

**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  
Article 138 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.*

**Court of Appeal No:**

Democratic Socialist Republic of Sri Lanka

CA/HCC/0060/2015

**COMPLAINANT**

**Vs.**

**High Court of Rathnapura**

Pitiwala Liyanage Dinesh Kumara *alias*

**Case No:** HCR/36/2014

Indika Sampath

**ACCUSED**

**AND NOW BETWEEN**

Pitiwala Liyanage Dinesh Kumara *alias*

Indika Sampath

**ACCUSED-APPELLANT**

**Vs.**

The Attorney General,

Attorney General's Department,

Colombo 12

**RESPONDENT**

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

**Counsel** : Thanuka Nandasiri for the Accused Appellant  
: Azard Navavi, DSG for the Respondent

**Argued on** : 11-11-2022

**Written Submissions** : 09-11-2018 (By the Accused-Appellant)  
: 29-11-2018 (By the Respondent)

**Decided on** : 15-12-2022

**Sampath B Abayakoon, J.**

This is an appeal by the accused appellant (hereinafter referred to as the appellant) on being aggrieved by his conviction and the sentence of the learned High Court Judge of Rathnapura.

The appellant was indicted before the High Court of Rathnapura for causing the death of one Athukoralage Priyantha Abeywardena on 13<sup>th</sup> March 2005, and thereby committing the offence of murder, punishable in terms of Section 296 of the Penal Code.

After trial without a jury, the learned High Court Judge found the appellant guilty as charged by his judgement dated 2<sup>nd</sup> April 2015. Accordingly, he was sentenced to death.

At the hearing of this appeal, the learned Counsel for the accused appellant formulated one solitary ground of appeal, namely;

1. Whether accused appellant has been properly identified as the assailant by the prosecution witnesses.

### **Facts in Brief**

On the date of this incident, Officers of the Balangoda Police and villagers have been searching for some robbery suspects within a forest area in the village of Dampitiya where PW-01 also lived. This has been going on from the morning. PW-01, while having a cup of tea in front of her house around 4.30 in the evening, has observed a person wearing a red-coloured jacket and having a limp when walking, approaching her house. Seeing the PW-01, he has questioned whether she saw anyone passing her house for which she has replied No, but had told him that in the morning, police came and searched for some thieves. Upon hearing that, the person has run away towards the forest area.

At that moment, she has seen the deceased Priyantha running towards the person who questioned her and ran away and both of them meeting each other, face to face. She has been about 30 feet away when she saw this. Thereafter, she has seen the deceased Priyantha waving an umbrella and has heard a gun being fired. She has seen Priyantha falling and the other person entering the forest. After hearing her cries and the gunshot, the villagers have gathered and they have observed that Priyantha was already dead.

About half an hour later, officers of the Balangoda police have arrived and while searching for the suspect with the aid of the villagers who gathered at the scene, she has seen the same person whom she saw earlier running while firing at the police and the villagers. That was around 5.30 in the evening. Later, around 6 in the evening, she has seen the same person apprehended by the police. Although the villagers have attempted to assault him, the police officers had prevented him being assaulted.

In her evidence, she has stated that she did not properly see the face of the person, but he was a person with partially bronze coloured hair and was a thin person. But her evidence clearly establishes that she was very much positive as

to the person who came and questioned her, shot at the deceased and later arrested by the police was one and the same person.

PW-03 was another fellow villager. According to his evidence, around 7 in the morning of the day of the incident, he had heard somebody screaming from the direction of the house of his elder brother. He has identified that sound as of his brother's wife. When he rushed towards the said house, he has seen two persons holding his sister-in-law and when he attempted to rescue her, one of them had pointed a gun at him, but both of them had fled after threatening him. They have run towards the forest area adjacent to the village. He too has identified one of the persons as the person who had a bronze-coloured hair with a thin body shape. He has identified that person as the accused in the Court. He has stated that he identified the same person at the identification parade held at the Balangoda Magistrate Court.

According to the evidence of PW-08 while on duty at the Balangoda police station on 13-03-2005, he has received an information that a group of thieves had entered a house in Amupitiya area and had entered Dampitiya forest which was nearby. He has received this information around 7.25 in the morning and accordingly, he and a team of police officers have gone to the area in search of the thieves. Although they have searched the forest, they were unable to apprehend the thieves. While conducting investigations, he has recovered a live bullet fallen in front of the house where the thieves have allegedly entered in the morning. While conducting the search operation with the help of the villagers, he has come to know that a person has been shot in the same area. After commencing his investigations in that regard, he has recorded a statement from PW-01 Bandara Manike at 4.45 in the evening. As her statement has revealed that the person who shot at the deceased entered the forest area, he has again started searching the forest for the assailant. While this was going on, he has observed a person running on a hilly area close to the house of PW-01

and when the villagers and the police team surrounded him, he has started firing at his pursuers. However, the police team had found him later, hiding under a bush and when ordered to surrender, he has come out with a pistol in hand and surrendered. After arresting the person, he has brought the suspect who was the appellant in this case to the police station with difficulty, because of the attempts by the villagers to assault him. He has conducted further inquiry into this matter and has taken steps to send the pistol recovered from the possession of the appellant and the live bullet recovered near the house, where the 1<sup>st</sup> incident has occurred around 7 in the morning, to the Government Analyst.

According to the evidence of Judicial Medical Officer who has given evidence in this case, the death of the deceased had been due to gunshot wounds. The Government Analyst who has examined the pistol recovered and the live bullet send for analysis has opined the weapon as a firearm, and has also matched the live ammunition to the said firearm.

When the appellant was called for a defence at the conclusion of the prosecution case, he has made a statement from the dock. It had been his position that he came to the area looking for a job in a bakery and people who were looking for some robbers surrounded and attacked him because he was a stranger to that area. He has stated that while this was happening, he too heard a gunshot, but had denied any involvement in firing at the deceased.

### **Consideration of the Ground of Appeal**

The ground of appeal urged by the learned Counsel for the appellant was mainly based on the identification of the appellant by PW-01 who was the only eyewitness to the incident of shooting. It was his position that PW-01 has never seen the face of the assailant when the deceased was shot at and even after the appellant was apprehended by the police. He was of the view that the

identification of the appellant as the person who shot at the deceased by PW-01 was clouded with doubt and cannot be considered a positive identification. He was of the view that a conviction on such an identification was not safe, and therefore, appellant should be given the benefit of the doubt created as to the identification.

It was the view of the learned Deputy Solicitor General (DSG) that PW-01 has clearly identified the appellant at the time of the incident. Referring to the evidence led at the trial, he contended that PW-01 has seen the appellant three times within a short span of time after the incident. She has seen him firing at the deceased and fleeing the scene of the crime. Later she has seen the same person running towards a hill which was near her house while firing at his pursuers and has also seen him after his arrest by the police. She has given a clear description as to the body features of the appellant and reasons as to why she was unable to clearly see the face of the appellant. Submitting that the learned High Court Judge has well considered the question of the identity of the appellant and has come to a firm finding that the prosecution has established the identity of the appellant beyond reasonable doubt, it was his view that the judgement needs no disturbance by this Court.

I am of the view that, as pointed out correctly by the learned DSG, this was not an incident where the PW-01 only had the opportunity of having looked at the appellant for few seconds. She had been very clear in her evidence that the appellant first came and questioned her whether she saw someone passing the area. When she replied, the appellant has run away and had been confronted by the deceased. She has seen him entering the forest area after committing the crime. Within an hour of the incident, she has again seen the same person running while firing at the fellow villagers. Later, the same person has been apprehended. She has given a clear description as to a special feature she observed on the hair of the appellant. The same feature had been observed by PW-03 as well, when he confronted the thieves who were holding his sister-in-law in the morning.

Since this is a matter where the identity of the appellant had come into question, I find it relevant to mention the guidelines set in the case of **Regina Vs. Turnbull (1977) Q.B. 224**, which held that where a case against an accused depends wholly on the correctness of the identity of that person, the judge should warn the jury of the special need to for caution before relying on the correctness of the identification by the witness.

*It was held that the judge should tell the jury,*

- *Caution is required to avoid the risk of injustice.*
- *A witness who is honest may be wrong even if they are convinced, they are right.*
- *A witness who is convincing may still be wrong.*
- *More than one witness may be wrong.*
- *A witness who recognizes the defendant even when the witness knows the defendant well maybe wrong.*

*Some of the circumstances a judge should direct the jury to examine in order to find out whether a correct identification has been made include;*

- *The length of time the accused was observed by the witnesses.*
- *The distance the witness was from the accused.*
- *The state of the light.*
- *The length of time elapsed between the original observation and the subsequent identification.*

As I have considered before, the witness PW-01 has been able to observe the appellant several times during this incident at a short distance away from her. Since it was only the evening of the day at that time, she has had no difficulty in seeing the person. When considering the sequence of events that had taken place, I do not find any doubt that has been created as to the identification of the appellant by PW-01.

As discussed by **E.R.S.R. Coomaraswamy** in his book **The Law of Evidence Volume 1 at page 670**, the Indian Supreme Court in the case of **Ramratan Vs. State of Rajasthan AIR (1962) S.C. 424** has laid down the following general rules governing the question whether the evidence of a single witness is sufficient as the basis of a conviction.

- a. The question whether corroboration of a testimony of a single witness is or is not necessary must depend upon the facts and circumstances of each case.*
- b. The Court should not, in the absence of a statutory requirement, insist on corroboration, except in cases where the nature of the testimony of the single witness itself requires, as a matter of prudence, that corroboration should be insisted upon.*
- c. Where the Court is convinced that the witness is speaking the truth, and his evidence rings to be true, as a general rule, the Court may act on the evidence of a single witness though uncorroborated.*

It is well settled law that in a criminal matter of this nature, a trial Court has to look into the evidence placed before it in its totality rather than compartmentalizing it. I am of the view that if taken in its totality, the prosecution has placed sufficient evidence before the Court in order to decide on the question of identity of the appellant. In his judgement, the learned High Court Judge has clearly identified the necessity to establish the identity of the appellant as the person who shot at the deceased beyond reasonable doubt in order to find the appellant guilty for the charge. He has well considered the eyewitness account and other evidence that show the sequence of events that took place within the day of the incident to come to a firm finding in that regard. He has well considered the defence put forward by the appellant to determine that it has not created any doubt as to the prosecution evidence or has given a



reasonable explanation with regard to him being arrested within a short span of the incident with a gun in the nearby forest.

This Court does not find any reasons to interfere with the findings of the learned High Court Judge as they have been reached after due consideration of the evidence presented to the Court with a clear understanding of the relevant law.

Accordingly, the appeal is dismissed, as I find no merit in the ground of appeal urged by the learned Counsel for the appellant.

The conviction and the sentence affirmed.

Judge of the Court of Appeal

**P. Kumararatnam, J.**

I agree.

Judge of the Court of Appeal