

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA**

In the matter of an Appeal under Section 331 of the Code of Criminal Procedure Act No. 15 of 1979, read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The Democratic Socialist Republic of Sri Lanka

**Complainant**

**Court of Appeal Case No.**  
**HCC/0319/2019**

V.

**High Court of Rathnapura**  
**Case No. HCR/80/2015**

Rathna Horanekarage Sri Lal alias Ruwan

**Accused**

AND NOW BETWEEN

Rathna Horanekarage Sri Lal alias Ruwan

**Accused – Appellant**

V.

Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Complainant – Respondent**

**BEFORE**

: **K. PRIYANTHA FERNANDO, J. (P/CA)**  
**WICKUM A. KALUARACHCHI, J.**

**COUNSEL** : Nihara Randeniya for the Accused – Appellant.  
Dileepa Peeris, Senior Deputy Solicitor  
General for the Respondent.

**ARGUED ON** : 10.01.2022

**WRITTEN SUBMISSIONS  
FILED ON** : 07.01.2022 by the Accused – Appellant.  
03.05.2021 by the Respondent.

**JUDGMENT ON** : 18.02.2022

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**K. PRIYANTHA FERNANDO, J.(P/CA)**

1. The accused appellant was indicted in the High Court of *Rathnapura* for one count of murder punishable in terms of section 296 of the Penal Code. Upon conviction after trial, the appellant was sentenced to death. Being aggrieved by the above conviction and sentence, the appellant preferred the instant appeal. The learned Counsel for the appellant urged the following grounds of appeal.

- I. That the learned High Court Judge failed to consider the well settled principles of law relating to a case entirely based on circumstantial evidence.
- II. That the learned trial Judge failed to consider the evidence favorable to the defence in concluding the appellant guilty for murder.

2. Facts in brief

The main witness for the prosecution has been *Shanthi Kumari* (PW1). The appellant is her younger brother and the deceased was her elder brother's wife. As per her evidence, on the day of the incident she had been plucking tea leaves with her husband and the mother. Her father was plucking tea leaves on

a nearby land which could be seen by her from where she was. The appellant has come from the direction of the house where the deceased was living and has said that he killed the deceased and that he drank poison. “මල්ලි කිව්වා. දිලානි මැරුවා එයා වස බිව්වා කිව්වා.” (Page 47 of the brief). After stating so, the appellant had fallen unconscious.

3. Then she had run to the elder brother’s house (the house where the deceased lived). She has seen the deceased lying fallen with a bleeding head injury and her six-month-old child has been on her lap. She has picked up the child and has screamed for help. Both the deceased and the appellant have then been taken to hospital in a lorry. The deceased had succumbed to her injuries.
4. The medical officer who conducted the autopsy on the body of the deceased has observed two injuries, one of them was a cut injury on the head near the left ear which had caused the death. According to the medical officer, that has been a necessarily fatal injury.
5. The appellant has made an unsworn statement from the dock stating that he drank poison due to an issue on a money transaction, but denied any involvement with the death of the deceased.
6. The following judgments expound the well developed principles applicable to cases relying solely on circumstantial evidence;

In case of ***Shankarlal Gyarasilal Dixit V. State of Maharashtra [1981] Cri. L.J 325*** Indian Supreme Court held;

*“In a case of circumstantial evidence, the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. It is not to be expected that in every case depending on circumstantial evidence, the whole of the law governing cases of circumstantial evidence should be set out in the judgment. Legal principles are not magic incantations and their importance lies more in their application to a given set of facts than in their recital in the judgment. The simple expectation is that the judgment must show that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis.”*

In case of ***Junaiden Mohmed Haaris V. Hon. Attorney General. SC Appeal 118/17 [09.11.2018]***, where there were no eye witnesses to substantiate any of the charges against the appellant and the prosecution relied solely on circumstantial evidence, His Lordship Justice ***Aluwihare*** stated;

*“... Thus, it was incumbent on the prosecution to establish that the ‘circumstances’ the prosecution relied on, are consistent only with the guilt of the accused-appellant and not with any other hypothesis.*

*Regard should be had to a set of principles and rules of prudence, developed in a series of English decisions, which are now regarded as settled law by our Courts.*

*The two basic principles are-*

- 1. The inference sought to be drawn must be consistent with all the proved facts, if it is not, then the inference cannot be drawn.*
  - 2. The proved facts should be such that they exclude every reasonable inference from them, save the one to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct (per Watermeyer J. in R. V. Blom AD 188).”*
7. In her evidence, PW1 has clearly said what the appellant told her. The appellant has said that he killed the deceased and also that he consumed poison. When PW1 ran to see, the deceased had been lying fallen bleeding from the head. In cross examination the appellant has not challenged the evidence of the PW1. The appellant has only taken up the position that the deceased was against a love affair he had with a relative of the deceased and also that there was a rift between them about a money transaction. Even in the statement the appellant made from the dock, he has not denied that he told the PW1 that he killed the deceased. Hence, as rightly concluded by the learned High Court Judge, the only inference that could be drawn from the proved circumstances is that the appellant inflicted the injury that caused the death of the deceased and it was no one else. Hence, the first ground of appeal fails as it is devoid of merit.
8. The learned Counsel for the appellant submitted that, as the evidence shows that the deceased had disliked the love affair the appellant had with a relative, the learned trial Judge should have considered a lesser culpability on the basis of grave and sudden provocation as per the special exception described in

section 294 of the Penal Code. There is some evidence to the fact that the appellant had a love affair with a relative of the deceased where the deceased had disliked the same. However, there is no evidence of any sudden provocation that would lessen the culpability of the appellant nor has the appellant taken up that defence. Hence, the second ground of appeal should necessarily fail.

9. Therefore, I see no reason to interfere with the conviction of the appellant as charged and the sentence imposed on him. Hence, I affirm the conviction and the sentence imposed by the learned High Court Judge.

Appeal dismissed.

**PRESIDENT OF THE COURT OF APPEAL**

**WICKUM A. KALUARACHCHI, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**