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

In the matter of an Application for Appeal in terms of Section 16 (1) of the Judicature Act No. 2 of 1978 read with section 331 (1) of the Code of Criminal Procedure Act No. 15 of 1979 as amended.

Court of Appeal Case No: **CA / HCC / 247 /20**

High Court of Colombo Case No: **HC / 251 / 17**

The Democratic Socialist Republic of Sri Lanka.

Complainant

Vs.

Don Sirisena Ranasinghe.

Accused

AND NOW BETWEEN

Don Sirisena Ranasinghe.

Accused – Appellant

Vs.

Hon. Attorney General

Attorney General's Department

Colombo 12.

Complainant – Respondent

Before: Menaka Wijesundera J.

B. Sasi Mahendran J.

Counsel: Hemanthie Kumudu Wijesooriya with Tharana Karunathilake for

the Accused – Appellant.

Jayalakshi De Silva, SC for the state.

Argued on: 05.06.2023

Decided on: 05.07.2023

MENAKA WIJESUNDERA J.

The instant appeal has been filed to set aside the judgment dated 24.7.2020 of the High Court of Colombo.

In the instant matter the accused appellant has been indicted for murder and the appellant has pleaded not guilty to the indictment and the trial had commenced and the prosecution had led the evidence of two eye witnesses, the doctor and the evidence of the investigative officers. Upon the conclusion of the evidence of the prosecution the appellant had made a dock statement and thereafter upon the conclusion of the entire case the learned trial judge had found the appellant guilty for the offence in the indictment and had passed the capital punishment.

The appellant being aggrieved by the said judgment has filled the instant appeal. The main ground of appeal is that the prosecution has not proved its case beyond a reasonable doubt.

The version of the prosecution is that the deceased on the date of the offence had come to the party held in the house of PW 2 and had said that the son of the appellant had assaulted him. Thereafter the PW 1, and PW2

had led the deceased out of the house of the reception and had tried to take him home. On their way they had seen the accused coming on a pushbicycle and he had stopped the bicycle and then PW1 and 2 had heard the deceased shouting that he had been stabbed and had seen the accused running away with a knife. The time of day had been around 9pm in the night but there had been light emanating from nearby houses. The deceased had been rushed to hospital and he had succumbed to his injuries.

The doctor had said in evidence that the deceased has had one stab injury but he had undergone a surgery but still he had identified it to be 100 percent sufficient to cause death in the ordinary course of nature, and the police had recovered a knife subsequent to the arrest of the appellant which had been marked and shown to the doctor and he had said that the injury could have been caused by the same.

The appellant had made a dock statement and had said that he had been assaulted by the deceased on the day of the incident and that he ran away due to fear of his own life.

The trial judge had concluded that it is the prosecution who has alleged that the appellant had killed the deceased and therefore it is the duty of the prosecution to show that it is so beyond a reasonable doubt.

The trial judge had very rightly concluded that although the two witnesses has not per say seen the appellant stabbing the deceased but the surrounding situation of the incident only draws the inference that it is only the appellant and no one else who had stabbed the deceased and the said circumstances are as follows,

1) The deceased was walking with PW1 and 2 when the accused had come in front and had stabbed and then both the witnesses had seen the appellant running away with a knife.
2) The deceased had been involved in a scuffle just before the incident with the son of the appellant which can be considered as a motive.
3) On the statement of the appellant a knife had been recovered, and the said knife had been identified by the doctor as a knife which is cable of causing the injury on the deceased.

The evidence above mentioned had been subjected to lengthy cross examination but the trial judge had observed that the evidence had stood the test of spontaneity and creditworthiness although it is a well-established principle in criminal law that witnesses are not expected to have photographic memories of the incident as said in the judgment cited by the trial judge.

The dock statement made by the appellant has been considered by the trial judge and he had concluded that he is unable to accept it because it does not create a doubt in the prosecution case.

Therefore, he has said that in view of the doctor's opinion on the injury on the deceased and the incidents which led to the commission of the said injury he has concluded that the appellant has committed the offence in the indictment.

The offence of murder had been defined under section 294 of the Penal Code under four limbs and under the said section under limb 3 of 294 clearly describes the act committed by the appellant especially in view of the evidence of the doctor who had classified the injury on the deceased to be 100 percent sufficient to cause death in the ordinary course of nature. The medical evidence is substantiated by the evidence of the lay witnesses and the evidence of the investigative officers. As such we see no merit in the ground of appeal raised by the appellant and we see no reason to interfere with the findings of the trial judge. As such the conviction and the sentence of the trial judge is affirmed and the instant appeal is hereby dismissed.

Judge of the Court of Appeal.

I agree.

B. Sasi Mahendran J.

Judge of the Court of Appeal.