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

In the matter of an appeal in terms of Section 331 (1) of the Code of Criminal Procedure Act No.15 of 1979, read with Article138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The Democratic Socialist Republic of Sri Lanka.

Complainant

CA/HCC-101/2020

Vs.

High Court of Kalutara
Case No: 271/2003

1) Kalawila Pathirage Pradeep Chandana

2) Senevirathne Aarachchige Hemantha Perera (alias) Jayasuriya Arachchige Bimal Samantha Perera

Accused

And Now Between

1) Kalawila Pathirage Pradeep Chandana

1st Accused-Appellant

Vs.

The Honourable Attorney General,

Attorney General's Department,

Colombo 12

Complainant-Respondent

BEFORE : N. Bandula Karunarathna, J.

: R. Gurusinghe, J.

COUNSEL : Chaminda Athukorale with Hafeel Fariz, Veenashani Jayathilake and Isuru Gamage **for the Accused-Appellant**

Shanil Kularatne, DSG and Priyani Abeygunawardena SC **for the Respondent.**

ARGUED ON : 11/11/2021

DECIDED ON : 09/03/2022

R. Gurusinghe, J.

The first accused-appellant (the appellant) and another was indicted in the High Court of Kalutara for committing the murder of Vithanage Siripala on or around the 15th of April 1998, at Yatadola Road, Kalawila, an offence punishable under Section 296 of the Penal Code.

Having pleaded not guilty to the charge the accused preferred to have the trial before the Learned High Court Judge without a Jury.

After the trial, the Learned High Court Judge found the appellant guilty to the charge. The second accused was acquitted.

The appellant appealed against that verdict and the sentence.

The prosecution led the evidence of PW1, PW2, PW4, PW3, PW7, PW6, PW8, PW9 and the Court Interpreter. The appellant gave evidence on his behalf and denied the account of the events by the prosecution.

In the hearing of the appeal, the appellant relied on two grounds, which are;

1. The eyewitness PW2 had not said that he saw the appellant stabbing the deceased. However, after declaring PW2 as a hostile witness, some portions of his statement to the police led as evidence were contrary to the provisions of Section 110 of the Criminal Procedure Code. Those portions were mentioned as 'X1' and 'X2', which were not admissible evidence, and should have been excluded.

2. The dying deposition relied upon by the prosecution is not a reliable piece of evidence against the appellant and that evidence regarding the dying deposition should not have been taken into consideration to convict the appellant.

Case for the prosecution is as follows:

PW1 the wife of the deceased, in her evidence, stated that, on the date of the incident the deceased left home at about 8.30am and came back home at about 6.30pm. Afterwards, he went to buy cigarettes and within about three minutes she heard someone saying **'චිකානට ගහනවානේ'.** She came to the place where she heard the shouting coming from, and she heard the name of the accused **ප්‍රදීප්**. She was not sure who said that word **'ප්‍රදීප්.'** Her husband was lying on the ground and she saw blood. PW2 was also there. PW2 told her that **ප්‍රදීප්** stabbed her husband.

PW2 described the incident as follows:

There was a new year ceremony and a marathon race on that day. The accused was one of the organizers of the event. In the evening, there was a quarrel. The deceased, Kumarasiri, and some others he could not recollect were there. A fight took place between the people who were present there at that time, including the deceased. The appellant assaulted the deceased. He saw the appellant attacking the deceased with his hands and feet. As somebody tried to assault him, he went to a bus stop for safety. The deceased came towards him saying that Pradeep stabbed him. He later saw the appellant and three or four people running away. He further stated that he told the appellant's brother Upali that your brother, Pradeep did this.

PW2 later said that if he had stated in his statement to the police that he saw the appellant stabbing the deceased, it was correct.

PW4 said that he witnessed the incident and that somebody was trying to stab the deceased. He did not know that person at that time. Then he tried to stop the assailant, but he could not stop him. That person stabbed the deceased and the deceased said that "**මට ප්‍රදීප් පිහියෙන් ඇන්නා.** "PW4 said that his hand got injured when he tried to stop the assailant. There was sufficient light to identify the people. This witness was not cross-examined.

PW3 in his evidence said that he saw the appellant and the second accused with two knives at about 6.45 pm. He said he knows both the accused persons from his childhood. Thereafter, he heard the noise of the altercation, but he did not go there immediately. He said he knew

the deceased as well. He did not know any other ප්‍රදීප් in the village other than the first accused. However, he did not see the stabbing.

The appellant gave evidence from the witness box. He said he did not know the deceased, and he did not have any fight with the deceased. There was an altercation at the new year festival, but it was not with the deceased.

During the cross-examination, the appellant further stated that his father informed him that the police were looking for him in connection with the murder. He admitted that he had avoided the police, he evaded the questions as to why he dodged the police. He said that he had surrendered to court about one month later.

I consider the first ground of appeal relied on by the appellant regarding the evidential value of the evidence of PW2. PW2 is a person who very well knew the deceased, the appellant, and most of the others involved in the incident, which eventually led to the killing of the deceased.

At a later stage of his evidence, PW2 was treated as a hostile witness to the prosecution. Before he was declared a hostile witness, he unfolded the incident as that had happened. PW2 clearly stated that he saw the appellant assaulting the deceased and one other person. He identified the appellant in the court. As PW2 approached the deceased, the appellant tried to attack PW2 as well, and then PW2 ran to the nearest bus stop and watched. He said the appellant was assaulting the deceased, and then the deceased ran towards PW2 and said that (at Page 830) "ප්‍රදීප් මට පිහියෙන් ඇන්නා". PW2 said that he saw විතානට පිට පස්සෙන් ගහනවා දැක්කා. This evidence is entirely compatible with the doctor's findings in the post mortem report.

There were six injuries on the body of the deceased. Out of those injuries, five were on the back of the chest. The evidence of the doctor corroborated the evidence of PW2.

On Page 180, PW2 described as follows:

ප්‍ර: **විතාන පහළට ආවෙ කොහොමද?**

උ: **භාගෙට නැවීගෙන ඇවිල්ලා වැටුනා පාරේ**

ප්‍ර: **තමුන් බැලුවාද කෙහොමද ඇවිල්ලා වැටුනේ**

උ: **භාගෙට නැවීගෙන ඇවිල්ලා වැටුනා. ඒ වෙලාවේ මම එයාව එහෙන්ම ඇල්ලුවා. වැටුනාට පසුව ලේ තිබුණා**

ප්‍ර: **කොහේද ලේ තිබුණෙ?**

උ: **පිටුපැත්තේ**

ප්‍ර: **පිටුපැත්තේ කියන්නේ**

උ **ඒ පුද්ගලයාගේ පිටපැත්තේ**

ප්‍ර: **පිට කියන ප්‍රදේශයේද?**

උ **ඔව්**

The only thing that PW2 did not say in his evidence-in-chief is that he saw the appellant stab the deceased before the High Court treated him as a hostile witness.

Then his attention was drawn to a portion of his statement to the police.

(On page 257)

ස්වාමීනි මේ අවස්ථාවේදී සාක්ෂිකරු සඳහන් කරන ලද ප්‍රකාශයේ කොටසක් කියවා සිටීමට ගෞරවයෙන් අවසර ඉල්ලා සිටිනවා

ප්‍ර: දැන් තමුන් සිද්ධියෙන් පස්සේ පොලිසියට දුන්න කට උත්තරයේ 1998.04.15 වන දින මෙන්න මේ විදිහට කිව්වද?

''මා දුටුවා ප්‍රදිප් යන අය අතේ තිබුන පිහියෙන් තවත් පාරවල් කිහිපයක් විතාන අයියාට අනිනවා''

උ මට මතකයක් නෑ.

ප්‍ර ඒ විදියට සටහන් වෙලා තියෙනවා නම් ඒක පිළිගන්නවාද?

උ පිළිගන්න වෙනවානේ ස්වාමිනි

ප්‍ර එතකොට සාක්ෂිකරු එහෙම සටහන් වෙලා තියෙනවා නම් ඒක හරිද?

උ හරි

The abovementioned portion of his statement was marked as 'X1'

On Page 262

ප්‍ර: ''පසුව විතානට ඇන්නා පිහියෙන්. ප්‍රදීප් ඇන්නේ'' යනුවෙන් කිව්වද?

උ: දන්නේ නෑ.

ප්‍ර: එහෙම සටහන් වෙනවා නම් තමුන් ඒක පිළිගන්නවාද?

උ පිළිගන්න වෙනවා

“පසුව විතානට ඇන්නා පිහියෙන්. ප්‍රදීප් ඇන්නේ” යන කොටස **X3** වශයෙන් ලකුණු කිරීමට ගෞරවයෙන් අවසර ඉල්ලා සිටිනවා.

These pieces of evidence were challenged as illegally admitted evidence. It was further argued that the evidence of PW2 should be disregarded altogether. If the evidence of PW2 has been excluded altogether, the evidence is inadequate to support the conviction.

The argument of the counsel for the appellant is based on the provisions of section110 (3).

Section110 (3), is as follows;

> (3) A statement made by any person to a police officer in the course of any investigation may be used in accordance with the provisions of the Evidence Ordinance except for the purpose of corroborating the testimony of such person in Court:
>
> Provided that a statement made by an accused person in the course of any investigation shall only be used to prove that he made a different statement at a different time.
>
> Anything in this subsection shall not be deemed to apply to any statement falling within the provisions of section 27 of the Evidence Ordinance or to prevent any statement made by a person in the course of any investigation being used as evidence in a charge under section 180 of the Penal Code.

The Learned Deputy Solicitor General for the respondent argued that drawing the attention of the witness to what he had stated in the

statement does not contravene the law. He draws our attention to section 159 of the evidence ordinance.

Counsel for the Appellant argued that no lay witness could refresh his mind by looking at his statement. But when you read section 110(4), there is no legal provision imposing any restrictions.

Subsection 110(4) reads as follows;

> 4. Any criminal court may send for the statements recorded in a case under inquiry or trial in such court and may use such statements or information, not as evidence in the case, but to aid it in such inquiry or trial. Save as otherwise provided for in section 444 neither the accused nor his agents shall be entitled to call for such statements, nor shall he or they be entitled to see them merely because they are referred to by the **court** ***but if they are used by the police officer or inquirer or witness who made them to refresh his memory***, or if the court uses them for the purpose of contradicting such police officer or inquirer or witness the provisions of the Evidence Ordinance, section 161 or section 145, as the case may be, shall apply :
>
> Provided that where a preliminary inquiry under Chapter XV is being held in respect of any offence, such statements of witnesses as have up to then been recorded shall, on the application of the accused, be made available to him for his perusal in open court during the inquiry.

The above-emphasized portion shows that a witness can refresh his mind by referring to his previously given statement.

As per the provisions of section 159, the witness may refer to a writing made by him or made by any other person and read by the witness.

Section 159 and 160 of the Evidence Ordinance read as follows:

159 (1) A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned or so soon afterwards that the court considers it likely that the transaction was at that time fresh in his memory.

(2) The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it, he knew it to be correct.

(3) Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the court, refer to a copy of such document:

Provided the court be satisfied that there is sufficient reason for the non-production of the original.

(4) An expert may refresh his memory by reference to professional treatises.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

PW2 gave evidence before the High Court about sixteen years after the incident. PW2 is not a relative of the deceased. Forgetting certain things after sixteen years is natural and justifiable. In *Francis Appuhamy Vs the Queen 68 NLR 437* on page 433, *Justice T. S. Fernando* rejected the argument that "the evidence of a witness must be accepted completely or not at all".

Samaraweera vs. Attorney General 1991Sri LR 256 *P R P Perera J* stated that all falsehood is not deliberate. Quoting the following passage of *Basnayake J* in the case of *Queen vs. Julis 65 NLR 505* on page 519;

> 'Falsus in uno, falsus in omnibus or Falsum in uno falsum in omnibus, both forms are in use, (he who speaks falsely on one point will speak falsely upon all) is a well-known maxim. In applying this maxim, 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. Nor does it apply to cases of conflict of testimony on the same point between different witnesses.'

When considering the evidence of PW2, his evidence even before the Learned State Counsel sought permission to question which might be put in cross-examination is very helpful to establish the prosecution case. PW2 said that as per his recollection, he had made the statement to the police on the same day. This is correct. PW6, Assistant Superintendent of Police, said that the statement of PW2 was recorded on the same day at 10.50pm. PW2 had shown the place of the incident to that police officer (on page 332). This witness also said that the appellant had evaded the police and was not arrested.

As PW2 had given a statement to the police on the same day within three hours of the incident, the statement satisfies the condition in sections 159 and 160 of the Evidence Ordinance that "at the time of the transaction concerning which he is questioned or so soon afterward the court considers it likely that the transaction was at that time fresh in his memory". Such statements can be used to refresh the witness's mind. As per the provisions under section 160 of the Evidence Ordinance, even if the witness had no specific recollection of the facts themselves if he is sure that the facts were correctly recorded in the document, he can refresh his mind looking at such document. PW2 had admitted what he had stated to the police was correct and that it had been correctly recorded. When PW2 was confronted with the portions of his statement, he accepted that as the truth. He did not deny the portions of his statement put before him. Therefore, there was no contradiction. Such evidence is substantial evidence. As fourteen years elapsed after the incident, the witness should have been allowed to refresh his memory. Therefore, questioning of certain portions of his statement is not illegal.

With regard to refreshing memory as per the provisions of sections 159 and 160 of the Evidence Ordinance, *Woodroffe and Amir Ali* in Law of Evidence 20th edition at page 5503 say as follows:

> "Though there are some objections to such a course, yet it is clear that an important aid to exactness would be neglected, if, human memory and inaccuracy being what they are, a witness were not at liberty to justify his recollection of facts by reference to written memoranda concerning them. It is desirable to secure the full benefit of the witness's recollection as to the whole of the facts and that a witness should not suffer from a mistake and may explain an inconsistency. Indeed, a witness is under an obligation to refresh his memory if he can and is invited by the court to do so, it

being his duty to lay the whole truth before the court to the best of his ability. It is further to be observed that the committing of a statement to writing calls for unavoidably a greater degree of attention than the exhibition of it viva voce in the way of ordinary conversation if this be done honestly at the time of the occurrence which forms the subject of the statement, or so soon afterwards that the incidents must have been fresh in the writer's memory, the writing is a most reliable means of preserving the truth, more reliable indeed than simple memory itself. The law, however, here prescribes certain conditions with a view to securing that the memoranda so employed shall be trustworthy. These conditions are laid down by the sections abovementioned. The witness may be cross-examined as to the paper in his hands, since in no other way can the accuracy and recollection of the witness be ascertained, and it is only by the production and inspection of the document and by such cross-examination that it can be ascertained whether the memorandum does assist the memory or not. The right of production, inspection and cross-examination is necessary to check the use of improper documents and to compare the witness's oral testimony with his written statement.'

Records by the investigating officer are contemporaneous entries made by him and hence for refreshing his memory, it is always advisable, that he looks into those records before answering any question. Similarly, deposition of complainant by referring to documents after permission from court for the purposes of refreshing his memory does not result in any illegality or irregularity."

In view of the abovementioned case laws and principles, the evidence of PW2 cannot be considered as illegally admitted evidence. Section 159

and 160 of the Evidence Ordinance and section 110(4) of the Criminal Procedure Code Act allow a witness to refresh his mind. However, marking certain portions of the statement is irregular. The Judge could use the information book to verify whether such portions are contained in the statement.

In *Keerthi Bandara vs. Attorney General* [2000] Sri LR 245, *F.N.D Jayasuriya J* stated that "when the defence contends that there is a vital omission which militates against the adoption of the credibility of the witness, it is the Trial Judge who should peruse the information book and decide on that issue."

Therefore, this irregularity does not warrant to vitiate the conviction. If the witness denied making such a statement, it becomes a contradiction and not substantial evidence. But here, the witness admitted making such a statement and he further said it was true. Therefore, it becomes substantial evidence.

Evaluation of evidence of an adverse witness.

The term hostile or adverse witness is not found in our Evidence Ordinance or the Indian Evidence Act. Section 154 of the Evidence Ordinance is as follows:

"The court may in its discretion permit the person who calls a witness to put any question to him, which might be put in cross-examination by the adverse party".

In the case of *Moses vs. The State*[1999] 3 SriLR 401 *Hector Yapa J,* referring to the Indian case of *Kesharam Gora vs. state of Asam 1998 AIR 65* quoted the following:

> "While it is true that merely because a witness is declared hostile, his evidence cannot be rejected on that ground alone it is equally well settled that when once a prosecution witness is declared hostile to the prosecution, it clearly exhibits his intention not to rely on the evidence of such witness."

However, the above case does not reflect the present law of India in this regard. By the Amendment Act no. 2 of 2006 sub-section 2 is added to section 154 of the Indian Evidence Act. Sub-section 2 of the Indian Evidence Act is thus,

> "2. nothing in this section shall dis-entitle the person, so permitted under sub-section 1 to rely on any part of the evidence of such witness".

In *Hari and Others vs. The State of UP*, the Supreme Court India held as follows; (in para 25)

> 'It is well settled that the evidence of prosecution witnesses cannot be rejected in toto merely because the prosecution chose to treat them as hostile and cross-examined them. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the

record, that part of testimony which he finds to be creditworthy and act upon it.'

In the case of *Attar Singh vs State of Maharashtra* decided on December 14, 2012 (https://indiankanoon.org/doc/13185807), the Supreme Court of India stated the following regarding the evidentiary value of testimonial of a hostile witness.

"13. We have meticulously considered the arguments advanced on this vital aspect of the matter on which the conviction and sentence imposed on the appellant is based. This compels us to consider as to whether the conviction and sentence recorded on the basis of the testimony of the witness who has been declared hostile could be relied upon for recording conviction of the accused-appellant. But it was difficult to overlook the relevance and value of the evidence of even a hostile witness while considering as to what extent their evidence could be allowed to be relied upon and used by the prosecution. It could not be ignored that when a witness is declared hostile and when his testimony is not shaken on material points in the cross-examination, there is no ground to reject his testimony in toto as it is well-settled by a catena of decisions that the Court is not precluded from taking into account the statement of a hostile witness altogether and it is not necessary to discard the same in toto and can be relied upon partly. If some portion of the statement of the hostile witness inspires confidence, it can be relied upon. He cannot be thrown out as wholly unreliable. This was the view expressed by this Court in the case of *Syed Akbar vs. State of Karnataka* reported in AIR 1979 SC 1848 whereby the learned Judges of the Supreme Court reversed the judgment of the Karnataka High Court which had discarded the evidence of a hostile witness in its entirety. Similarly, other High Courts in the matter of *Gulshan Kumar vs. State* (1993) Crl.L.J. 1525 as

also *Kunwar vs. State of U.P.* (1993) Crl.L.J. 3421 as also *Haneefa vs. State* (1993) Crl.L.J. 2125 have held that it is not necessary to discard the evidence of the hostile witness in toto and can be relied upon partly. So also, in the matter of *State of U.P. vs. Chet Ram* reported in AIR 1989 SC 1543 = (1989) Crl.L.J. 1785; it was held that if some portion of the statement of the hostile witness inspires confidence it can be relied upon and the witness cannot be termed as wholly unreliable. It was further categorically held in the case of *Shatrughan vs. State of M.P.* (1993) Crl.L.J. 3120 that hostile witness is not necessarily a false witness. Granting of a permission by the Court to cross-examine his own witness does not amount to adjudication by the Court as to the veracity of a witness. It only means a declaration that the witness is adverse or unfriendly to the party calling him and not that the witness is untruthful. This was the view expressed by this Court in the matter of *Sat Paul vs. Delhi Administration* AIR 1976 SC 294. Thus, merely because a witness becomes hostile it would not result in throwing out the prosecution case, but the Court must see the relative effect of his testimony. If the evidence of a hostile witness is corroborated by other evidence, there is no legal bar to convict the accused. Thus, testimony of a hostile witness is acceptable to the extent it is corroborated by that of a reliable witness. It is, therefore, open to the Court to consider the evidence and there is no objection to a part of that evidence being made use of in support of the prosecution or in support of the accused."

Having regard to the abovementioned principles regarding testimony of an adverse witness, I hold that evidence of an adverse witness is not to be rejected in toto. The evidence of such witnesses cannot be treated as washed off the record altogether. Such evidence can be accepted and acted upon to the extent that is found to be dependable after a careful scrutiny. It is for the Trial Judge to decide on and come to a conclusion on how much of such evidence can be relied on or otherwise.

In this case, the Learned High Court Judge has carefully considered and evaluated the evidence of PW2. PW2 did not try to help the prosecution. He was not biased towards the prosecution. The prosecution could definitely rely upon the evidence of PW2.

The next argument is that the Learned Trial Judge should not have relied on the evidence regarding the dying declaration, one reason being that the Trial Judge rejected the evidence of PW 8, and the other was that PW 4 did not know to whom the deceased referred to as 'Pradeep'. It was further argued that after receiving the stab injuries, the deceased was not in a position to speak, or at least it was doubtful whether he was able to speak.

PW4 did not know who Pradeep was. PW4 tried to save the deceased from stabbing by the assailant and he himself got injured. At that moment, the deceased told him that Pradeep stabbed him. There was no time gap between the stabbing and the dying declaration. PW 2 stated that he saw the appellant bend the deceased and assault him. Immediately the deceased ran towards PW2 and said that Pradeep stabbed him. PW4 was not cross-examined, and his testimony stands uncontested. Therefore, the fact that the deceased had told PW4 that Pradeep stabbed him is established. Though PW4 did not know the appellant, PW2 knew the appellant and his name from his childhood. The wife of the deceased also testified that PW2 told that Pradeep stabbed the deceased.

Now I consider whether the deceased was able to speak after receiving the injuries.

On Page 384 the doctor stated as follows:

ප්‍ර: මෙවැනි රෝගියෙකු තුවාල සිදු වූ විගස කථා කිරීමේ හැකියාව තිබෙනවාද?

උ: තිබෙනවා

In Cross-examination the doctor answered as follows:

On page 397

ප්‍ර: එම නිසා මෙම පුද්ගලයාට ක්ෂණිකව කම්පනයක් ඇති වෙන්න හැකියාවක් තිබෙනවා?

උ: ක්ෂණිකව ඇති වෙන්න හැකියාවක් නැහැ. මේ වගේ තුවාල තිබෙන රෝගීනුත් රෝහලට රැගෙන විත් ශල්‍ය කර්මයක් සිදු කර ජීවිතය බේරා ගත් අවස්ථාත් තිබෙනවා .

ප්‍ර: මෙම පුද්ගලයාට කොපමණ වෙලාවක් කතා කරන්න හැකියාවක් තිබුනා ද කියලා මෙම වාර්තාව දිහා බලලා ඔබතුමාට කීමට හැකියාවක් නැහැ?

උ: හැකියි.

ප්‍ර: කොපමණ වෙලාවක් ඔහුට කතා කිරීමේ හැකියාව තිබුනා ද?

On Page 398

උ: නිශ්චිතවම කියන්න බැහැ නමුත් සැළකියයුතු වෙලාවක් හැකියාවක් තිබෙන්නට පුළුවන්.

In re-examination On Page 406 and 407

ප්‍ර: වෛද්‍යතුමනි හරස් ප්‍රශ්නවලට පිළිතුරු දෙමින් කිව්වා මරණය සිදු වූ වේලාව සම්බන්ධයෙන් වෛද්‍යතුමාට යම්කිසි මතයක් ප්‍රකාශ කරන්න බැරි වුණත් මේ පැ. 3 ලේඛනයේ සටහන් කරලා තිබෙන තුවාල බලලා ඉවර වෙලා වෛද්‍යතුමාට මතයක් කියන්න පුළුන්ද අඩුම තරමේ මෙ මරණකරු කොච්චර වෙලාවක් ජීවත් වෙලා ඉන්නැද්ද කියලා?

උ: දළ වශයෙන් ප්‍රකාශ කිරීමේ හැකියාවක් තිබෙනවා.

ප්‍ර: ඒ අනුව වෛද්‍යතුමාට කියන්න පුළුවන් මතය මොකක්ද?

උ: මම කලින් සඳහන් කළ ආකාරයට මෙවන් තුවාල සිදු වූ ඇතැම් රෝගීන් රෝහල් ගත කරලා ශ්වසන පාලනය කරලා සෑහෙන වෙලාවක් ජීවත් වීමේ හැකියාව තිබෙනවා නමුත් කලාතුරකින් සිදු වන තුවාල අනුව ඊට කලින් මරණය ගෙන දීමේ හැකියාව තිබෙනවා.

ප්‍ර: දැන් වෛද්‍යතුමනි මේ තුවාල වලට අනුව ක්ෂණිකවම එවලේම මරණයට පත් වීමේ හැකියාවක් තිබෙනවාද?

උ: අනිවාර්යයෙන්ම යම්කිසි කාලයක් ගත වෙනවා රුධිර ගැලීම නිසා ඒ හේතුවෙන් හෘද වස්තුවත් එහි පටලයත් අතර රුධිරය එකතුවීම නිසා එහි ක්‍රියාකාරීත්වයට බාධා ඇති වෙනවා. මම කලින් සඳහන් කළ ආකාරයට පහළ කොටසේ සිදු වී තිබෙන නිසා ඒ නිසා රුධිරය ගැලීමට සහ බාධා කිරීමට සැලකිය යුතු කාලයක් ගත වෙනවා. මොකද එහි දී රුධිරය ගැලීම සිදු වන්නේ එක අවස්ථාවක දී පමණයි. සංකෝචනයක් සිදු වෙනවා නම් අවස්ථාව වැඩියි රුධිරය ගැලීම ඉතාමත් අවම වෙනවා.

ප්‍ර: ඒ කියන්නේ වෛද්‍යතුමනි තුවාල වෙච්ච ගමන්ම ටැප් එකකින් වගේ ලේ ගලාගෙන එන්නේ නැහැ?

උ: යම්කිසි වේලාවක් ඒකට යනවා. හෘදය ස්පන්දනය වෙන කොට නවතිනවා. ලිහිල් වෙන කොට ආපහු රුධිරය එළියට එනවා. ආපහු හැකිලෙන කොට නවතිනවා.

ප්‍ර: ඒ අනුව ක්ෂණික මරණයක් ඇති වීමේ හැකියාවකුත් නැහැ මෙම මරණක රුට?

උ: වේදනාවෙන් පසු වීමේ හැකියාව තිබෙනවා. නමුත් මරණය ගෙන දෙන්නේ නැහැ ක්ෂණිකයෙන්.

The doctor's evidence quoted above established the fact that the deceased could speak for a considerable time after receiving the injuries. This is further corroborated by uncontradicted evidence of PW4.

The defence did not put any questions to PW 2 and PW4, to the effect that the deceased was not in a position to speak after receiving the injuries.

When considering the evidence of the doctor, PW2 and PW4, the fact that the deceased made the dying declaration is established beyond reasonable doubt.

The evidence is sufficient to establish the dying declaration.

We have examined the evidence in the case and we are satisfied. The decision of the Trial Judge was based on admissible evidence and there is no reason to upset the findings of the Trial Judge. Therefore, we affirm the conviction and sentence imposed by the Trial Judge.

The appeal is dismissed.

Judge of the Court of Appeal

N. Bandula Karunarathna, J.

I agree.

Judge of the Court of Appeal