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

In the matter of an appeal under and in terms of section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

Democratic Socialist Republic of Sri Lanka

Complainant

Court of Appeal Case No:
CA-HCC -181/16
HC of Batticaloa Case No:
HC-2889/13

v.

Mohamed Careem

Accused

AND NOW BETWEEN

Mohamed Careem

Accused-Appellant

v.

The Hon. Attorney General,

Attorney General's Department,

Colombo 12

Respondent

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

Counsel: Dr. Ranjith Fernando with Champika Monarawila for the Accused-Appellant
Anoopa De Silva,DSG for the Respondent

Written Submissions: 28.08.2017(by the Accused-Appellant)
15.09.2017 (by the Respondent)
On

Argued On: 27.06.2023

Decided On: 31.08.2023

Sasi Mahendran, J.

The Accused-Appellant (hereinafter referred to as 'the Accused') was indicted before the High Court of Batticaloa for having committed the offence of murder of one Mohomed Subair Athm Abul Sathar alias Riyal (the Deceased) an offence made punishable under Section 296 of the Penal Code.

Prosecution led the evidence of six witnesses and production marked as P1 to P6. The Accused made a dock statement. At the conclusion of the trial, the Learned High Court Judge by his judgement dated 2nd of September 2016 found the Accused guilty for murder, convicting him, and imposed the death sentence.

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

As this case is based on circumstantial evidence, we are thereby guided by the well-established principles of law on circumstantial evidence.

In the case of **Hanumant Govind Nargundkar and another v. State of Madhya Pradesh, AIR 1952 SC 343 at Page 345, Mahajan, J** held that **,**

"In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof and therefore, it is right to recall the warning addressed by Baron Alderson, to the jury in Reg v. Hodge ((1838) 2 Lew. 227), where he said :-

"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to from parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

In the case of **Sudu Hakuruge Jamis and 1 Other v. The Attorney General, CA 204/2010 ,decided on 13.11.2013, Sisira De Abrew, J held;**

Applying the principles laid down in the above judicial decisions, I hold that in a case of circumstantial evidence if the Court is going to arrive at a conclusion that the accused is guilty of the offence, such an inference must be the one and only irresistible and inescapable conclusion that the accused himself committed the crime.

Further I hold that if the proved facts are not consistent with the guilt of the accused, he must be acquitted

This was further analysed in the case of **H.K.K.Habakkala v. Attorney General CA Appeal 107/2005,** his Lordship **Sisira De Abrew, J** held that:

"The case against the appellant entirely depended on circumstantial evidence. Therefore it is necessary to consider the principles governing cases of circumstantial evidence." In his judgement he had referred the following case of *Don Sunny v. AG 1998 2 SLR Page 1 Gunasekara J held that*

1. when a charge is sought to be proved by circumstantial evidence the proved items of circumstantial evidence when taken together must irresistibly point towards the only inference that the accused committed the offence. On a consideration of all the evidence the only inference that can be arrived at should be consistent with the guilt of the accused only.
2. If on a consideration of the items of circumstantial evidence if an inference can be drawn which is consistent with the innocence of the accused, then one cannot say that the charges have been proved beyond reasonable doubt.
3. If upon a consideration of the proved items of circumstantial evidence if the only inference that can be drawn is that the accused committed the offence then they can be found guilty.

The following evidence was led by the prosecution to prove the charge of murder:

The Accused and the Deceased were employed at a hotel in Ottamavady and resided in a house rented by the hotel's owner (PW1).

According to PW1, concerned that the Deceased had not reported for work, he visited the house where the Deceased was residing. Upon arrival, he found the door padlocked. After failing to reach the Deceased via his switched-off mobile phone, PW1 forcibly entered the premises, discovering the body of the Deceased. He reported that he had given some money to the Deceased the previous day. Upon discovery he immediately informed the police. The

following police investigation led to the arrest of the Accused, who was found in possession of a set of keys to the house and a mobile phone.

Conversely, the defense asserted that the Accused had left the residence, leaving behind his bicycle, to stay at his cousin's house. He claimed that there had been no animosity between him and the Deceased.

Upon considering the evidence presented by the prosecution, it becomes clear that there is no direct evidence against the Accused. While both the Deceased and the Accused resided in the same house and the Accused was found with a set of keys and a Nokia cellphone, there is no substantiated evidence to prove that the phone belonged to the Deceased.

Additionally, we observe that there is no evidence to suggest that no other person lived in or visited the house at that time. Moreover, no evidence exists to show that only the Deceased and the Accused had keys to the residence.

I am of the opinion that the prosecution has failed to establish sufficient evidence. The only inescapable conclusion is that the Accused is not proven to have committed the murder of Mohomed Subair Athm Abul Sathar.

Therefore, we hold that the prosecution has failed to prove beyond a reasonable doubt that the Accused committed the murder. Accordingly, we set aside the conviction and sentence, and we acquit the Accused.

This Appeal is allowed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera, J.

I AGREE.

JUDGE OF THE COURT OF APPEAL