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

In the matter of an Appeal made under  
Section 331 of the Code of Criminal  
Procedure Act No.15 of 1979.

**Court of Appeal No:  
CA/HCC/0014/2020**

Sengamalai Murugiah

**High Court of Kalutara  
Case No: HC/702/2006**

**ACCUSED-APPELLANT**

**vs.**

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

**COMPLAINANT-RESPONDENT**

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

**COUNSEL : Yalith Wijesurendra for the Appellant.  
Janaka Bandara, DSG for the Respondent.**

**ARGUED ON : 29/09/2022**

**DECIDED ON : 18/10/2022**

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## **JUDGMENT**

### **P. Kumararatnam, J.**

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted in the High Court of Kalutara under three counts.

1. Under Section 296 of the Penal Code for committing the murder of Rengan Sellamma on or about 06<sup>th</sup> May 2001.
2. Under Section 315 of Penal Code for voluntarily causing hurt by dangerous weapon to one Nagamuttu Rasalingam in the course of the same transaction.
3. Under Section 314 of Penal Code for voluntarily causing hurt to one Weerappan Arumugam in the course of the same transaction.

The trial commenced before the High Court Judge as the Appellant had opted for a non-jury trial. After the conclusion of the prosecution case, the learned High Court Judge had called for the defence and the Appellant had made a brief dock statement and closed the case. After considering the evidence presented by both parties, the learned High Court Judge had convicted the Appellant as follows:

1. Count one the Appellant was sentenced to death.
2. Count two he was sentenced to 01-year rigorous imprisonment with a fine of Rs.5000/-. In default 06 months six months imprisonment.
3. Count three he was sentenced to 03 months rigorous imprisonment with a fine of Rs.1000/-. In default 03 months six months imprisonment.

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

The Learned Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence due to the Covid 19 pandemic. Also, at the time of argument the Appellant was connected via Zoom platform from prison.

Counsel appearing for the Appellant has taken up a preliminary objection and contended that the jury option under Section 195(ee) of the Code of Criminal Procedure Act No.15 of 1979 had not been given to the Appellant. As this itself is sufficient to quash a conviction, moved this court to consider ordering a re-trial.

But on the perusal of the original court record, it is found that the jury option was properly given to the Appellant on 18/09/2006 and the Appellant had elected a non-jury trial. (Page 62 of the brief). Due to an oversight, this relevant page had not been included in the brief given to the Appellant. After going through the original case record, the Counsel for the Appellant informed the court that he is no longer pursuing the said preliminary objection.

Further, the Counsel for the Appellant had submitted that as the prosecution had led clear and cogent evidence and the Learned High Court Judge very correctly considered the evidence and come to a correct finding, he is not going to argue this matter as he has no ground to support. Hence, the Learned Deputy Solicitor General had made his submission.

Hence, this Court has decided to consider the merit of this Appeal.

**Background of the Case *albeit* briefly is as follows**

In this case the incident had happened in an estate where the deceased, the witnesses and Appellant were resided. On the date of incident, at about 6.30 p.m. the appellants had come to the line rooms where PW1-3 were residing.

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He had an argument with PW2, regarding a loan obtained from the Appellant by PW2. As the argument turned to a fight, the deceased, being the mother of the Appellant had come to the scene and tried to calm down the Appellant. But the Appellant had stabbed her mother with a knife. As this incident had taken place in moon light no dispute arose with regard to the identity of the Appellant. This incident had been eye witnessed by PW1, PW2 and the PW3.

The police had conducted the investigation and recovered a knife upon the statement made by the Appellant.

The JMO who held the post mortem of the deceased opined that the death of the deceased had caused due to shock following severe intra thorax haemorrhage following stab injury done by a sharp pointed weapon. The same doctor had examined the injured PW2 and PW3 and issued the Medico Legal Reports.

The legality of the recovery made under Section 27(1) Evidence Ordinance has been discussed in several cases in our jurisdiction.

According to Section 27(1) of the Evidence Ordinance-

“When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.”

The Supreme Court in the case of **Somarathne Rajapakse Others v. Hon. Attorney General** (2010) 2 Sri L.R. 113 at 115 stated that:

*“A vital limitation on the scope of Section 27 of the Evidence Ordinance is that only the facts which are distinctly related to what has been discovered would be permitted in evidence. There*

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*should be a clear nexus between the information given by the accused and the subsequent discovery of a relevant fact. A discovery made in terms of Section 27 of the Evidence Ordinance discloses that the information given was true and that the Accused had knowledge of the existence and the whereabouts of the actual discovery.”*

In this case the prosecution had led strong incriminating evidence against the Appellant which clearly established that the Appellant had stabbed his mother to death and caused injuries to PW2 and PW3. Hence, I proceed to dismiss his appeal.

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

**JUDGE OF THE COURT OF APPEAL**

**SAMPATH B. ABAYAKOON, J.**

I agree

**JUDGE OF THE COURT OF APPEAL**