

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

Hitihamy Mudiyanseelage Samarasinghe alias Samare,

**Accused-Appellant.**

**CA. No. 115/2011**

**HC. Badulla Case o. 62/2002**

-Vs-

The Attorney-General,

**Respondent**

**Before** : **Sisira J. de Abrew, J &**  
**P.W.D.C. Jayathilaka, J**

**Counsel:** : **Saliya Pieris for the Accused-Appellant.**  
**Ms. Haripriya Jayasundera DSG for the A.G.**

**Argued &**

**Decided on:** : **21.06.2013**

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**Sisira . J . De Abrew, J.**

Heard both counsel in support of their respective cases. The accused-appellant in this case was convicted of the murder of a man named Siriwardi Mudiyanseelage Ranasinghe Bandara and was sentenced to death. The deceased person was the brother of the wife of

morning of 27<sup>th</sup>. He received death threats only in the night of 27<sup>th</sup>. But he did not make a statement to the police during the day time of 27.10.1999 nor did he divulge the incident to anybody. He states that he did not complain to the police during the day time of 27.10.99. He divulged the incident to the Police only after he was arrested. Police had recovered a sword consequent to the statement made by the accused-appellant.

The accused-appellant gave evidence under oath and denied the entire incident. In particular he denied giving or pointing out a sword to the police. According to the accused-appellant's evidence, the deceased person had had dinner with him in the night of 26.10.99. The accused-appellant's wife too gave evidence and denied the incident. She further stated that her husband was at home on that day. The learned trial Judge after narrating the story of the accused-appellant, stated that she could not accept the evidence of the accused-appellant and his wife. The learned trial Judge did not give any reasons for non acceptance of the defence evidence. The learned trial judge has not considered whether the evidence of the accused-appellant and his wife creates a reasonable doubt in the prosecution case. We would like to mention here that the learned State Counsel decided not to cross examine the wife of the accused-appellant when she gave evidence. At this stage it is necessary to consider an important judicial decision. In **G.K.Ariyadasa Vs Queen 68 NLR page 66** His Lordship Justice T.S. Fernando held thus:

- 1) If the jury believed the accused's evidence he is entitled to be acquitted.
- 2) Accused is also entitled to be acquitted even if his evidence, though not believed, was such that it caused the jury to entertain a reasonable doubt in regard to his guilt.

The learned trial judge has not considered the said principles governing the defence evidence. It is necessary to state the following guide lines when the trial judges analyse the defence evidence.

- 1) If the defence evidence is believed the accused is entitled to succeed in his defence.
- 2) If the defence evidence creates a reasonable doubt in the truth of the prosecution case, accused is entitled to succeed in his defence.

The learned trial Judge has failed to consider these principles. According to the evidence of the accused-appellant, when the accused-appellant, on 27<sup>th</sup> morning, went to the boutique in the junction, he has heard the death of his brother-in-law. On hearing this incident the accused-appellant threw the packet of biscuits and plantains he bought and ran to the place of the incident.

On hearing the death of his brother-in-Law he ran to the place where the dead body was lying fallen. This behaviour of the accused-appellant tallies with the behaviour of a normal man. In our view there is no reason to reject the evidence of the accused-appellant and his wife.

When we consider the evidence of the accused-appellant and his wife, we feel that the said evidence has created a reasonable doubt in the truth of the prosecution case. We therefore hold that the accused is entitled to be acquitted.

For the above reasons, we set aside the conviction and the death sentence and acquit the accused-appellant.

*Appeal allowed.*

**Judge of the Court of Appeal**

**P.W.D.C. Jayathilaka, J**

I agree.

**Judge of the Court of Appeal**

Jmr/-