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

In the matter of an Appeal under and in terms of the Article 138 (1) of the Constitution read with the Section 11 (1) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 with the Section 331 of the Code of Criminal Procedure Act No. 15 of 979.

Court of Appeal Case No:
CA / HCC / 399 / 2018

High Court of Colombo Case No:
HC 7634 / 14

The Democratic Socialist Republic of Sri Lanka.

Complainant

Vs.

1. Wijesooriya Arachchige Sudesh
2. Kotte Mudiyanselage Upul Pushpa Kumara
3. Kotte Mudiyanselage Ajith Kumara
4. Wellam Pansisge Siriyawathi
5. Gamage Mangalika

Accused

AND NOW BETWEEN

1. Wijesooriya Arachchige Sudesh

Accused – Appellant

Vs.

Hon. Attorney General

Attorney General's Department

Colombo 12.

Complainant Respondent

Before: Menaka Wijesundera J.

B. Sasi Mahendran J.

Counsel: I.B.S. Harshana for the Accused – Appellant.

Riyaz Bary, DSG for the State.

Argued on: 08.06.2023

Decided on: 05.07.2023

MENAKA WIJESUNDERA J.

The instant appeal has been filed to set aside the judgment dated 25.10.2018 of the High Court of Colombo.

The accused appellant had been found guilty for offences under section 296 and 315 of the Penal Code.

When the matter was taken up for argument the Counsel appearing for the appellant wanted this Court to consider the sentence of the appellant but the learned Counsel for respondents objected to the application.

The version of the prosecution is that on the day of the incident the deceased had been stabbed by the appellant twice and the appellant had stabbed the injured Anuradha as well. This had been testified to by the injured Anuradha and the PW1. The learned trial judge had considered the evidence of the prosecution eye witness and the injured and had concluded that the discrepancies marked does not go to the root of the prosecution case.

The deceased is supposed to have sustained 9 injuries out of which two had been stab injuries and one of the said stab injuries which had been near the chest had cut a main blood vessel and the same had been the cause of death.

The injured Anuradha had also received one injury which also had been observed by the doctor and which he had said could have been caused by the knife recovered on the statement of the appellant.

The police upon receiving the information had commenced the investigations and had recovered a knife subsequent to the statement of the appellant. The doctor had said that the injuries on the deceased could have been caused by the knife recovered subsequent to the statement of the appellant.

According to the police and the prosecution witnesses there had been ample light at the scene of crime.

The appellant had made a statement from the dock and the trial judge had disregarded the said statement stating that it does not create a reasonable doubt in the case for the prosecution.

The defense witness also had been disbelieved for the same reason.

Therefore, in totality the trial judge had concluded that the conduct of the appellant had been very intentional and he had made no mistake in stabbing the deceased and the injured person, and the appellant had been convicted for murder on the basis of section 294 (3) of the Penal code and section 315 of the same.

Upon analyzing the reasoning of the trial judge and the evidence led before him we find that there is clear evidence of the appellant stabbing the deceased and the injured for no reason and when the injured had tried to stop the stabbing, he too had been stabbed which is very clear of the intention of the appellant and this is further substantiated by the nature of the injuries on the deceased and the place of the injuries of the deceased.

As observed by the trial judge the dock statement put forward by the defense in fact contradicts the position of the defense with regard to the line of cross examination of the prosecution witnesses. At this point this Court draws its attention to the case of **Queen vs Kularatne 71 NLR 529** where it has specified as to how a dock statement should be considered. It has held that

1) If the dock statement is believed it must be acted upon,
2) If it raises a reasonable doubt in their minds about the case of the prosecution the defense must succeed and,
3) It must not be used against another accused.

   In the instant matter the trial judge had concluded that the dock statement does not create a reasonable doubt in the case for the prosecution hence he has disregarded the same.

Furthermore, this Court observes that it had not been put to the prosecution witnesses that it was the deceased who struck the appellant and not vice versa.

The evidence of the defense witness also does not say that she saw any incident but has heard but as concluded by the trial judge she had appeared to be a partisan witness to the defense. Therefore, in our view the trial judge had very rightly concluded that the defense had not created a reasonable doubt in the prosecution case.

It has been held in the case of **Sunil Jayaratne vs Attorney General 2011 2 Sri LR 92 that "unless there is a grave miscarriage of justice it would not be appropriate to interfere with the judgment of the trial judge who enters judgment after careful consideration of the first hand evidence put before him to which the judges of the appellate courts would not have the ability to witness."**

As such we see no merit in the submissions of the counsel for the accused Appellant hence the conviction and the sentence imposed by the trial judge is hereby affirmed, and the appeal is dismissed.

Judge of the Court of Appeal.

I agree.

B. Sasi Mahendran J.

Judge of the Court of Appeal.