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

In the matter of an appeal in terms of section 331 of the Code of Criminal Procedure Act No. 15 pf 1979 read together with section 14 of Judicature Act No. 02 of 1978 and section 11 of High Court of Provinces (Special Provisions) Act No. 19 of 1990.

Court of Appeal Case No:
CA / HCC / 77 / 2020

High Court of Negombo Case No:
HC 359 / 11

Democratic Socialist Republic of Sri Lanka.

Complainant

Vs.

Alahakoon Mudiyanselage Lalinda Sampath.

Accused

NOW AND BETWEEN

Alahakoon Mudiyanselage Lalinda Sampath.

Accused – Appellant

Vs.

Hon. Attorney General

Attorney General's Department

Colombo 12.

Complainant – Respondent

Before: Menaka Wijesundera J.

B.Sasi Mahendran J.

Counsel: Lakshan Dias with Hasini Hettiarachchi for the Accused – Appellant.

Sudarshana De Silva DSG for the Respondent.

Argued on: 08.03.2023

Decided on: 09.05.2023

MENAKA WIJESUNDERA J.

The instant appeal has been lodged to set aside the judgment dated 27.8.2020 of the High Court of Negombo

The accused appellant (hereinafter referred to as the appellant) has been indicted under section 296 of the Penal code.

The appellant had pleaded not guilty and upon the conclusion of the trial the learned trial judge had found the appellant guilty for the charge in the indictment and had sentenced him to death.

The main ground of appeal by the appellant is that the learned trial judge had failed to consider and evaluate the evidence led by the prosecution and had not considered the dying declaration in its proper context.

The evidence of the prosecution begins with the evidence of Mahesh Millina Silva who had been witness no 1 had said in evidence that there had been a funeral in the village and that he had known the deceased for a long time. The funeral activities had been over in the evening and in the night villagers had

gathered to keep watch in the house where the funeral had been and late in the night the witness had gone to the adjoining land where there had been a hut to sleep. In the hut there had been a florescent light burning and they had played cards. On the mat playing cards there had been the deceased and five others and at the end of playing cards they had gone to sleep at the same place.

All of a sudden, the deceased had shouted that the accused stabbed him and had directed his hand towards the direction from where the witness had seen the accused leaving the scene. Thereafter the deceased had been rushed to hospital. The witness had been cross examined at length and it had been suggested to him that he had was lying.

Next the prosecution had led the evidence of Premgal Krishna Alexsander and he too had said the same thing as witness no 1, and he too had been cross examined at length and to him also it had been suggested that there had been an affair between the deceased and the accused wife and had agreed but the previous witness had pleaded ignorance to the said suggestion.

According to the evidence of the doctor who has held the post mortem of the deceased had said that the the deceased had sustained two injuries and the second had been the fatal injury which had been a stab injury placed at the back of his abdomen and had cut in to the intestines and which he had been identified to be necessarily fatal. He had further said that it could have been caused while the deceased had been asleep. The doctor had further identified the knife as being possible to have caused the fatal injury on the deceased.

But we note that although the doctor had been cross examined as to the improbability of the injury he had not been cross examined as to whether he was in a position to talk soon after the injury. But we observe that the dying

declaration had been corroborated by the prosecution witness without any discrepancies.

Thereafter the prosecution has led the evidence of the investigative officers who had visited the scene of crime and had taken in to custody a mat on which they had observed certain cutting marks and a blood stained tissue, and nearby they had also observed that there had been a funeral on the previous day. They had also observed an electric bulb fixed to the place of incident and from the help of the said bulb they had made their observations.

The appellant had surrendered to the police and on his statement the police had recovered a blood stained knife and some clothes.

The police officers had been cross examined and it had been suggested to the witnesses that there were no productions recovered on the statement of the appellant.

The prosecution had further led the evidence of one Puspa kumara who also had been with the deceased and he too had spoken with regard to the statement made by the deceased with regard to his death.

The Government Analyst had not been able to identify human blood on the productions due to the lack of required quantity for analysis.

Thereafter the prosecution had closed its case and the learned trial judge had called for the defense and the appellant had made a dock statement.

In the dock statement the appellant had spoken to about an illicit affair between the deceased and the appellants wife and at the funeral the deceased had passed a comment hinting that his daughter too would fall a pray like the

mother to the deceased which the appellant had not been able to bear and according to his statement from the dock he had lost his self-control.

The defense witnesses had tried to substantiate this position but the learned trial judge had rejected the said position and had found the appellant guilty of murder.

Having considered the evidence led at the trial the main items of evidence against the appellant are the,

1) The dying declaration made by the deceased,
2) The section 27 recoveries
3) The possible motive.

According to the dock statement of the appellant he had not denied the act of causing the death of the deceased but he had said that it is on grave and sudden provocation by the deceased because of a statement made by the deceased.

But this position had not been put to the prosecution witnesses in cross examination. The line of cross examination had been a total denial, which is entirely different to the dock statement. But the appellant's wife's involvement with the deceased had been suggested to the prosecution witnesses right through out in cross examination.

The learned trial judge had correctly analyzed the evidential value of a dock statement and its infirmities and the legal positions of the section 27(1) recoveries. But as per the dock statement the appellant had not denied the causing the death of the deceased , hence the evidence leading up to the death of the deceased is not in dispute but **what needs to be analyzed are the circumstances under which the death had been caused.**

According to the prosecution the appellant had caused the death of the deceased who had been a sleeping man and against whom he has had a grudge which is suggested by the defense.

But according to the dock statement the appellant had caused the death of the deceased due to grave and sudden provocation which is substantiated by the daughter of the appellant who spoke of the confession by the appellant to her soon after the incident which the learned trial judge had failed to consider.

The other witness called by the defense had spoken to the series of events which had taken place at the funeral and the probable motive for the killing.

But this Court observes that the trial judge had brushed aside the evidence of the defense without proper analysis and had considered the dying declaration which is corroborated by the medical evidence and the probable motive and had convicted the appellant for the offence in the indictment.

But we do not see much merit in that finding and instead we are of the opinion that the act of causing the death of the deceased is not denied by both parties but what is in dispute is the circumstances under which it had been caused.

The prosecution does not deny the motive and the dock statement by the appellant had been able cast a doubt as with regard to the murderous intention of the appellant as per the definition under section 294 of the Penal Code .

Hence the benefit of the doubt in such a situation has to be given to the appellant, especially in view of the evidence of the daughter of the appellant.

Hence, we are of the opinion that the trial judge had failed to consider the evidence of the defense in proper perspective with regarding to motive, as such we set aside the conviction and the sentence of the trial judge and we convict the appellant for culpable homicide not amounting to murder on the basis of grave and sudden provocation and sentence the appellant for a period of 10 years rigorous imprisonment to be operative from the date of conviction and a fine of rupees 25000 in default 1 year imprisonment.

Judge of the Court of Appeal.

I agree.

B. Sasi Mahendran J.

Judge of the Court of Appeal.