

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

In the matter of an appeal in terms of Article
CA 138(1) of the Constitution and section 331(1)
of the Criminal Procedure Code Act No 15 of
1979.

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

Complainant

Court of Appeal Case No:

CA-HCC- 193/16

HC of Vavuniya Case No:

HC 2585/14

v.

Sellakutti Mylvaganam

Accused

And Now Between

Sellakutti Mylvaganam

Accuse-Appellant

v.

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

Respondent

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

Counsel: K.Kugaraja for the Accused-Appellant
Riyaz Bary, SDSG for the Respondent

Written 18.10.2021(by the Accused-Appellant)

Submissions: 03.02.2020(by the Respondent)

On

Argued On : 29.05.2023

Decided On : 28.07.2023

Sasi Mahendran, J.

The Accused-Appellant (hereinafter referred to as 'the Accused') was indicted before the High Court of Vavuniya for having committed the offence of murder of his own daughter Mylvaganam Gowrie an offence made punishable under Section 296 of the Penal Code.

Prosecution led the evidence of ten witnesses and evidence marked as P1 to P3. The Accused made a dock statement. After the trial, the Learned High Court Judge convicted the Accused for the murder, and the death sentence was imposed.

Being aggrieved by the said conviction and the sentence the Accused has appealed to this court.

The following grounds were set out in the written submission.

1. It is respectfully submitted that although the Appellant had taken up on a defence of a denial, evidence emanates from prosecution witness that the Appellant was drunk at the time of the incident.
2. It is reiterated that PW1 the daughter of the Appellant was testified to the effect that the Appellant was under the influence of liquor and after stabbing the deceased the Appellant stabbed himself too. Further she has stated that she did not know what happened to the Appellant. (Pages 77-76)
3. It warrants mentioning that in the instant case, the wife of the Appellant was abroad when the incident had taken place and the Appellant was the person looking after the children PW1 the daughter of the Appellant too admitted that her father was looking after them well.
4. Learned Trial Judge in his judgment has come to the conclusion that appellant was under the influence of liquor on the day in question and he was not in a state to understand what he was doing. (Pages 154-156)
5. Further Learned Trial judge has concluded that since the Appellant did not take the above defence he was duty bound to explain his case. (Pages 161/162)
6. It is respectfully submitted that it was incumbent upon the Learned Trial Judge to consider the plea of voluntary intoxication.

The facts and circumstances giving rise to this appeal are that:

According to PW1 Mylvaganam Sakunthala (the daughter of the Accused and the sister of the Deceased) states that on the fatal day of 28th March 2008, had been with her sister under the care of their father (the Accused) due to the reason her mother had gone abroad as per the constant quarrelling with their father.

PW1 described the events of the fatal day where the Accused had come home intoxicated after consuming liquor and was quarrelling with PW1's uncle and didn't let them sleep as the Accused had said that her uncle was going to stab her and no one should sleep. Therefore, she was awake and watching television while the sisters were sleeping, suddenly the Accused approached her and stabbed her and the Deceased who was sleeping, though PW1 tried to prevent it she failed.

Thereafter PW1 and the Deceased were then taken to the Vavuniya hospital where the doctor pronounced her sister dead. She then made a complaint to the police along with PW2.

In the cross examination she stated that there was sufficient light to identify the Accused stabbing the Deceased when we analyse the evidence given by this witness we are of the view her evidence is consistent.

We observe that there are no contradictions or discrepancies in her evidence therefore there is no reason for us to disbelieve her.

We also do not see any reason for her to implicate her father in this crime.

According to PW4 Samarkoon Mudiyansele Kapila Bandara Samarakoon Police inspector has stated, that he visited the crime scene with the SOCO officers (PW8) and observed the blood stains and the blood soaked knife found inside on the side of the room. This production of evidence marked as P1 was taken over by the SOCO officers PW8.

Thereafter he states that the Accused had admitted himself to the hospital since he had stabbed himself before PW4 engaged in arresting him. It had come to the Accused attention that the police had been looking for him, where he then surrendered on the 3rd of April 2008 at the police station as his allegations were pronounced and arrested him, his statement was recorded.

The evidence specified by PW8 corroborates with PW4's witness evidence pertaining to the properties of the knife.

PW7 Thamotharampillai Jayarathan the Judicial Medical officer, states that the cause of death was due to excessive bleeding where 2 ½ to 3 litres of blood was found in the abdominal cavity. During the Autopsy, two injuries were found one being on the left

and the other on the right side just above the navel. He also stated that the injury sustained was inflicted by a sharp weapon.

The Accused stated in his dock statement that he did not know what happened to him.

The learned High Court Judge has considered the Accused version and rejected his evidence. It is pertinent to note that he had not created any doubts about the evidence postulated by the prosecution.

We see that the Learned Trial Judge had carefully considered the evidence placed before him and has come to the conclusion that the prosecution proved the case beyond reasonable doubt.

We see no reason to interfere with the judgement made by the learned High Court Judge. Therefore, this appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera, J.

I AGREE

JUDGE OF THE COURT OF APPEAL