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

In the matter of an Appeal made under Section 331(1) 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.

**Court of Appeal No:
CA/HCC/ 0142/2015**

**High Court of Rathnapura
Case No. HC/70/2011**

Ekanayake Mudiyansele
Hemantha Ekanayake

ACCUSED-APPELLANT

vs.

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

COMPLAINANT-RESPONDENT

BEFORE : **Sampath B. Abayakoon, J.
P. Kumararatnam, J.**

COUNSEL : **Muditha Perera for the Appellant.
Sudharshana De Silva, DSG for the
Respondent.**

ARGUED ON : **31/08/2022**

DECIDED ON : **27/09/2022**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General on three counts under Section 296,300 and 315 of the Penal Code in the High court of Ratnapura.

As the Appellant opted for a non-jury trial, the trial commenced before a judge and the prosecution had led seven witnesses and marked production P1-10 and closed the case. The Learned High Court Judge having satisfied that evidence presented by the prosecution warrant a case to answer, called for defence and explained the rights of the accused. Having selected the right to make a statement from the dock, the Appellant had proceeded to deny the charge by way of his dock statement.

After considering the evidence presented by both the prosecution and the defence, the Learned High Court Judge had convicted the Appellant as charged and imposed the sentence on 19/03/2015 as follows:

1. First Count - sentenced the Appellant to death.
2. Count Two - 05 years rigorous imprisonment with a compensation of Rs.250000/-. In default 12-month simple imprisonment.
3. Count Three - 18 months rigorous imprisonment with a compensation of Rs.25000/-. In default 03 months simple imprisonment.

Being aggrieved by the aforesaid conviction and the sentence the Appellant preferred this appeal to this court.

The Learned Counsel for the Appellant informed this court that the Appellant had given consent to argue this matter in his absence due to the Covid 19 pandemic. At the hearing the Appellant was connected via Zoom platform from prison.

The following Grounds of Appeal were raised on behalf of the Appellant.

1. The prosecution has failed to prove the existence of murderous intention of the Appellant.
2. The Learned High Court Judge had reversed the presumption of innocence.
3. The evidence is not supported the conclusion reached by the Learned High Court Judge in his judgment.
4. The High Court Judge has not considered the evidence favourable to the Appellant in his judgment.

The background of the case *albeit* briefly is as follows:

According to PW4 Poornima, on the date of the incident when she was having dinner with her deceased father in the kitchen, her sister Nayana had come running from the direction of the hall shouting that the Appellant had come and asked her to run. Her sister Nayana also showed the injury on her hand said to have been inflicted by the Appellant. When PW4 rushed up to the kitchen door the Appellant had come there. When she ran out and looked backed had seen the deceased was on the floor and the Appellant was on her father's body and inflicting the injury to her father. When she pulled the Appellant by his T-shirt, the Appellant had stabbed on her head. As such she had been hospitalized and received treatment. Her Medico Legal Report was marked as P3 by the prosecution. She had seen

the Appellant inflicting injury on the deceased with a close proximity of the incident.

The Appellant is the son of PW4's mother's sister. The Appellant had stayed in the deceased's house for a brief period of time previously. During this time the Appellant's family had proposed the Appellant to one of her sisters, which had been vehemently turned down by the deceased. Due to this disappointment the Appellant, six months prior to this incident had come to the deceased's house brandishing a knife and created an unpleasant scene. For this a complaint was lodged at the Ehaliyagoda Police Station and after police inquiry, the police had settled the matter imposing a condition that the Appellant should not visit deceased's house.

According to PW3 Nayana Kumari, when she was having a chat with her Uncle Karunaratna in the hall, she had suddenly felt that something had struck on her hand. When she looked had seen that she had sustained an injury on her hand. At the same time, she had seen the presence of the Appellant and she ran into the house alerting others that the Appellant had come. After a while when she came to the house, she had seen her deceased father was lying fallen near the kitchen door bleeding due to injuries. She also confirmed the enmity existed between the Appellant and the deceased's family. She too had been hospitalized and the Medico Legal Report pertaining to her injuries was marked as P2 in the trial.

PW5 Achini is a relation of the deceased and on the date of incident she had gone to meet one of the daughters of the deceased when the incident had taken place. When she was talking to Damayanthi inside a room, heard shouting in the direction of the hall. When she looked through the window had seen PW3 running and shouting that the Appellant had come. She had also seen the Appellant chasing PW3. Due to fear, she had run to her house and when she came back, she had seen the deceased was lying fallen near the kitchen door and others were weeping near the deceased.

Officers from the Weligepola Police Station had conducted investigations, arrested the accused on the following day and recovered a knife and short sleeved shirt based upon his statement under Section 27(1) of the Evidence Ordinance.

According to medical evidence one deep stab injury was found on the chest of the deceased. According to PW13, the death could have occurred due to haemorrhage shock due to a stab on the left anterior wall, penetrating to the heart.

After the closer of the prosecution case, the defence was called and the Appellant had made a statement from the dock. In his dock statement the Appellant had admitted that he went to deceased's house to discuss his love affair he had with one of the daughters of the deceased. At that time due to a sudden fight this incident had happened.

In the first ground of appeal the appellant contends that the prosecution has failed to prove the existence of murderous intention of the Appellant.

The essence of criminal law has been said to lie in the maxim- "*actus non facit reum nisi mens sit rea*". The essence of an offence is the wrongful intent, without which it cannot exist.

The Learned High Court Judge in his judgment at page 327 of the brief very extensively analysed the evidence of PW4 who is the eye witness in this case. The Appellant had gone to the deceased's house despite the warning given to him by the Ehaliyagoda Police due to a previous incident. Hence, going to deceased's house on that day clearly shows his malicious intention.

PW3 had vividly explained in her evidence that the Appellant had a cordial relationship with deceased's family before the wedding proposal was brought to the deceased's daughter Anoma. The cordial relationship was stained when the deceased opposed to the said wedding proposal. As the Appellant started to fight with the deceased's family a complained was

lodged at the Ehaliyagoda Police station. Even though she admitted existence of a love affair between with deceased's daughter Anoma and the Appellant, but no connection whatsoever existed with the Appellant and Anoma at the time of the incident.

It is the uncontradicted evidence of lay witnesses that on seeing the Appellant, witnesses raised cries and ran for safety. This clearly indicates the amount of animosity the Appellant had towards the deceased's family prior to the incident. When the Appellant entered the deceased's house despite being barred by the police, clearly infers intention for launching a murderous attack on the inmates of deceased's house. Hence, it is incorrect to say that the prosecution has not proven existence of murderous intention. Therefore, considering the first appeal, it has no merit.

In the second ground of appeal the Learned Counsel contends that the Learned High Court Judge had reversed the presumption of innocence.

Although, the Learned Counsel drew to the attention of the pages 326 -327 of the brief to substantiate the second ground of appeal in favour of the Appellant, but after reading the said pages revealed that the Learned High Court Judge had not reversed the burden of proof on the Appellant. The Learned High Court Judge only considered the dock statement of the Appellant to negate his stance that he acted in self-defence to escape from the deceased. Hence, this ground too devoid of any merit.

In the third ground of appeal the appellant argues that the evidence does not support the conclusion reached by the Learned High Court Judge in his judgment.

The Learned High Court Judge has considered the evidence presented by both parties to arrive at his conclusion. The Learned Counsel for the Appellant highlighting the page 328 of the brief submits that the Learned High Court Judge in his judgment submitted that even though the

Appellant had taken up the position that he was assaulted by a person called Karunaratna with an axe, the Learned High Court Judge in his judgment had concluded that it has not been proved through the medical evidence.

The Appellant had been examined by PW13 DMO of Weligedera Hospital on 17/10/2008. The doctor had checked his body and noted a mild abrasion in the middle of his left forearm which had been categorised as a non-grievous injury. He has opined that the injury could have been sustained due to the contact with hard object. The Medico Legal Report of the appellant was marked as P-4 by the prosecution.

Although the Appellant had taken up the position that the incident had occurred due to a sudden fight ensued with one Karunaratna who had assaulted him with an mamoty when he entered the deceased's house. But according to PW13 he had noted a mild abrasion on at middle of left forearm of the Appellant. Hence, the Learned High Court Judge had very correctly come to the conclusion that the position taken by the Appellant in his dock statement had not been reflected in his Medico Legal Report. Therefore, this ground also has no merit.

In the final ground of appeal, the Appellant contends that the Learned High Court Judge has not considered the evidence favourable to the Appellant in his judgment.

With all the evidence presented by the prosecution and the defence, it appears that the Learned High Court Judge had appropriately evaluated the evidence in delivering his verdict. The Learned High Court Judge had considered the dock statement of the Appellant in the judgment. Hence, it is incorrect to say that the Learned High Court Judge had not considered the evidence favourable to the Appellant. Hence, this ground also has no merit.

In this case the evidence given by the prosecution witnesses are not tainted with uncertainty or ambiguity and it certainly passes the probability test.

Therefore, I conclude that the prosecution had succeeded in adducing highly incriminating evidence against the Appellant and thereby established the charges beyond reasonable doubt.

As such, I conclude, that this is not an appropriate case in which to interfere with the findings of the Learned High Court Judge of Rathnapura dated 19/03/2015. Hence, I dismiss the Appeal.

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

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL