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

In the matter of an Appeal made under Section 331 of the Code of Criminal Procedure Act No.15 of 1979.

Court of Appeal No:
CA/HCC/ 0067/2018

High Court of Kurunegala
Case No. HC/ 119/2015

Aluthgedara Karunathilaka Rajapaksha alias Sunil

ACCUSED-APPELLANT

vs.

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

COMPLAINANT-RESPONDENT

BEFORE : **Sampath B. Abayakoon, J.**
P. Kumararatnam, J.

COUNSEL : **Palitha Fernando, PC for the Appellant.**
Maheshika Silva, DSG for the Respondent.

ARGUED ON : **10/07/2023**

DECIDED ON : **02/10/2022**

****

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General for committing the offence as mentioned below.

On or about the 13th April 2014 in Hallawa the accused-Appellant committed the murder of Ritigahamula Prematilaka alias Siril which is an offence punishable under Section 296 of Penal Code.

As the Appellant opted for a non-jury trial, the trial commenced before a judge and the prosecution had led five witnesses and marked productions P1-6 and closed the case. The Learned High Court Judge having satisfied that evidence presented by the prosecution warrants a case to answer, called for the defence and explained the rights of the accused. The Appellant gave evidence from witness box and called a witness on his behalf.

After considering the evidence presented by both the prosecution and the defence, the Learned High Court Judge had convicted the Appellant as charged and sentenced him to death on 20/03/2018.

Being aggrieved by the aforesaid conviction and sentence the Appellant preferred this appeal to this court.

The Learned Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence due to the Covid 19 pandemic. Appellant was connected via Zoom platform from prison during the hearing.

The following Grounds of Appeal were raised on behalf of the Appellant.

1. The testimony of the sole eye witness fails the test of credibility on the following grounds.
    a) The evidence of the witness contradicts with the medical evidence.
    b) The witness had failed to explain the injuries on the accused.
2. The Learned High Court Judge had misdirected herself regarding the evidence of the defence and thereby had failed to evaluate the defence evidence properly.
3. The Learned High Court Judge had failed to address her mind adequately to the mitigatory pleas of sudden fight, provocation and cumulative provocation which had been taken up by the defence and which is supported by the evidence of the prosecution.

The background of the case *albeit* **briefly is as follows:**

According to the eye witness PW1 Manjula Kulatunga, on the day of the incident at about 6.45 pm, he had gone to a house of a doctor to collect some money. At that time the deceased was also in the garden of the doctor's house and had spoken to him. While they were talking in the garden of the doctor's house, suddenly the Appellant had come from the back side of the deceased and stabbed with a knife in the neck of the deceased. At the time of happening of the incident, the deceased stood very close to the witness. Hence, the witness had identified the Appellant with the light emanating from the doctor's house. At the trial, PW1 had identified the knife which was used by the Appellant to stab the deceased.

PW13,IP/Ekanayake who investigated the crime scene had noticed a bulb was on in front of the doctor's house and blood stains strewn in the garden.

PW16, Consultant JMO Ajith Jayasena who held the post mortem of the deceased, expressed that there were 03 injuries on the deceased's neck and injury marked no. 01 caused the inevitable death and injuries no.02 and 03 could have happened with the movements of the deceased and the knife, at the time of the attack.

Corroborating the evidence of PW1, the JMO opined that the injuries on the deceased could have occurred with the knife marked as P1.

The Appellant was arrested by PW14, IP/Rathnayake while he was hiding in backwoods and the knife P1 allegedly used to stab the deceased and a sarong and a shirt with contained blood stains were found under the bed of the Appellant's bed room, in consequence to a statement made by the Appellant under section 27(1) of the Evidence Ordinance. When the Appellant was going to be arrested by the police, he had resisted such arrest. As such, minimum force had been used to arrest him.

In the first ground of appeal, the Appellant contends that the testimony of the sole eye witness fails the test of credibility on the following grounds.

c) The evidence of the witness contradicts the medical evidence.
d) The witness had failed to explain the injuries on the accused.

In this case, the Appellant had admitted that he stabbed the deceased with a knife brought from his house. Hence, Learned High Court Judge considering this fact went on to analyse the evidence very accurately to find out whether the Appellant had stabbed the deceased due to sudden fight or provocation as claimed by him.

The High Court Judge had very correctly considered evidence given by PW1 who had seen the Appellant stabbing in the neck of the deceased while he was standing and talking to the witness. This position of the witness had not

been contradicted at any time. Although the Appellant speak about a sudden fight, PW1 had not seen such an incident.

Considering the circumstances under which PW1 had witnessed the stabbing, a reasonable man could not accurately see all the injuries at the time of the stabbing. The JMO had given a clear and detail evidence regarding the injuries sustained by the deceased. Hence, it is incorrect to say that PW1 had given contradictory evidence against the medical evidence.

PW1 without any contradiction had given evidence in the Court keeping with what he had seen on the day of the incident. This position has correctly been endorsed by the Learned High Judge in judgment. The relevant portion is re-produced below:

Page 145 of the brief.

ඔහු සඳහන් කර සිටියේ දොස්තර මහත්තයාගේ නිවස ඉදිරියේ සිටින විට මරණකරු තමන් ඉදිරියේ සිටි බවත් විත්තිකරු පැමිණ ඔහුට පහර දුන් බවය. ඔහුගේ සාක්ෂිය කිසිසේත්ම විත්තියෙන් අභියෝග වී නැත. එම නිසා එම සාක්ෂිය බැහැර කිරීමට හේතු වන්නේ ද නැත.

Hence, it is incorrect to say that the Learned High court Judge had not properly evaluated the evidence given by the eye witness. The evidence given by PW1 is not tainted with uncertainty or ambiguity.

Therefore, I conclude that the Appellant is not successful in his first ground of appeal.

As the second and third appeal grounds are interconnected, those grounds will be considered together hereinafter. The Appellant in his second ground of appeal, contends that the Learned High Court Judge had misdirected herself regarding the evidence of the defence and thereby failed to evaluate the defence evidence properly.

In the third ground, the Appellant contends that the Learned High Court Judge had failed to address her mind adequately to the mitigatory pleas of

sudden fight, provocation and cumulative provocation which had been taken up by the defence and which is supported by the evidence of the prosecution.

The Learned High Court Judge after considering the evidence of the Appellant stabbing the deceased, went on to analyse his evidence to consider whether the act of the Appellant falls under 296 or 297 of the Penal Code. The relevant portions of the judgment are re-produced below:

Page 143 of the brief.

ඒ අනුව අධිකරණයද සටහන් කර තැබුවේ මෙම අවස්ථාවේ දී මෙම මරණකරුගේ මරණය විත්තිකරු විසින් සිදු කරන ලද බවට දෙපාර්ශවයම පිළිගෙන ඇති බව ය. ඒ අනුව මෙම අවස්ථාවේ දී මෙම අධිකරණයට තීරණය කිරීමට සිදු වන්නේ මෙම මරණය මිනී මැරුමක් ද එසේත් නැත්නම් සාවද්‍ය මනුෂ්‍ය ඝාතනයක් ද යන්න වේ.

Page 144 of the brief.

කෙසේ වෙතත් විත්තිකරු ඔහුගේ සාක්ෂියේ දී ඔහු විසින් මෙම මරණය සිදු කල බවට පිළිගෙන ඇත. ඒ අනුව මෙහිදී එම මරණය සිදු කිරීම සම්බන්ධව හඹයක් නැත. නමුත් එම මරණය සිදු කිරීම මිනී මැරීමක් ද එසේත් නැත්නම් සාවද්‍ය මනුෂ්‍ය ඝාතනයක් ද යන්න පිළිබඳව මෙම අධිකරණය තීරණය කළයුතු වේ. මෙහිදී විත්තිකරු කියා සිටින්නේ ඔහු මෙම සිද්ධියේ දී බීමත්ව සිටි බවත් මරණකරුත් බීමත්ව සිටි බවය. ඇසින් දුටු එකම සාක්ෂිකරු සඳහන් කර සිටියේ මෙදින ක්‍රිකට් මැච් එකක් පැවති ස්ථානයක් බැවින් සියලු දෙනා බීමත්ව සිටි බවත් තමන් ඉදිරියේ සිටි මරණකරුට විත්තිකරු පිටිපස්සෙන් පැමිණ බෙල්ල කැපූ බවය. විත්තිකරුගේ සාක්ෂියට අනුව මරණකරු ඔහුට පහර දුන් නිසා තමන් නිවසට පැමිණ ඉන්පසු විත්තිකරු මරණකරුව මිදුලට පන්නාගෙන ගොස් ඔහුට පිහියෙන් අනින ලද බවය.

Pages 144-145 of the brief.

වෛද්‍යවරයාගේ සාක්ෂියට අනුව මරණකරුගේ බෙල්ලේ තිබූ තුවාලය නිසා ඔහුගේ මරණය සිදු වී ඇත. එය අනිවාර්ය මරණීය තුවාලයක් වේ. කෙසේ වෙතත් පැමිණිල්ලෙන් මෙම දෙපාර්ශවය අතර ආරවුල් තිබූ බව ප්‍රතික්ෂේප කර ඇත. නමුත් විත්තිය ඒ බව සඳහන් කර ඇත. පැමිණිල්ලෙන් මරණකරු විත්තිකරුට පහර දුන් බවක් සඳහන් වන්නේ නැත. නමුත් විත්තිය ඒ බව සඳහන් කර ඇත. ඒ බව සඳහන් කර ඇත්තේ විත්තිකරුගේ සාක්ෂියෙන් වේ.

Page 145 of the brief.

කෙසේ වෙතත් තමන්ගේ නිවසට පැමිණ පිහියක් අරගත්ත බවත් එම පිහියෙන් මරණකරු පස්සෙන් එළවාගෙන ගොස් ඔහුට පහර දුන් බව ඔහු පිළිගෙන ඇත. ඔහු එය කර ඇත්තේ ඔහුට ඇති වූ ක්ෂණික කෝපය නිසා බවද සඳහන් කර ඇත. නමුත් පැමිණිල්ලේ ඇසින් දුටු එකම සාක්ෂිකරුගේ සාක්ෂියෙන් එම ස්ථාවරයක් ඉදිරිපත් වන්නේ නැත.

Pages 145-146 of the brief.

විත්තිකරු බීමත්ව සිටි බව සඳහන් කර සිටියත් පැමිණිල්ලේ කිසිදු සාක්ෂියකින් එය පෙනී යන්නේ නැත. පැමිණිල්ලෙන් සමස්ත වශයෙන් සඳහන් කර සිටියේ සියලු දෙනා ඒදින බීමත්ව සිටි බවය. නමුත් විත්තිය පැමිණිල්ල පුරාම යෝජනා කර ඇත්තේ මෙම දෙපාර්ශවය අතර ආරවුල් තිබූ බවය. නමුත් එවැනි ආරවුලක් පැමිණිල්ලේ සාක්ෂිවලින් ඉදිරිපත් වන්නේ නැත. එකී හේතුව මත මෙම අධිකරණයට එළඹීමට හැකි එකම තීරණය වන්නේ විත්තිකරු මෙම මරණකරුගේ මරණය සිදු කරන ලද අවස්ථාවේ දී ඔහු තමන්ගේ නිවසට පැමිණ පිහියක් රැගෙන යාමත් ඔහු පස්සෙන් එලවාගෙන ගොස් ඔහුගේ බෙල්ල කැපීම යන සාක්ෂි සහ එම බෙල්ල කැපීමෙන් වූ තුවාල සලකා බැලීමේ දී විත්තිකරු මරණකරුගේ මරණය සිදු කිරීමේ අදහසින් මෙම ක්‍රියාව සිදු කර ඇති බවය. එසේම ඔහුට අනිවාර්යෙන්ම මරණය ගෙන දෙන තුවාල තිබූ බවට වෛද්‍ය සාක්ෂි ද ඉදිරිපත් වී ඇත.

Considering above portions of the judgment, the Learned High Court Judge had very clearly, extensively and correctly considered the defence evidence before she could reach her final decision. Hence, the contention raised in the second and third grounds of appeal by the Appellant have no merit.

In the third ground of appeal the Appellant contends that the recovery made under section 27(1) of the Evidence Ordinance has not been proved beyond reasonable doubt.

Following the arrest of the Appellant in this case, a knife was recovered based upon his statement to the police and the same was identified by PW2 as the knife that was used to kill the deceased.

The admissibility of the recovery evidence under Section 27(1) of the Evidence Ordinance had been discussed in several cases decided by the Superior Courts of our country.

In this case, PW1 had vividly explained how the deceased was positioned when he was brutally attacked. When PW1 looked at the deceased the Appellant was stabbing the deceased's neck.

Considering the evidence presented against the Appellant, I conclude that the prosecution had succeeded in adducing highly incriminating evidence against the Appellant and thereby has established the charge beyond reasonable doubt.

As such, I conclude that this is not an appropriate case in which the findings of the Learned High Court Judge of Kurunegala dated 20/03/2018 can be interfered upon. Hence, I dismiss the Appeal.

Appeal dismissed.

The Registrar of this Court is directed to send a copy of this judgment to the High Court of Kurunegala along with the original case record.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree

JUDGE OF THE COURT OF APPEAL