

**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/0008/2018

COMPLAINANT

Vs.

High Court of Gampaha

Ganeachchi Pathirannahalage Lakshman

Case No: HC/122/2007

ACCUSED

AND NOW BETWEEN

Ganeachchi Pathirannahalage Lakshman

ACCUSED-APPELLANT

Vs.

The Attorney General,

Attorney General's Department,

Colombo 12.

RESPONDENT

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

Counsel : Amila Palliyage with Nihara Randeniya and Sewani
Udugampola for the Accused Appellant
: Azard Navavi, DSG for the Respondent

Argued on : 08-12-2022

Written Submissions : 21-11-2018, 04-09-2018 (By the Accused-Appellant)
: 29-01-2019 (By the Respondent)

Decided on : 27-01-2023

Sampath B Abayakoon, J.

The accused appellant (hereinafter referred to as the appellant) was indicted before the High Court of Gampaha for committing the offence of murder of one Muthugalpedige Nandana Priyadarshana on 8th September 2005, an offence punishable in terms of Section 296 of the Penal Code.

After trial without a jury, he was convicted as charged by the learned High Court Judge of Gampaha of his judgement dated 24-01-2018, and he was sentenced to death.

Being aggrieved by the said conviction and the sentence, the appellant preferred this appeal.

The Facts in Brief

The deceased and PW-01 Lakshman Gunathilake have been close friends for some time. On the date of the incident namely 8th September 2005, PW-01 has gone to deceased Nandana's house around 8.00 - 8.15 in the night and both of them have left the house in order to consume toddy. They have left in the motor bicycle owned and ridden by Nandana in order to travel to Hakpitiya area where

a person called Sunil sells toddy. While travelling, they have seen three persons walking towards the direction they were travelling about 200 meters in front of them.

According to the witness PW-01, the headlight of the motor bicycle was on and there was a streetlight close by. Apart from the mentioned sources of light, it was the evidence of PW-01 that there was a wedding function going on at a house nearby and it was well lit. The witness has identified the appellant as one of the persons who were walking in front of them. While approaching them, suddenly, a strong torch light has been directed towards them, which blinded the rider, which has resulted in him losing control of the bike. As a result, both the deceased and PW-01 has fallen onto the ground and when this happened, PW-01 has seen the other two persons who were with the appellant running away from the scene.

The motor bike has fallen on top of PW-01. The deceased Nandana was able to get up while PW-01 was still attempting to remove the motor bike and get up. While this was happening, PW-01 has seen the appellant coming towards the deceased and stabbing him. He has not seen to what part of the body of the deceased the stabbing took place, however, as soon as this happened, the appellant has run away taking the knife used for the stabbing with him. When looking at the deceased, he has seen him with injuries to his chest. Subsequently, the witness has alerted the others and taken the deceased to the hospital where he was pronounced dead.

Explaining the light condition further, he has stated that the street light was about 50 feet away from the place of the incident, and the earlier-mentioned wedding reception was taking place and the garden of the house was well illuminated. Apart from that, as he has earlier-mentioned, the headlight of the motor bicycle was switched on when this incident happened.

The witness has mentioned that the motive for this attack as the dispute, the deceased had with the appellant over the murder of the brother of the appellant.

Under cross-examination, the witness has admitted that he made his police statement on the 10th of September and has admitted that the deceased was also a person who was dealing in illicit liquor and he was also closely associated with the deceased. The only position taken up by the appellant during the cross-examination had been that the witness was lying, which the witness has denied.

According to the evidence of the Judicial Medical Officer (PW-08) who conducted the postmortem (report marked P-1), he has observed 6 injuries on the body of the deceased. Injury number 1 was a laceration and injury number 2 and 3 are abrasions near the right eye of the deceased, which the JMO has attributed to a result of being fallen on the ground. Injury number 4, 5 and 6 had been stab wounds. The JMO has categorized injury number 4 and 5 as defensive injuries. Injury number 6 had been to the front upper chest, which has penetrated the skin, subcutaneous tissues, zip sternum, costal ventricular wall. The JMO has categorized injury number 6 as an essentially fatal injury, which has resulted in the death.

According to the evidence of the investigating officer, he has recovered a wooden pestle, a pole and a manna knife, 75 meters away from the place of the incident. It was also his evidence that the appellant surrendered to police on the next day and produced a pointed knife. Under cross-examination, he has stated that although there was a streetlight near the place of the incident, it was not working when he went for his investigations.

The Ground of Appeal

At the hearing of the appeal, the learned Counsel for the appellant formulated one ground of appeal based on the question of the identity of the appellant.

The said ground of appeal reads as follows.

- (1) Whether the prosecution has proved the identity of the appellant as the person who committed the crime beyond reasonable doubt.

It was the contention of the learned Counsel for the appellant that PW-01 was the only eyewitness to the incident and this was an incident happened around 8.30 in the night. Relying on the evidence of the investigating officer who had stated that the streetlight was not functioning when he went to the scene of the crime and the fact that the investigating officer has not stated whether there was a wedding function nearby, it was his position that a serious doubt arises whether witness PW-01 has clearly identified the appellant as the assailant.

Referring to the medical evidence it was his position that there had been 6 injuries to the deceased, but PW-01 speaks only about 1 attack which also shows that he has failed to see what happened at the time of the incident. It was his position that relying on the sole eyewitness to convict the appellant for the offence of murder was not safe due to the discrepancies in the mode of identity and the doubt arises in relation to the identity should be considered in favour of the appellant.

The submissions of the learned DSG on behalf of the Hon. Attorney General was that there is no doubt as to the identity of the appellant as the person who attacked the deceased. He pointed out to the fact that the deceased, the appellant and PW-01 were well known to each other and PW-01 had first identified the appellant through the light emanating from the headlight of the motorbike. Being a person well known to him, there would have been no difficulty for PW-01 to identify the appellant positively was the submission of the learned DSG.

It was his contention that there was no discrepancy between the evidence of the JMO as to the injuries he observed and the evidence of PW-01, if one takes the evidence in its totality rather than compartmentalizing it.

The Consideration of the Ground of Appeal

This is a matter where the incident has taken place in the night around 8.30 p.m. According to the evidence of PW-01, he and the deceased were travelling in a motorbike and when he says that he was able to identify the appellant who was walking in front of them towards the direction they were travelling, it needs

to be looked at whether the witness was familiar with the appellant for him to identify him from even if he sees him from behind. It is undisputed that the appellant and PW-01 are persons well known to each other being fellow villagers. Under the circumstances, I do not find any reason to consider that there was any difficulty for the PW-01 to positively identify the appellant when he saw him for the first time.

When a strong light was aimed at them, PW-01 and the deceased had fallen off the bike because the deceased had lost control of it as a result. At that point, the two other persons who were with the appellant have run away. It was only the appellant who has approached the deceased and had stabbed him. When this stabbing took place, it was only PW-01, the deceased and the appellant had been there close to each other.

It was the evidence of PW-01 that apart from the headlight of the bike, there was a wedding function going on in a nearby house and its garden was well illuminated and there was a streetlight as well near the place of the incident. Although it was the evidence of the investigating officer that when he went to investigate, the streetlight was not working, that does not mean that the PW-01 was unable to identify the appellant being well known to each other. The investigating officer not mentioning that there was a wedding function nearby is not a matter that can be considered as a matter that creates a doubt in relation to the evidence of PW-01 as to the identity of the appellant.

It had been the evidence of PW-01 that what he saw was the deceased being stabbed once by the appellant. According to the evidence of JMO, out of the 6 injuries he observed, the first 3 injuries were probably due to the fall which may have occurred as a result of the deceased being fallen when he lost the control of the motorbike or either falling as a result of being attacked. Injury number 3 and 4 are defensive injuries, which may be a result of the deceased attempting to defend himself when he saw him being stabbed. Injury number 6 was the fatal injury, which has penetrated the chest of the deceased.

When PW-01 says that he saw the deceased being stabbed once, one has to look at that piece of evidence given the facts and the circumstances relevant to the matter. PW-01 has seen the incident of stabbing while getting up after being fallen off to the ground when the motorbike he was traveling fell on him as a result of deceased losing control of it. He has seen the incident of stabbing about six feet away from him. Under the circumstances, PW-01 saying that he saw the appellant stabbing the deceased only once, in my view, is perfectly understandable evidence, which does not create any doubt as to whether the PW-01 actually saw the incident.

When it comes to the question of a disputed identity, a trial Court has to be mindful of the Turnbull guidelines as stated in the case of **Regina Vs. Turnbull (1977) QB 224**.

The said Turnbull guidelines requires a trial judge to be mindful that;

- 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 judge should also examine the circumstances in which the identification by each witness can be made. Some of these circumstances may include;

- The length of time the accused was observed by the witness.
- 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 to the police.

The case of **Sigera Vs. The Attorney General (2011) 1 SLR 201** was a case the question of the identity of the accused had been discussed. It was held:

“The identification was not in a difficult circumstance or in a multitude of persons in a crowd or in a fleeting moment. To apply the Turnbull principles, the identification had to be made under difficult circumstances. In this case, although the incident took place during night, there was ample light shed by the bulb of the lamppost that was burning. There was no congregation of multitude of persons in a crowd but only the accused appellant and the deceased. In order to inflict the injuries on the deceased, the assailant had to come very close to the deceased.”

Similarly, in the appeal under consideration, the Turnbull principles would have no direct application. The parties were well known to each other. Even if one to doubt whether there was a streetlight burning at the time of the incident, there was cogent evidence to establish that the first identification of the appellant has been made by the use of the headlight of the motorbike and the appellant has approached the deceased as well as PW-01 and inflicted the stab wound when all of them were very close to each other. At the time of the incident, only the deceased, the appellant and the witness had been present. Hence, I find no reason to doubt the identity of the appellant as the person who inflicted the fatal injury on the deceased.

It needs to be mentioned that there exists no bar for a trial Court to admit the evidence of a single witness if the evidence is cogent and trustworthy and relied on it for determining an action.

The relevant section 134 of the Evidence Ordinance reads as follows;

134. No particular number of witnesses shall in any case be required for the proof of any act.

In the case of **Mulluwa Vs. The State of Madhya Pradesh 1976 AIR 989** it was stated that,

“Testimony must always be weighed and not counted.”

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.*

For the reasons as set out above, I find no merit in the ground of appeal urged.

The appeal, therefore, is dismissed. The conviction and the sentence affirmed.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal