

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

Thambirasa Thiruchelwam,

Accused-Appellant

Vs.

The Hon. Attorney General.

Respondent

C.A. 245/2008

H.C. Batticaloa Case No: 2327/05

Before : Sisira J. de Abrew,J. (Acting P/CA) &
P.W.D.C. Jayathilaka,J.

Counsel : Jeffery Zeinudeen for the Accused-Appellant.
Varunika Hettige SSC. for the A.G.

Argued &

Decided on : 31.01.2014

Sisira J. de Abrew,J.(Acting P/CA)

Heard both counsel in support of their respective cases. The accused-appellant in this case was convicted of the murder of a man named

Sinnathamby Kandasamy and was sentenced to death. Being aggrieved by the said conviction and the sentence he has appealed to this Court.

Facts of this case may be briefly summarized as follows: On the day of the incident, the accused-appellant started scolding the deceased person and asked him to come to his compound. The deceased person who refused to come to the road, invited him to come to his house (the deceased's house). The accused-appellant thereafter carrying a knife went to the compound of the deceased person and assaulted the deceased person's son and dragged the deceased person to a place in the compound. The deceased person ^{fell} ~~fall~~ on the ground. Thereafter the accused-appellant stabbed the deceased person four times. This was witnessed by the wife of the deceased person and two daughters of the deceased person. Even on the previous day the accused-appellant came to the compound of the deceased person carrying a knife. The learned Defence Counsel at the trial suggested to the witnesses that the accused stabbed the deceased person during a struggle between him and the deceased person. But this suggestion was denied by the witness. The accused-appellant, in his Dock Statement, did not take up the said suggestion made by the learned Defence Counsel. In his Dock statement he said when he was coming from the sea shore he was assaulted by 08 people and was tied in the house of Eliyathamby Thavarasa. In his Dock statement he did not mention that he was tied up in the house of the deceased person Kadasamy. It appears that he has sustained an injury on the head and some injury on the hand as a result of this assault by the people. Therefore the injuries of the accused-appellant cannot be

considered to conclude that there was a fight between the accused-appellant and the deceased person. In fact, the suggestion made to the prosecution witnesses that there was a fight between the accused-appellant and the deceased person was denied by them. Three eye witnesses gave evidence. The learned Defence Counsel failed to mark any contradictions or omissions with their statements made to the Police. Thus it appears that their evidence satisfies that the test of consistency. They also made a prompt complaint to the police. Thus their evidence satisfies the test of promptness. When we consider the evidence led at the trial, we see no reason to interfere with the judgment of the learned trial Judge. We therefore affirm the conviction and the sentence and dismiss the appeal

Appeal dismissed.

Acting President of the Court of Appeal

P.W.D.C. Jayathilake, J.

I agree.

Judge of the Court of Appeal

Jmr/-