ප්‍ර : කංකානම්ගේ ප්‍රියංකා පුෂ්පලතා ලේලි?

උ : ඔව්

ප්‍ර : පුතාගේ නම?

උ : අජිත් කුමාර

(Vide Page 49 of the Appeal Brief)

ප්‍ර : මම අහන්නේ විත්තිකරුට තමුන් කතා කළේ කව්රු කියලද?

උ : අජිත් කියලා

ප්‍ර : ලගපාත වෙන අජිත්ලා හිටියද?

උ : අපේ පුතාගෙ නමත් අජිත්

ප්‍ර : තමුන්ගේ පුතාගෙ නම?

උ : හේවා කපුගේ අජිත් කුමාර

(Vide Page 53 of the Appeal Brief)

As per the evidence of the PW 08 Chandra Padmalal who was the investigating officer to the incident, there had been a quarrel between the deceased and one Janaka on the day of the incident close to the place where the body of the deceased lay. The accused mentioned this incident in his dock statement where he stated that Ajith who is the son of Karunawathi (PW 01) was also involved in the said incident.

It is the circumstantial evidence led against the accused that he came with a knife in hand and uttered that if anyone gives evidence relating to the incident, they all would be killed. It is only Karunawathi (PW 01) who has given evidence to as above and there is no doubt as to her credibility and the veracity of her evidence.

It is important to note that the only inference that can be drawn from the evidence of the Chandra Padmalal (PW 08) who was the investigation officer in this incident is, that the accused knew of the whereabouts of the knife.

In the case of Nandasena Vs The Republic of Sri Lanka 1994 (3) SLR 172 the court has explained the principle on what the Trial Judge should bear in mind in a case which entirely rests on circumstantial evidence. It is as follows:

> "In a case which turns on circumstantial evidence it is essential that the trial judge should explain clearly to the jury that circumstantial evidence, if it is to support a conviction, must be altogether inconsistent with the accused is innocence and explicable solely on the hypothesis of his quilt."

The court further held that:

> "It is a sufficient direction where the trial judge directed the jury that they should find the accused guilty of the charge of murder only if they were satisfied beyond reasonable doubt that the fatal injuries were caused by the accused having regard to the circumstantial evidence in the case and the jury had been sufficiently directed where they were told that the circumstantial evidence should unmistakably point to the conclusion that the accused and no other, inflicted the fatal stab injuries."

In the present case considering the prosecution evidence the only inference that can be arrived at was consistent with the guilty of the accused. The prosecution proved that no one else other than the accused had the opportunity of committing the crime.

In R v Exall (1866)176 ER 850 the court held as follows:

> "Circumstantial evidence is to be considered as a chain, and each piece of evidence is a link in the chain, but that is not so, for them, if any one link breaks, the chain would fail.it is most like the case of a rope compromised of several codes. One strand of code might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus it may be a circumstantial evidence, there may be a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion;

The learned Trial Judge has evaluated the above circumstances when arriving at the conclusion of the present case. Therefore, the conviction can be maintained.

It is my view that the prosecution has proven the dying declaration of the deceased beyond reasonable doubt.

In the case of Ranasinghe Vs Attorney General 2007 (1) SLR 218, the court has observed the matters with which the Trial Judge must be satisfied beyond reasonable doubt relating to a dying declaration as follows:

a) Whether the deceased in fact made such a statement;

b) whether the statement made by the deceased was true and accurate;

c) whether the statement made by the deceased could be accepted beyond reasonable doubt;

d) whether the evidence of the witness who testifies about the dying declaration could be accepted;

e) whether the witness is telling the truth;

f) whether the deceased was able to speak at the time the alleged declaration was made.

In the above case the Court has stated the weaknesses that must be borne in mind by a Trial Judge when a dying declaration is considered as an item of evidence against an accused;

1) the statement of the deceased person was not made under oath;

2) the statement of the deceased person has not been tested by cross-examination.

The prosecution has proved the dying declaration beyond any doubt and the learned Trial Judge has appreciated the purported declaration according to the principles laid down by the law in the above-mentioned case.

It is evident that the medical evidence did not create a reasonable doubt as to whether the deceased could have spoken after sustaining the injury.

The circumstantial evidence at the trial is, overwhelming to establish the guilt of the accused. The police investigator's evidence indicates that the deceased had been first attacked whilst riding his bicycle closer to the accused's house. Thereafter, the deceased had run into Karunawathi's house to save his life.

The accused disappeared from the village soon after the crime. He was arrested 6 days after the incident. A knife was recovered based on the accused's guidance. The defence failed to create any reasonable doubt from the prosecution witnesses. The learned trial Judge had clearly evaluated the version of the defence in comparison with the stance taken during the cross-examination. In fact, the learned trial Judge had fairly evaluated each and every piece of evidence. The position taken in cross-examination, contradictions marked were duly considered by the learned Trial Judge. It is important to note that the Trial Judge in his judgement at pages 48-49 had carefully considered whether the salient ingredients of the offence had been proved.

In King Vs. Gunaratne 14 Ceylon Law Recorder 174 Chief Justice MacDonnell said; "I have to apply these tests as they seem to be, which a Court of Appeal must apply to an appeal coming to it on questions of fact,

1) Was the verdict of the Judge unreasonably against the weight of the evidence,

2) Was there misdirection either on the law or the evidence,

3) Has the Court of trial drawn the wrong inference from the matters in evidence?"

The functions of an appellate Court in dealing with a judgment are based mainly on the facts from Court which saw and heard witnesses.

It was held in Fradd Vs Brown & Company 20 NLR 282 at 283 that, 'it is rare that a decision of a Judge so express, so explicit upon a point of fact purely is over ruled by a Court of Appeal, because Courts of Appeal recognize the priceless advantage which a Judge of first instance has in matters of that kind, as contrasted with any Judge of a Court of Appeal, who can only learn from papers or from narrative of those who were present. It is very rare, in questions of veracity so direct and so specific as these, a Court of Appeal will over rule a Judge of first instance.'

In the present case, the learned High Court Judge has well analysed all the evidence before him in his judgment.

In the case of King v. Musthapha Lebbe 44 NLR. 505 the Court of Appeal held that "The court of criminal Appeal will not interfere with the verdict of a Jury unless it has a real doubt as to the guilt of the accused or is of the opinion that on the whole it is safer that the conviction should not be allowed to stand".

In the above circumstances it is evident that there is strong and cogent evidence which establishes the fact that the prosecution has proved its case beyond reasonable doubt and also that, it is proper for the learned Trial judge to arrive at a decision that, the accused-appellant did commit the offence of murder.

Considering the above, there is no reason to interfere with the findings of the learned High Court Judge.

We affirm the conviction and the sentence dated 30.09.2014.

Appeal is dismissed.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree.

Judge of the Court of Appeal