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 the provisions of Section 11 of High Court of the of Provinces (Special Provisions) Act No. 19 of 1990.

CA No: CA/HCC/ 446/19
HC: Puttalam: HC 52/2009

The Democratic Socialist Republic of
Sri Lanka.

Complainant

Vs.

Palamandilage Antony Fernando
Accused

And now between

Palamandilage Antony Fernando

Accused- Appellant

Vs.

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

Before: **N. Bandula Karunarathna J. – P/CA.**

&

R. Gurusinghe J.

Counsel: Vinsent Shashikalum Perera, AAL for the Accused-Appellant

Shaminda Wickrama, SC for the Complainant-Respondent

Written Submissions: By the Accused-Appellant – 16.12.2021

By the Complainant-Respondent – 27.06.2022

Argued on : 01.12.2022

Decided on : **08.03.2023.**

N. Bandula Karunarathna J. P/CA

This appeal is from the judgment, delivered by the learned trial Judge of the High Court of Puttalam, dated 01.02.2019, by which, the accused-appellant, who is before this court via zoom platform, was convicted and sentenced to death for having murdered Dissanayaka Mudiyanselage Suneetha Kumari (the deceased) on 14.04.2008, punishable under section 296 of the Penal Code.

The appellant pleaded not guilty to the charge and requested a non-jury trial. Thereafter, the case proceeded to trial.

The prosecution led the evidence of the following witnesses;

(a) R.H.M. Jayathilaka (PW 1)

(b) Dr S.P.A. Hewage (PW 5)

(c) Police Constable A.D.R. Jayakodi (PW 7)

(d) Sub Inspector E.M. Rathnayaka (PW 10)

(e) Police Constable H.M.S. Dissanayaka (PW 9)

(f) D.M. Wasana Sandamali (PW 2)

(g) M.A.M. Afral – Court Interpreter Mudlier

At the conclusion of the case for the prosecution, the learned High Court Judge called for the defence and the appellant made his statement from the dock.

After a trial without a Jury, the learned High Court Judge convicted the accused-appellant and imposed the death sentence on 01.02.2019. Being aggrieved by the conviction and the sentence, the accused-appellant has preferred this appeal to this court.

The appellant had raised 4 grounds of appeal. Since this is an appeal filed in person, it could be safely assumed that the standard set of grounds of appeal usually submitted by prisoners have been presented in this case which are;

I. the learned High Court Judge failed to consider the inconsistencies in the evidence presented by the prosecution
II. the learned High Court Judge failed to pay attention to the closing submissions made by the defence
III. the learned High Court Judge failed to consider the weaknesses and the incredible nature of the evidence for the prosecution
IV. the judgment is contrary to the evidence adduced.

Having perused the brief, the learned counsel for the respondent raised the following grounds of appeal on behalf of the appellant which would fall within the purview of grounds III and IV above;

I. The learned trial Judge failed to properly apply the principles relating to dying declarations in dealing with the purported statements relied on by the prosecution as dying declarations

II. The learned trial Judge had failed to properly analyse the evidence and to consider whether the elements of the offence were proven beyond reasonable doubt based on the evidence adduced

The trial commenced on 27.07.2011 and the appellant was convicted and sentenced to death on 19.03.2014. On appeal, the judgment and sentence were set aside on the technicality of the learned trial Judge not adopting section 48 of the Judicature Act appropriately in the proceedings and a Retrial was ordered by the Court of Appeal on 23.05.2018. The Retrial commenced on 12.11.2018 and the judgment convicting the appellant was pronounced on 01.02.2019. It is important to note that the instant appeal is on the said judgment of the Retrial.

The case for the prosecution was that the appellant was having a de facto relationship with the deceased, and the appellant said the deceased ablaze in the early hours of the morning on 14.04.2008. The deceased died on 18.04.2008. The prosecution was essentially based on three purported dying declarations made by the deceased; one to PW 1 who was a neighbour, one to PW 2 who was a step sister of the deceased and one to the police sergeant PW 7 who claims that a statement of the deceased was recorded by him at the Nawagattegama Hospital on 14.04.2008 around 05.05 pm.

It is evident that the deceased had been living together with the accused-appellant and her two children. PW 1, a neighbour, lived in a house about 200 meters away. Around 12 am on 14.04.2008, the deceased had come running in flames towards PW 1's house, shouting that "Antony" (the Appellant) had set fire to her. PW 1 woke up on hearing the shouts, and then splashed water on the deceased to put out the fire. Thereafter, on the request of the deceased, PW 1 had gone to the house of the step sisters of the deceased (PW 2 and PW 3). They arranged a lorry from a neighbour, and took the deceased to the Nawagattegama Hospital. The Police commenced investigations, based on the statement given by PW1. On the way to the hospital, the deceased had been speaking with her step sisters, PW 2 and PW 3.

PW 2 gave evidence at the trial, and PW 3 gave evidence at the Retrial. At the Retrial, PW 2 stated that the deceased said that the appellant set fire to her and held her head with his legs until she burnt.

Page 323 of the appeal brief is as follows;

> “මේ ඇන්ටනී ගිනි තිබ්බා කියල කිව්වා. ගිනි තියල ගිනි ගන්නකම් කකුල් දෙකෙන් අල්ලගෙන හිටියා කියලා කිව්වා.”

The deceased had been transferred to the Kurunegala Teaching Hospital due to her condition getting graver, and PW 7 who was stationed at the Police Unit at the Hospital recorded her dying declaration in which she had again stated that the appellant had held her head with his legs and set fire to her.

Page 285 of the appeal brief is as follows;

> “මගේ ඔළුව කකුල් දෙක අස්සේ හිර කරගෙන මගේ ඇගට ලාම්පුතෙල් වක්කරල ළග තිබුණු ලාම්පුව අරගෙන මගේ ඇගට ගිනි තිබ්බා.”

Page 286 of the appeal brief is as follows;

“මට, මගේ පුරුෂයා වන ඇන්ටනී ප්‍රනාන්දු යන අයයි ගිනි තැබුවේ.”

PW 10 – Officer-In-Charge (Crimes) at Nawagattegama Police Station stated that on receiving the first information (through the statement of PW 1), he investigated the scene of the crime and he found a can with some kerosene oil and a kerosene lamp placed inside a tin in the house. He also stated that there was a smell of kerosene oil. He had arrested the accused-appellant on the same day, and he stated that the appellant was at the bus stop intending to leave the village when the arrest was made.

The Judicial Medical Officer (PW 5) stated that more than 70% of the body area of the deceased was covered with burn wounds. He stated that the back of the deceased had more serious burns, namely third-degree burns, but no burns were seen on the lower legs.

The appellant opted to make a statement from the Dock denying the charge. He said that they quarrelled on the day, and during the quarrel, she caught fire with the kerosene lamp which was on the floor which is inconsistent with the nature of her burnt wounds.

While admitting that he saw her catching fire, he did not even state that he tried to put out the fire or help her. His action instead was to pack up and leave which is a clear indication of his intention to kill. Thus, at the end of a strong prima-facie case for the prosecution which proved the guilt of the accused-appellant beyond reasonable doubt, the appellant was convicted of the charge of murder at the Retrial as well.

According to PW 1, on 14.04.2008 around 12.00 am - 1.00 am, the deceased who was ablaze came running towards his house shouting "මාව බේරගන්න, මාව බේර ගන්න" and the deceased also told him "මම කුමාරි, මට ඇන්ටනි ගිනි තිබ්බා". Subsequently, she took the deceased first to the Nawagattegama Police Station in a lorry and then to the Hospital. According to PW 1, it took about one and a half hours to take the deceased to the police station. According to PW 2, she had accompanied the deceased on the way to the police station and to the hospital as well, the deceased had told her that "ඇන්ටනි ගිනි තිබ්බා".

Page 323 of the appeal brief is as follows;

“ප්‍ර : අක්ක මොකද්ද කිව්වේ තමුන්ට.”

“උ : මට ඇන්ටනි ගිනි තිබ්බ කියල කිව්වා. ගිනි තියල ගිනි ගන්නකම් කකුල් දෙකෙන් අල්ලගෙන හිටියා කියල කිව්වා. අක්කා එනකම් ළමයි දෙන්නා බලා ගන්න කියල කිව්වා.”

In his evidence PW 7 had said that he recorded a statement of the deceased on 14.04.2008 at 05.30pm at the Kurunegala Hospital. According to PW 7, the deceased had stated in her statement that; "මගේ ඔළුව කකුල් දෙක අස්සේ හිරකරගෙන මගේ ඇගට ලාම්පු තෙල් වක්කරල ලග තිබුණු ලාම්පුව අරගෙන මගේ ඇගට ගිනි තිබ්බා" [marked as පැ 3].

"මට මගේ පුරුෂයා වන ඇන්ටනී ප්‍රනාන්දු යන අයයි ගිනි තැබුවේ." [Marked as පැ 3 අ].

However, PW 7 could not obtain the deceased's signature on the statement because of the injuries the deceased had on her fingers. PW 5 was the doctor who had conducted the post-mortem examination, PW9 was the police constable who had recorded the first information and PW10 was the Investigating Officer.

The appellant in his dock statement had said that on that day the appellant and the deceased wrestled after the deceased pulled him from his shirt because he tried to leave the house and during that fight, the deceased caught fire from the lamp and the can (ලාම්පු කුප්පියයි කෑන් එකයි) which were on the ground. The appellant had further stated that thereafter the deceased ran away shouting "ඇන්ටනි ගිනි තිබ්බා".

It is important to understand section 32(1) of the Evidence Ordinance. It states thus;

> 32(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under the expectation of death, and whatever may be the nature of the proceedings in which the cause of his death comes into question.

The effect of the provisions of section 32 (1) above is to make a statement made by a deceased as to the cause of death or as to any of the circumstances of the transaction which resulted in death relevant in proceedings in which the cause of death of the deceased comes into question. In this regard, it is immaterial whether the deceased was or was not under the expectation of death at the time the statement in question was made.

In the case of Ranasinghe Vs. Attorney-General 2007 (1) SLR 218 the Court of Appeal held thus;

> As there are inherent weaknesses in a dying declaration which I have stated above, the trial Judge or the jury as the case may be must be satisfied beyond a reasonable doubt on the following matters.
>
> i. Whether the deceased made such a statement.
> ii. Whether the statement made by the deceased was true and accurate.
> iii. Whether the statement made by the deceased person could be accepted beyond a reasonable doubt.
> iv. Whether the evidence of the witness who testifies about the dying declaration could be accepted beyond a reasonable doubt.
> v. Whether the witness is telling the truth.
> vi. Whether the deceased was able to speak at the time the alleged declaration was made.

Even though section 32(1) of the Evidence Ordinance makes a statement made by a deceased as to the cause of death or as to any of the circumstances of the transaction which resulted in death a relevant fact in a case, a trial Judge is required to carefully scrutinize such evidence in line with the above guidelines declared in Ranasinghe Vs. Attorney-General (supra).

The second factor is about ascertaining whether the relevant statement is true and accurate. In that regard, it would be important and relevant to consider whether the deceased was in serious apprehension of his/her death at the time the relevant statement was made as highlighted in the dictum quoted by the learned trial Judge in the impugned judgment (at page 367).

In the case of Shudhakar Vs. State of M.P (2012) 7 SCC 569 which reads thus;

> "Dying declaration' is the last statement made by a person at a stage when he is in serious apprehension of his death and expects no chance of his survival. At such times, it is expected that a person will speak the truth and only the truth. Normally in such situations, courts attach intrinsic value of truthfulness to such statements. Once such a statement has been made voluntarily, it is reliable and is not an attempt by the deceased to cover up the truth or falsely implicate a person, then courts can safely rely on such a dying declaration and it can form the basis of conviction. More so, where version given by the deceased as dying declaration is supported and corroborated by other prosecution evidence, there is no reason for courts to doubt the truthfulness of such dying declaration."

Therefore, section 32 (1) of the Evidence Ordinance provides that a dying declaration is relevant whether or not the deceased was under the expectation of death at the time the relevant statement was made, the fact whether or not the deceased was in serious apprehension of death is relevant in deciding whether such statement is true. The reason is, as explained in the above excerpt, it is expected of a person to speak the truth and only the truth in a situation where that person is in serious apprehension of death and where he/she expects no chance of survival.

It is pertinent to note that in the case at hand, PW 2 had said in evidence that the deceased told her while the deceased was being transported to the police station and then to the hospital, to look after the deceased's children until she returns.

Page 323 of the appeal brief is as follows;

> "අක්කා එනකම් ළමයි දෙන්නා බලා ගන්න කියල කිව්වා."

Therefore, the learned counsel for the accused-appellant argued that at the time the two purported dying declarations were made by the deceased to PW1 and PW 2 respectively, the deceased was not in serious apprehension of death according to the evidence of PW 2. Thus, the deceased could not be expected to have spoken the truth and only the truth when she is said to have made the aforesaid statements to PW 1 and PW 2.

The learned counsel for the appellant further says that the purported dying declaration made to PW 7 is concerned, firstly, it is important to note that the police already knew about the statements the deceased is said to have made to PW 1 and PW 2 by the time PW 7 saw the deceased in the hospital. Secondly, according to PW 2, when she saw the deceased at the Kurunegala Hospital around 12.00 pm on 14.04.2008, the deceased could not talk.

Page 324 of the appeal brief is as follows;

> "වාට්ටුවට මම ගියාට පස්සේ එයා ටිකක් දොඩවනවා වගේ එයාට කතා කර ගන්න බැරි උනා"

It was the contention of the learned counsel for the accused-appellant that, this raises a doubt with regard to the evidence of PW 7 who says that the deceased gave a statement to him on 14.04.2008 at 5.30 pm.

The doctor (PW 5) who conducted the post-mortem had said in his evidence that the deceased should have been able to talk because he did not find injuries in the relevant organs, it is important to note that PW 5 could only give evidence based on what he observed on the dead body of the deceased. On the other hand, PW 2 had met the deceased person and her evidence was based on what she observed when the deceased was alive. The learned counsel for the appellant argued that the said evidence raises a reasonable doubt on whether the evidence of PW 7 was true when he said that the deceased made the purported dying declarations tendered in evidence as පැ 3 and පැ 3 අ.

The learned counsel for the accused-appellant says that it is very unlikely for PW 7 not be briefed by the Investigating Officer of the case when PW7 was asked to record the statement of the deceased. Thus, it is highly probable for PW 7 to have knowledge about the statements made by PW 1 and PW 2 to the police when he approached the deceased in the hospital, and this would explain how the purported dying declarations were included in the statement alleged to have been made by the deceased. The learned counsel for the appellant further argued the fact that the said purported statement was not signed by the deceased for whatever reason also amplifies the doubt as to whether the deceased made the statements marked as පැ 3 and පැ 3 අ.

The learned counsel for the accused-appellant further submitted that none of the purported dying declarations based on which the conviction against the appellant was entered is reliable and therefore the conviction should not be allowed to stand.

On behalf of the accused-appellant, it was argued that the elements of the offence are not established. In the instant case, the evidence does not divulge the part of the body of the deceased which caught fire initially. This evidence is essential in two respects. Firstly, to draw an inference on the actus reus especially where the appellant claims that the catching of fire was accidental. Secondly, in order to draw an inference in relation to the intention of the appellant and to ascertain whether the relevant element of the offence is established.

For the prosecution to prove a charge it is necessary for all the elements of the offence relevant to that charge to be established beyond a reasonable doubt. In regard to a charge of murder, among other elements, the prosecution should establish beyond reasonable doubt that the accused had;

i. the intention of causing death, or
ii. the intention of causing such bodily injury as is likely to cause death, or
iii. the knowledge that he is likely by such an act to cause death.

The learned counsel for the accused-appellant argued that, according to the dock statement of the appellant, at the relevant point of time the deceased caught fire by accident when the two of them were wrestling and therefore the appellant denies the actus reus as well as the *mens rea* relevant to the offence he is charged with. The learned trial Judge had dismissed this position taken up by the appellant based on the evidence of PW 10 who had said that the lamp and the can which was found in the house were intact and they were not lying on the floor.

While justifying his conclusion that the deceased could not have caught fire in the manner explained by the accused in the dock statement, the learned trial Judge says in the

impugned judgment that the appellant had said in his dock statement that both the appellant and the deceased ran out of the house as the deceased caught fire. He remarks that the lamp would have got burnt if that was the case because as there was no one to put out the lamp. Learned counsel for the appellant argued that it is pertinent to note that such a statement by the appellant is not found on pages 339 and 340 of the court record where the dock statement of the accused is reproduced. On the contrary, according to what is recorded at page 340, the appellant says "ඊට පස්සේ මම ඒ බයට ඇවිල්ල රෙදි බෑග් එකත් අරගෙන ආවා.".

Another argument raised by the learned counsel for the appellant was that in the impugned judgment the learned trial Judge says that if the deceased had caught fire according to the manner explained by the appellant, the deceased would not have sustained the injuries observed by PW 5 during the post-mortem. However, during cross-examination when PW 5 was asked whether he can provide a conclusive opinion to the effect that the deceased had been set ablaze after kerosene oil was poured on her body, PW 5 answered in the negative. PW 5 had said;

Page 313 of the appeal brief is as follows;

> "ප්‍ර : ඔබතුමාගෙන් මූලික සාක්ෂියෙදි ඇහුවා මෙම මරණකාරියගේ ශරීරයට භූමිතෙල් වක්කරල ඉන් අනතුරුව ඇයව ගැනි තැබීමකින් මෙම තුවාල ඇති වීමේ හැකියාව තිබෙනවා කියල.
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> උ : එහෙමයි.
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> ප්‍ර : ඔබතුමාට ඒ සමබන්ධයෙන් ස්ථිර මතයක් ප්‍රකිශ කිරීමට හැකියාවක් තිබෙනවාද?
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> උ : නැහැ. මා මේ පරීක්ෂා කරන විට මා සටහන් කරලත් තියෙනවා මුල් අවස්ථාවේ දී මෙම තැනැත්තියගේ ශරීරයේ ඇඳුම් නැත. මෙම තැනැත්තිය රෝහලෙන් ප්‍රතිකාර ලබන කොට ඒ තුවාල පිරිසිදු වෙනවා. ඒ තුවාලවල භූමිතෙල් තිබෙනවානම් ඒවා පිරිසිදු වෙලා යනවා. මේ තැනැත්තිය මුල් අවස්ථාවේ ඇද සිටි ඇඳුම් මම දැක්කේ නැහැ. ඒ නිසා මට කියන්න බැහැ මැයට භූමිතෙල් දාලා පිලිස්සුවද කියල මට කියන්න බැහැ. හැබැයි එවැනි දෙයක් කලා නම් මේ වගේ ආකාරයේ තුවාලයක් වෙන්න පුළුවන්. එහෙම නොවුනයි කියල මට බැහැර කරන්න බැහැ."

Therefore, the learned counsel for the appellant says that according to PW 5, the injuries he observed on the deceased could occur even if kerosene oil was not poured on the body and it is clear that the learned trial Judge had either misinterpreted or misconstrued the evidence of PW 5 in order to justify his decision to dismiss the version of the appellant. He argued that there was no evidence before the court that would justify the rejection of the version of the appellant that he had put forward through his dock statement and no evidence that would lead to the irresistible inference that the appellant had intentionally set the deceased ablaze.

The contention of the learned counsel for the accused-appellant is that the evidence adduced in this case does not establish all the elements of the offence of murder.

One of the main arguments raised by the appellant is that the learned trial Judge failed to properly apply the principles relating to dying declarations in dealing with the purported statements relied on by the prosecution as dying declarations. As the learned trial Judge

held in his judgement and also admitted by the appellant in his Written Submission (paragraphs 13 and 14), the statements made by the deceased to PW 1, PW 2 and PW 7 are relevant facts in terms of section 32(1) of the Evidence Ordinance.

In the judgement of Shudhakar Vs State of M. P. (2012) 7 SCC 569 which is a case where the accused husband poured kerosene oil on the deceased wife and set her ablaze, on dying declarations thus:

> "The 'dying declaration' is the last statement made by a person at a stage when he is sick in serious apprehension of his death and expects no chance of his survival. At such times, it is expected that a person will speak the truth and only the truth. Normally in such situations, the courts attach the intrinsic value of truthfulness to such statement. Once such a statement has been made voluntarily, it is reliable and is not an attempt by the deceased to cover up the truth or falsely implicate a person, then the courts can safely rely on such a dying declaration and it can form the basis of conviction. Where the version given by the deceased as dying declaration is supported and corroborated by other prosecution evidence, there is no reason for the courts to doubt the truthfulness of such dying declaration."

In the same judgement, the judgement of a similar case Lakhan Vs. State of M. P. Criminal Appeal No. 2297 of 2009, where the deceased was burnt by pouring kerosene oil, is referred to;

> "This court has considered time and again the relevance/probative value of dying declarations recorded under different situations and also in cases where more than one dying declaration has been recorded. The law is that if the court is satisfied that the dying declaration is true and made voluntarily by the deceased, conviction can be based solely on it, without any further corroboration. It is neither a rule of law nor of prudence that a dying declaration cannot be relied upon without corroboration. When a dying declaration is suspicious, it should not be relied upon without having corroborative evidence."
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> "The court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased must be in a fit state of mind to make the declaration and must identify the assailants. Merely because a dying declaration does not contain the details of the occurrence, it cannot be rejected and in case there is merely a brief statement, it is more reliable for the reason that the shortness of the statement is itself a guarantee of its veracity. If the dying declaration suffers from some infirmity, it cannot alone form the basis of conviction. Where the prosecution version differs from the version given in the dying declaration, the said declaration cannot be acted upon."

In the instant case where the facts and circumstances are very similar,

(1) The deceased made the first dying declaration to PW 1 when she had run down the road in flames and PW1 splashed water on her and put out the fire. Considering the undisputed evidence of the Judicial Medical Officer that 70% of her body was burnt and that she had been running 200 meters up to the house of PW 1 in flames, the excruciating pain that the deceased must have been experiencing must be

considered. Any reasonable person would be in apprehension of death in such an instance.

(2) The second dying declaration was made to PW 2 on the way to the hospital in a lorry. The fact that the deceased requested PW 2 - her step sister and likely the only relative to help her as it was PW 2 who had given her a place to stay - to "look after her children" indicates the thinking of the deceased that she may not survive. The contention of the defence that as the deceased said "until her return", that the deceased had no apprehension of death is ludicrous, as this has to be considered in the context of the deceased with 70% body burns caused by her intimate partner and being transported in a lorry to the hospital, and that she said these words after saying that the appellant burnt her.

(3) The third dying declaration was made to PW 7, the Police Officer at Kurunegala Hospital where she had been moved from the Nawagattegama hospital. PW 7 had been called from the Ward to take her dying declaration, as her condition was grave. By the time PW 7 finished taking her statement, her condition had been such that she was not in a position to sign the statement, and PW 7 had to get her fingerprint instead.

Considering the above, it can be considered that the deceased was in serious apprehension of death when making all three declarations.

In three dying declarations to three different persons, the deceased was consistent that the appellant set fire to her. All three declarations were made voluntarily, and even the defence does not contend that the deceased was attempting to cover up the truth. On the contents of the dying declarations, the only contention of the defence was the discrepancy between the police statement and evidence at the Retrial of PW 2, on the point of the appellant holding the head of the deceased with his legs when setting fire to her.

This was also included in the dying declaration of the deceased to PW 7, and even if not, the facts of whom and how the crime was committed are clear and consistent across all three declarations. The statement was brief and identified the "assailant". They were certainly not the result of tutoring or prompting, as the statements were made within a short period of the crime, and there was no one to tutor or prompt her. None of the witnesses had any motive to do so either. As per the evidence of the JMO, as corroborated by the witnesses to whom the dying declarations were made, the deceased was in a fit state of mind at the time of making the declarations. That she requested her step sister to look after the children is also a factor which supports her clarity of mind at the time in spite of her physical pain.

The appellant can be convicted based solely on the dying declarations. However, in the instant case, there is corroborative evidence, especially from PW 1, PW 2, PW 5 and PW 10. PW1 confirmed the time and the status of the deceased as she came running for help, and identified the appellant as the person living with the deceased. PW 2 also identified the appellant and the situation of the deceased at the time. The evidence of PW 10 and the productions (kerosene can and kerosene lamp) corroborate the declaration of the deceased on how she was burnt.

The evidence of the JMO (PW5) connects the chain of the other prosecution evidence with the gravity of the burns on her body which indicate that she had been helpless until so much damage occurred, proving the guilt of the appellant beyond reasonable doubt. In view of the above, the learned trial Judge has very correctly applied the principles relating to dying declarations in convicting the appellant.

The learned trial Judge has failed to properly analyse the evidence and to consider whether the elements of the offence were proven beyond a reasonable doubt based on the evidence adduced. As per paragraph 23 of the Written Submissions of the appellant, with regard to the charge of murder, the following elements must be established beyond a reasonable doubt:

i. the intention of causing death, or
ii. the intention of causing such bodily injury as is likely to cause death, or
iii. the knowledge that he is likely by such an act to cause death

The appellant in his Dock Statement stated that he and the deceased quarrelled, and while quarrelling the deceased caught fire from the kerosene lamp which was on the ground. According to the appellant, when the deceased was on fire, she ran out saying Antony set fire to her, and he has packed his bags and left fearing reprisal. None of the contentions of the appellant in his Dock Statement is consistent with his innocence.

No reasonable person would keep a lighted kerosene oil lamp on the ground next to a kerosene can. PW 10 stated that the kerosene oil lamp was inside a salmon tin, and it was on a ledge and not on the floor. PW 10 also stated that there was the smell of kerosene oil coming from the house, all of which are consistent with the Dying Declarations of the deceased and inconsistent with the Dock Statement of the appellant. If the deceased accidentally caught fire from a kerosene lamp which was on the ground, and she had no kerosene oil on her body, it is unlikely that the fire would spread through her whole body in a short time. In addition, such an incident would have provided ample opportunity for the appellant to help the deceased.

By his Dock Statement, the appellant had admitted that the deceased who was his intimate partner was in flames, but he did not even attempt to put out the fire and his first thought was to leave the village. If the appellant had not intentionally set fire to the deceased, his first action would have been to put out the fire. Even after the deceased ran out, the appellant did nothing to help her nor did he attempt to go after her. The fact that she was still in flames when she ran to the house of PW 1 is consistent with the dying declarations of the deceased that the appellant poured kerosene oil on her and set fire, and the appellant's version of an accident is inconceivable.

According to the evidence of the JMO (PW5), there were less burn wounds on the legs of the deceased. If the deceased caught fire from a lamp on the ground, it is unlikely that her legs did not get burnt. In addition, PW 5 also stated that the wounds could have been caused by setting fire after pouring kerosene oil.

In Nissanka Vs. the State 2001 (3) SLR 78, per Kulatilake, J; "The question arises on an evaluation and analysis of the dock statement whether the accused-appellant did attempt to explain away the highly and cogent incriminating circumstances elicited against him and

the prima facie case established by the prosecution. In his dock statement, the accused-appellant merely said that he had no connection to the crime. This is a bare and deficient dock statement. In view of the deficiency in the dock statement, the trial court would be justified in drawing an adverse inference of guilt against the accused-appellant in the circumstances of the case."

The appellant's Dock Statement has to be rejected in its totality and its deficiencies establish the elements of the appellant's intention and knowledge of causing death and justify drawing the inference of guilt of the appellant. The fact that the appellant who had an intimate relationship with the deceased, has taken no action whatsoever to put out the fire when the deceased was burning and in pain, points only to the motive of the appellant to cause the death of the deceased.

In King Vs. Abeywickrama 44 NLR 254, it was held that;

> "In order to base a conviction on circumstantial evidence the Jury must be satisfied that the evidence was consistent with the guilt of the accused and inconsistent with any reasonable hypothesis of his innocence"

The dying declarations and the circumstantial evidence of the instant case corroborate each other, and the evidence is only consistent with the guilt of the appellant and inconsistent with any reasonable hypothesis of his innocence.

In view of the above, none of the Grounds of Appeal raised by the appellant is believable or substantive. Therefore, it is my view that the case has been proven beyond a reasonable doubt. The Judgment of the learned trial Judge is sound and well-based in law.

In conclusion, in light of the reasons aforesaid, having regard to the facts and legal principles involved in the present matter in question, this appeal has failed to hold any merit. Thus, the conviction and the sentence should stand and therefore be affirmed.

Appeal dismissed.

President of the Court of Appeal

R. Gurusinghe J.

I agree.

Judge of the Court of Appeal