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.

Democratic Socialist Republic of Sri Lanka

Court of Appeal Case No. HCC/0376/2019

High Court of Anuradhapura Case No. HC/80/2012

Complainant

V.

Kodithuwakku Arachchilage Lakshman Weerasinghe alias Chandi

Accused

AND NOW BETWEEN

Kodithuwakku Arachchilage Lakshman Weerasinghe alias Chandi

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	:	Isuru Somadasa for the Accused – Appellant. Dilan Ratnayake, Senior Deputy Solicitor General for the Respondent.
ARGUED ON	:	21.02.2022
WRITTEN SUBMISSIONS FILED ON	:	01.12.2021 by the Accused – Appellant. 21.12.2021 by the Respondent.
JUDGMENT ON	:	04.04.2022

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

1. The accused–appellant hereinafter referred to as appellant was indicted in the High Court of *Anuradhapura* for one count of murder punishable in terms of Section 296 of the Penal Code. Upon conviction after trial, the learned High Court Judge has sentenced the appellant to death. Being aggrieved by the said conviction and the sentence, the appellant has preferred the instant appeal. In his written submissions, the learned Counsel for the appellant urged the following grounds of appeal:

    I. The prosecution has failed to establish the time of death.
    II. The learned High Court Judge has failed to consider the evidence in its totality and hence failed to consider evidence which is in favour of the accused-appellant.
    III. The learned High Court Judge has compartmentalized evidence and therefore failed to properly evaluate the evidence.

IV. The learned High Court Judge has failed to consider the inter-se contradictions of the evidence led by the prosecution.

V. The learned High Court Judge has misdirected himself regarding the defence taken by the accused-appellant.

VI. The prosecution has failed to prove their case beyond reasonable doubt.

2. **Brief facts of the case:**
As per the evidence given by *Karunawathie* (PW9), who is the daughter of the deceased, the deceased after having breakfast has left home. As he did not return for lunch she had searched for him. In the afternoon, she has made a complaint to the police. She has also identified the body of the deceased, and the mobile phone that was used by him, which was given to him by her.

3. The main witness for the prosecution had been *Priyangika Ratnayake* (PW1) who was a neighbor of the deceased. On 23rd May 2010, the deceased has come to her house by 7.00 – 7.30 in the morning. It was her evidence that the deceased used to come to her house quite often. The deceased has left for the accused's house stating that he has to collect some money from the accused. The witness has referred to the accused as "*Chandi*". As the deceased did not return by about 8.30 in the morning, she had gone to the accused's house. The two sisters had been inside the house and she had been talking to them. After about half an hour, the accused had come running, sweating. She has gone back home. By about 10.30 in the morning, the accused has come with *Jayantha* (PW4). Again, by about 12 noon the accused has come and told her that he is going to *Colombo,* as he has got some work. After the accused left, the people in the village have searched for the deceased. On the following day, a person from the village has found the body of the deceased in a shrub about 160 feet away from the accused's house. She has identified the phone used by the deceased.

4. According to the evidence given by *Jayantha* (PW4) on 23rd May 2010, he has gone to *Galenbindunuwewa* town where he has met the appellant. When the witness said that he came to the town to buy a mobile phone, the accused had told him that he can give him a phone. When the witness said that he will take it later, the appellant had told him that if he wants it, he has to take it today as he was to go to *Colombo*. Therefore, after going home, the witness has gone to the appellant's house where he got the phone.

5. He has later got to know that the deceased had died. The deceased's son, *Ajith* (PW6) upon seeing the phone with the witness, has asked from where he got the phone, stating that it is the deceased's phone. He had told *Ajith* that he got the phone from the appellant. Then *Ajith* has started crying stating that this is his father's phone.

6. Although six grounds of appeal were urged in the written submissions, the main ground of appeal pursued at the argument by the learned Counsel for the appellant was that the prosecution has failed to establish the time of death (ground no.1). All the grounds of appeal will be considered together.

7. It is the contention of the learned Counsel for the appellant that the prosecution has failed to prove the time the deceased died. As this case is based on circumstantial evidence, the learned Counsel submitted that the prosecution has failed to prove that it was the appellant who caused the death of the deceased.

8. The medical officer (PW12) who conducted the autopsy on the body of the deceased has clearly stated that the cause of death was strangulation. The medical officer has observed about ten injuries, out of which five injuries (injuries no. 2, 7, 8, 9, 10) have been caused before the death. The rest of the injuries had been due to various insect bites after death. The medical officer has conducted the post-mortem on the body of the deceased on 25th May 2010. The body has been brought to the mortuary on the 24th afternoon. It was the evidence of the medical officer that the death has occurred about 18 hours before the body was put into the freezer. Hence, the death has been caused in the morning of 23rd May 2010. In cross-examination, the medical officer said that this opinion is not only based on scientific methods, but also on other circumstances. In that, he said that the son of the deceased has seen the deceased on 23rd morning by 8.30 and that was also taken into consideration when deciding the time of the death. Expressing his opinion on the time of death, the medical officer said the following; (page 157)

> උ : "මෘත දේහයක් පරීක්ෂා කර මරණය සිදුවූ වෙලාව නිශ්චිතව කීමට වෛද්‍ය විද්‍යාත්මක ක්‍රමවේදයන් රාශියක් තිබෙනවා. දැනට එම විද්‍යාත්මක ක්‍රමවේදයන් පිළිබඳ වඩාත් විශ්වසනීයභාවය පිලිබඳ තියෙන්නේ බොහොම සැක සහිත තත්වයක්. අපි කතා කරන්නේ

අවම වශයෙන් වැරදි ක්‍රමය මිසක් වඩාත්ම නිවැරදි ක්‍රමය වශයෙන් නෙවෙයි. එහෙම පාවිච්චි කරන්නවත් බැරි තරම් මෙය අවිනිශ්චිතයි. ඒ අනුව වඩාත්ම අවිශ්වාසය අඩුම ක්‍රමය තමයි සිරුරේ උෂ්ණත්වය මැනීම. නමුත් මෙම මළ සිරුර මෘත ශරීරාගාරය වෙත රැගෙන එන අවස්ථාව වන විටත් එහි ආසන්න වශයෙන් මූලික කුණුවීමේ ලක්ෂණ පටන් ගෙන තිබුනේ. ඒ අනුව මළ සිරුර සිසිල්වීම කියන ක්‍රියාවලිය යොදාගෙන මළ සිරුර මියගිය වෙලාව නිර්ණය කිරීමේ විද්‍යාත්මක ක්‍රමවේදය යොදා ගැනීමේ හැකියාවක් තිබුනේ නැහැ. එතකොට මළ සිරුර පරීක්ෂා කරන අවස්ථාවේදී තිබුණු තත්වයට අනුව සාමාන්‍යයෙන් මිය ගිහිල්ලා පැය18 කට වඩා වැඩි කාලයකට පසුව පරීක්ෂා කරන්නට ලැබුණු මරණයක ලක්ෂණ තමයි පෙන්නුම් කලේ. ඒ අනුව මරණ පරීක්ෂණය මා සිදු කලේ 2010.05.25 දින. එතකොට ඊට පැය 18කට පෙර, නමුත් මා පරීක්ෂා කල වෙලාව වන විට තිබුනේ ශීතකරණයේ. මෙය කලින් 24 දින හවස රෝහලයට ගෙනැල්ලා ශීතකරණයේ දැම්මා කියනකොට 24 වැනිදා හවසට පැය 18 කට පෙර වගේ සිදුවූ මරණයක් බවට තමයි වැඩිම විශ්වාසය කරන්න පුළුවන්. ඒ කියන්නේ 23 පෙරවරුවේ හෝ මධ්‍යාහ්නයට ආසන්න කාලයකදී සිදු වූ මරණයක ලක්ෂණ පෙන්නුම් කලේ.”

9. It was evident that the deceased left the daughter’s house (PW9), in the morning. It is also evident that the deceased has gone to *Priyangika Ratnayake’s* house around 7.00-7.30 in the morning and has left for the appellant’s house. Hence, it is clear that the death of the deceased has occurred after the deceased left PW1’s house for the appellant’s house.

10. The evidence of the medical officer confirms that the death has been caused on 23rd morning. When the PW1 went in search of the deceased to the appellant’s house, the appellant has come running, sweating, from the area where the body of the deceased was later found. That was in the morning of the 23rd. Therefore, it is established that the death of the deceased has been caused much before the appellant left the area for *Colombo*.

11. The following circumstances were proved by evidence for the prosecution. It is proved that the deceased went to the appellant’s house, looking for him to get the money that the appellant owed him. When PW1 went in search of the deceased, the appellant has come running and sweating, from the area behind his house where the body of the deceased was later found. The same morning, the appellant has given the mobile phone marked as P1 which was

being used by the deceased, to *Jayantha* (PW4). The mobile phone has been clearly identified by PW1, PW9 and PW6 as the mobile phone used by the deceased, so much so the PW6 *Ajith* has identified the phone the same day, when it was being used by *Jayantha* (PW4). The evidence is that *Ajith* (PW6) upon seeing *Jayantha* using the phone has inquired from *Jayantha* how he got this phone that was used by his father.

12. The post-conduct of the appellant is also relevant in the matter. On the same day by noon, after giving the phone to *Jayantha*, the appellant has left for *Colombo*. He was later arrested by the police in *Kalubowila*. The police have also recovered the tag that was attached to the phone in the possession of the appellant. The police have also recovered a string which was marked and produced in Court, in terms of Section 27 of the Evidence Ordinance on the statement made by the appellant. It was the evidence of the medical officer that it is possible that the strangulation may have been caused with the same string. PW4 *Jayantha* in his evidence said that he also went with the police to *Colombo* in search of the appellant. When he told the appellant that he cannot keep the mobile phone, the appellant has asked him to do something about it, to throw it or burn it. (page 101 of the brief)

ප්‍ර : "තමුන් ලඟ තිබුණ කිව්ව දුරකතනයට මොකද වුනේ?"

උ : "දුරකතනය අරගෙන ගියේ. මම කීවා මේක මට තියාගන්න බෑ. එහෙනම් මොකක් හරි කරන්න කියලා කිව්වා. විසිකරන්න හරි ගිනි තියන්න හරි කියලා කිව්වා. මොකක් හරි තමුසේ ඇවිත් කරනවා කියලා මම කිව්වා. මට එන්න බෑ. පුලුවන් නම් ගෙනත් දෙන්න කියලා කිව්වා."

ප්‍ර : "කවුද එහෙම කිව්වේ?"

උ : "වණ්ඩි මල්ලී"

ප්‍ර : "ඊට පසුවෙනිදා පොලිසියට ගියා?"

උ : "24 වෙනිදා ඇ වගේ හරියටම මතක මදි."

ප්‍ර : "ඔය දුරකතනය පොලිසියට බාර දුන්නද?"

උ : "ඔව්. බාර දුන්නේ 24 වෙනිදා."

This piece of evidence was not challenged by the defence in the High Court.

13. After the close of the prosecution case, the accused has made a statement from the dock. He has said in Court that he did not possess the mobile phone. He has also said that he was travelling in a bus by the time the death has been caused in terms of the doctor's evidence.

14. This case is solely based on circumstantial evidence as there are no eye witnesses to the incident in which the deceased was strangled. In case of ***The King v. Appuhamy [1945] 46 NLR 128*** it was held that:

> *"In order to justify the inference of guilt from purely circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt."*

15. In case of ***Junaiden Mohmed Haaris V. Hon. Attorney General. SC Appeal 118/17 [09.11.2018]*** 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-*
>
> *i. The inference sought to be drawn must be consistent with all the proved facts, if it is not, then the inference cannot be drawn.*
>
> *ii. 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 1939 AD 188)."*

16. The mobile phone was not found in the appellant's possession. However there is clear evidence that the appellant has given it to *Jayantha* (PW4) on 23rd morning. In turn, the PW4 has handed it over to the police. There is clear evidence that the appellant had been in the area in the morning and had left for *Colombo* only by noon or after. Therefore, the learned trial Judge has rightly rejected the defence version. The learned trial Judge has clearly discussed and analysed the evidence and found that the proved circumstances are consistent with the guilt of the accused. The prosecution has established that the said proved circumstances are consistent only with the guilt of the accused appellant and not with any other hypothesis.

17. Hence, I find no merit in the grounds of appeal and find no reason to interfere with the conviction and the sentence imposed on the appellant 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