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

In the matter of appeal in terms of Section 333 (1) of the Code of Criminal Procedure Act No: 15 of 1979.

Court of Appeal Case No: **CA / HCC / 0363 / 18**

High Court of Gampaha Case No: **HC 289 /2006**

Maddumage Gamini Dharmaratne.

Accused – Appellant

Vs.

Hon. Attorney General

Attorney General's Department

Colombo 12.

Complainant – Respondent

Before: Menaka Wijesundera J.

B. Sasi Mahendran J.

Counsel: Riyaz Baey D.S.G for the State.

Argued on: 12.06.2023

Decided on: 11.07.2023

MENAKA WIJESUNDERA J.

The instant appeal has been lodged to set aside the judgment dated 14.12.2018 of the High Court of Gampaha.

The accused appellant along with the dead accused had been indicted for committing murder and upon the conclusion of the trial the trial judge had found him guilty for murder and had been sentenced to death.

The version of the prosecution revolves around the evidence of PW1 who is the sister of the deceased. On the day of the incident, she had heard the deceased shouting on the road that the second accused had assaulted him and when she went to see she had seen the appellant and the second accused at the scene along with her brother.

She had tried to take the brother out of the scene and she and deceased had walked out, they had been confronted with the appellant and the deceased accused with iron rods, and they had both alighted blows on the deceased. The witness had shouted for help and the witness named Nishantha had arrived but still the deceased had been assaulted. The deceased had been entered to hospital and he had been in hospital for 10 days and had succumbed to his injuries.

The doctor who conducted the postmortem had identified 9 injuries on the deceased and the fatal injury had been identified to be injury nu 1 and the 7, 8, 9, had been identified to be defensive injuries.

An iron rod had been recovered on the statement of the appellant and the same had been identified to be as being possible to have caused the

fatal blow. The doctor had further said that at least 6 blows would have been alighted on the deceased and with a lot of force.

The main line of cross examination had been that the PW1 had not seen the incident and the appellant had made a dock statement and had said that he and the deceased accused along with the deceased had been drinking and the other two had fought and he had intervened to settle. The same had been suggested to PW1.

In the evidence of PW1 certain contradictions have been marked but the trail judge had considered them to be without merit and he had also concluded that the dock statement of the appellant also had not raised a reasonable doubt in the case for the prosecution.

The main contention of the counsel for appellant is that the PW1 being the only witness for the prosecution is telling a story which is very improbable because had she participated in solving the incident, she too would have sustained some injuries because she was talking of an incident which is of great magnitude.

The defense also had cross examined PW1 on the line of argument of the appellant (deceased being drunk along with the deceased accused) but PW1 had denied the same and her evidence had been subjected to 4 contradictions which also had been to that effect but the evidential value of a contradiction is nil it only attacks the credibility of the witness. But in the instant matter the witness had been very consistent and had said very persistently that both the appellant and the other deceased accused assaulted the deceased with iron rods and the deceased could not get away.

It has been decided in the Indian case of Bojinbai Hirijibai vs State of Gujarat AIR 1983 SC 753 that discrepancies which does not go to the root of the case need not be considered by the trail judge.

It has been further decided in the case of State of Utra Pradesh vs Anthony AIR 1985 SC 48 that "witnesses should not be disbelieved on account of stifling discrepancies and contradictions."

Therefore, it is very obvious that the appellant along with the other accused had assaulted the deceased very intentionally and with a lot of force as narrated by the doctor.

The counsel for the appellant further submitted that the prosecution had led only one witness but we are very much aware of the fact that there are numerous decided judgements which says that the evidence should not be counted but instead it should be weighed. (King vs N.A. Fernando 46 NLR 254, Welimunige John vs The State 76 NLR 255). The quality of evidence is of more importance than they being counted.

Therefore, in view of the above sated facts it is the opinion of this Court that the appellant had acted very willfully and had alighted blows on the deceased with the intention of causing death and he had not denied as to how the police recovered an iron rod from his premises which the doctor had said that it is the type of a weapon which could have been used in the attach. But of course, it is settled law that a fact discovered on the statement of an accused person is indicative only of his knowledge of the whereabouts of the said fact. But if the appellants defense is that he went to the scene to settle the matter if so, any prudent man would deny the recovery of an incriminating article from his premises.

Therefore, it is the opinion of this Court that the ground of appeal raised by the appellant is without merit as such we affirm the conviction and the sentence imposed by the trial judge and we dismiss the instant appeal.

Judge of the Court of Appeal.

I agree.

B. Sasi Mahendran J.

Judge of the Court of Appeal.