

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 together 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 1979.

Court of Appeal Case No:

CA/HCC/0091/2019

Republic

High Court of Gampaha Case No:

HC 46/2008

The Democratic Socialist
of Sri Lanka.

Complainant

Vs.

Kankanamge Budhika
Yasantha Kumara
(Presently in Mahara Prison)

Accused

AND NOW BETWEEN

Kankanamge Budhika
Yasantha Kumara
(Presently in Mahara Prison)

Accused- Appellant

Vs.

The Hon. Attorney General,
Attorney General's
Department,
Colombo 12.

Complanant – Respondent

Before : Menaka Wijesundera J.
B. Sasi Mahendran J.

Counsel : Isuru Somadasa for the Accused –
Appellant.
Chethiya Gunasekera, A.S.G. for the State.

Argued on : 26.06.2023

Decided on : 19.07.2023

MENAKA WIJESUNDERA J.

The instant appeal has been filed to set aside the judgment dated 15.3.2019 of the High Court of Gampaha.

The accused appellant had been indicted for committing the murder of his girlfriend.

The version of the prosecution is that the deceased and accused had shifted to a boarding near the free trades zone of Gampaha on 24th of September 2014 and the accused along with the person who found the boarding with his wife had come and the deceased and the accused had remained in the room and the other couple had left the place.

The owner of the boarding had observed that on the following day the accused and the deceased going out and coming back to the boarding and thereafter on the 26th Saturday he had seen around 11 0 clock in the morning the accused going out of the boarding and rest of the day the door to the room had been padlocked from outside.

But on the 27th morning which is a Monday the owner of the boarding had smelt a foul smell from the boarding and had called the police and the police had found the deceased dead inside and the body decomposed.

On the 27th morning the body had been sent to the hospital mortuary and on the 28th the postmortem had been done.

According to the evidence of the Judicial Medical officer the deceased had died of strangulation and the death had taken place 48 hours prior to the post mortem, which should falling on the 26th. The JMO had further said that decomposition of a body takes place within 24 hours and it is worsened by the weather patterns. Hence by the time the accused had come to the boarding on the 26th morning as observed by the owner of the boarding the death of the deceased should have taken place and if so the question remains as to why the accused did not inform the authorities.

The accused had been arrested while in hospital for having consumed poison on the 27th.

The accused had made a dock statement stating that he had found a boarding on the request of the deceased and he had taken her on the 24th September to the said boarding and had given her the keys and had

left but came back on the 25th to collect the identity card which he had forgotten to take but thereafter he does not know as to what happened to the deceased.

The trial judge upon the conclusion of the case had convicted the accused for the charge in the indictment and had passed the capital punishment.

The main ground of appeal of the appellant is that the time of death has not been established by the prosecution.

When one considers the above mentioned factors, it is very clear that the entirety of the case for the prosecution is based on circumstantial evidence.

Wills on Circumstantial Evidence 7th edition page 296 has set down rules for the judicial evaluation of circumstantial evidence which is as follows,

01. Every fact and circumstance on which the prosecution relies as the basis for the inference of guilt must be clearly proved and connected with the fact to be proved beyond reasonable doubt and must be such as to lead to a reasonable inference as to the guilt of the accused.
02. Particularly when circumstantial evidence is relied on, the best evidence must be adduced. The suppression or non-production of pertinent and cogent evidence necessarily raises a strong presumption against the party who withholds the evidence.
03. The chain or strand of proved facts and circumstances must be so complete that no vital link in it is missing. A vital link

should never be inferred. *Mishra vs. State Bihar* A.I.R. (1995) S.C. 801.

04. In order to justify the inference of guilt, the inculpatory fact must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. Any reasonable probability of innocence must be held for the benefit of the accused.

05. If there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

In our legal history it has been very clearly held that in a case of circumstantial evidence the circumstances against the accused must only draw the inference of guilt of the accused and nothing else, and the prosecution must establish that it was the accused and no one else who committed the offence. It has been so decided in the cases of **The Queen vs Kularatne 71 NLR 529 and in many others.**

In the instant case the circumstances against the accused are as follows,

- 1) The accused takes the deceased to a boarding on the 24 of September and pretends to be her husband,**
- 2) The accused and the deceased are in the room till the 25th and they are seen going out on the 25th and coming back to the room by the boarding owner.**
- 3) On the 26th morning the owner of the boarding observes that the room is padlocked from outside but around the 11 in the**

morning the accused is seen coming to the room and going back but the room remains locked from outside. Coming to the room on the 26th is contradicted by the accused to be as the 25th.

- 4) On the 27th morning the owner of the boarding gets a foul smell from the room and informs the police and the deceased is found dead inside and the body is heavily decomposed.
- 5) The JMO who conducted the post mortem is of the opinion that the death had occurred 48 hours prior to the post mortem which was held on the 28th and therefore the death has to be on the 26th on which day the accused was seen coming to the room.
- 6) The accused in the dock statement says that he does not know as to what happened to the deceased that he only found her a boarding and on the 25th he left the place but he came back to the room to collect the identity card which he forgot to take and thereafter he is unaware as to what happened.
- 7) But the police arrest him while in hospital on the 27th after consuming poison which he makes no mention of in the dock statement.

On perusal of the above the following factors are very clear.

- 1) The accused was last seen coming to the room occupied by the deceased to which the accused had brought the deceased,

- 2) The next day the decomposed body of the deceased is found locked inside the room from outside which had been left by the accused on the 26th.
- 3) The accused subsequent conduct which is being arrested while in hospital after having consumed poison which he fails to mention in the dock statement.
- 4) The owner of the boarding says that there was no one else other than the accused who came to the boarding after the occupancy after the two persons who found the boarding had left.
- 5) The JMO stating that the death having taken place 48 hours prior to the post mortem which falls on to the 26 on which day it is only the accused and no one else who had visited the room where the decomposed body of the deceased had been found.

Hence upon considering the same the only inference one can draw from the above is that it is only the accused and no one else who had committed the offence in the indictment and the trial judge had very cautiously and carefully analyzed the evidence placed before him and had considered the line of defense out forward by the defense and -one else who had committed the murder of the deceased.

Hence, we see no merit in the ground o appeal raised by the accused appellant that the time of death had not been established by the prosecution beyond a reasonable doubt.

As such the instant appeal is dismissed and the conviction and the sentence of the trial judge is hereby affirmed.

JUDGE OF THE COURT OF APPEAL

Hon. Justice B. Sasi Mahendran

I agree.

JUDGE OF THE COURT OF APPEAL