

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

Mohomed Uvais *alias* Paraniyam Suresh

**C.A. No:297/2009**

**Accused-Appellant**

**H.C. Colombo 1102/2002**

**Vs.**

Democratic Socialist Republic of Sri Lanka

**Respondent**

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

COUNSEL : Neranjan Jayasinghe for the Accused-Appellant.  
Yasantha Kodagoda, DSG, for the Respondent.

ARGUED ON : 22.01.2014, 24.01.2014, 27.01.2014, 28.01.2014 &  
29.01.2014.

DECIDED ON : 26.02.2014.  
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**Sisira J. de Abrew, (Acting P/CA)**

The accused-appellant in this case was convicted of the murder of a woman named, Siththy Faiza 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.

The deceased woman Siththy Faiza was having a love affair with the accused person long prior to her death. But at the time of her death the said love affair had come to an end. The deceased woman, at the time of her death was a married woman having three children. Prior to her death she requested the accused-appellant to return Rs.60,000/- that she had given to him. She was troubling him to return the money. On the day of the incident she left the house saying that she was going to meet the accused. On the day of the incident around 11 O' clock, the accused-appellant and a woman came to a hotel called Ocean Beach Inn at Dehiwala in a three wheeler driven by one Samson Silva. Samson Silva who knows the accused-appellant well says that he, in his three wheeler, dropped the accused-appellant and a woman at this hotel around 11.00 a.m. Therefore it is clear that the accused-appellant came to the hotel in the three wheeler with a woman. Later it was proved that the woman who came to the hotel with the accused-appellant was the deceased woman in this case. According to Chandran Dio who is the owner of the hotel says that around 11.00 a.m. on 08.10.1999 the accused-appellant with a woman came to the reception desk of the hotel and asked for a room. He allocated room No.8. He thereafter called the room boy Rohana and directed him to take the couple to room No.8 in upstairs. Rohana took the couple to room No.8 in upstairs. Around 11.30 a.m. when the room bell rang Rohana went to the room. The accused-appellant thereafter ordered two omelets and two bottles of beer. Rohana says between 12.00 and 12.30 p.m. he took two omelets and two bottles of beer to the room where the accused-appellant and the woman were staying. Around 3.30 p.m. on this day the accused-appellant came to the compound of the hotel. When Chandran Dio inquired him

as to why he was leaving alone he told that he was going out to fetch lunch. Chandran Dio told him that he could supply lunch to both of them in the hotel. However, the accused-appellant went away from the hotel saying that he would bring lunch. It has to be noted here when Chandran Dio volunteered to offer Rohana's service to get down lunch. But he left the hotel leaving the woman whom he brought in the hotel room. Around 6.30 p.m. Chandran Dio who noticed that the accused-appellant did not return to the hotel, directed the room boy to go and check. He knocked on the door but there was no response. He reported back to the owner. Rohana, on the instructions of the owner of the hotel Chandran Dio, again went near the room and noticed the key of the room was on the outer aspect of the lock of the door of the room. When he opened the room he found the woman who came with the accused-appellant in the room with bleeding injuries. He immediately informed the owner of the hotel who informed the police. The police who came to the room found the dead body of the woman in the said room. They also noticed certain jewellery (imitation jewellery) on the table. Some rings were on the fingers of the deceased woman. They opened the hand bag and found various items and noticed that the contents of the hand bag were not disturbed.

The accused-appellant denied the incident in his dock statement. The accused-appellant, in his dock statement states that after his arrest he was detained for six days and the police gave him a bottle of beer and a tumbler to handle. He further admits that he knew the deceased woman; that he got angry with her; the relationship between both of them was terminated as the son of the deceased woman threatened him; that he was taken to the hotel by the police; and that hotel owner said that he was not the person

and the person who came was a tall handsome person. This was the summary of the dock statement of the accused appellant. He, in his dock statement, does not directly say that he did not go to the hotel. I will now analyze what he said in the dock statement. If the deceased woman was angry with him and the relationship between the two had come to an end, it cannot be contended that he went to the hotel with the woman. Thus the position that has to be inferred from his dock statement is that he did not go to the hotel on the day of the incident. If he admitted, in his dock statement, that he went to the hotel with the woman then the task of the prosecution would have been easier. If that is so, the conclusion would be that he came to the hotel with the woman, both of them occupied the room, he left the hotel without the woman and woman's dead body was found. In fairness to the accused-appellant it has to be observed here that the position taken up by the accused-appellant in his dock statement was that he did not go to the hotel. I will now consider whether the position taken up by the accused-appellant in his dock statement is true. Samson Silva who knows the accused-appellant well says that he dropped the accused-appellant and a woman at this hotel on 08.10.1999 around 11.00 a.m. The accused-appellant at the trial did not cross-examine him. Thus the accused-appellant did not challenge Samson Silva's evidence. What happens when evidence given by a reliable witness on a material point is not challenged in cross-examination? What is the effect of such silence on the part of the Counsel? In this regard I would like to consider certain judicial decisions. In the case of *Sarwan Singh vs State of Punjab* 2002 AIR Supreme Court (iii) 3652 at 3655 and 3656 also reported in 2003 Cri L.J. 21 Indian Supreme Court held: "It is a rule of essential justice that whenever the opponent has declined to avail

himself of the opportunity to put his case in cross-examination it must follow that the evidence tendered on that issue ought to be accepted.”

This judgment was cited with approval in the case of *Boby Mathew vs State of Karanataka* 2004 3 Cri. L.J. page 3003.

In the case of *State of Himachal Pradesh vs Thakur Dass* (1983) 2 Cri. L.J. 1694 at 1701 V.D. Misra CJ held: “Whenever a statement of fact made by a witness is not challenged in cross-examination, it has to be concluded that the fact in question is not disputed.”

*Motilal vs State of Madhya Pradesh* (1990) Cri. L.J NOC 125 MP  
“Absence of cross-examination of prosecution witness of certain facts leads to inference of admission of that fact.”

In the light of the above judicial decisions, I hold that whenever evidence given by a witness on a material point is not challenged in cross-examination, it has to be concluded that such evidence is not disputed and is accepted by the opponent subject of course to the qualification that the witness is a reliable witness. It is therefore noted that the accused-appellant has admitted the evidence of Samson Silva. What is the stand taken up by Samson Silva? His stand was that he dropped the accused-appellant with a woman. Thus the above position taken up by the accused-appellant that he did not go to the hotel is false.

Learned Counsel for the accused-appellant tried to contend at the hearing before us that the identity of the accused-appellant has not been proved beyond reasonable doubt as the prosecution had relied only on the dock identification. It has been proved beyond reasonable doubt, through the evidence of Samson Silva, the taxi driver, the accused-appellant and a woman came to the said hotel on 08.10.1999 around 11.00 a.m. Samson Silva knew the accused-appellant long prior to the incident. According to Chandran Dio the accused-appellant who came to the hotel with a woman spoke to him for some time. Thus this was not a fleeting glance. He thereafter ordered the room boy to take the couple to room No.8. Thereafter around 3.30 p.m. Chandran Dio again had the opportunity of talking to the accused-appellant in the compound. I have earlier discussed the conversation between the two. Chandran Dio had spent a few minutes with him in the compound. Thus Chandran Dio had sufficient opportunity to remember the accused-appellant. Therefore, Chandran Dio saw the accused-appellant on this day on two occasions. The room boy Rohana met the accused-appellant and the woman at the reception desk. Thereafter he took the couple to the room in upstairs and gave the key of the room to the accused-appellant. Thereafter, on the bell being rung, he again went to the room and met the accused-appellant. Between 12.00 and 12.30 p.m on the same day, he again went to the room and served the accused-appellant with two omelets and two bottles of beer. It is therefore seen that he had seen the accused-appellant on this day on four occasions. When I consider all these matters I hold that Chandran Dio and the room boy Rohana had sufficient opportunity to remember the face of the accused-appellant and that they had identified the accused-appellant. When I

consider all these matters I hold the view that the identification of the accused-appellant had been proved beyond reasonable doubt.

I have earlier pointed out that the position taken up by the accused-appellant in his dock statement that he did not go to the hotel is false. What is the position when an accused person utters falsehood in Court? In this connection I would like to consider *R vs. Lucas* 1981 2 All ER page 1008. Court of Criminal Appeal of England in the said case held thus -

“For a lie told by a defendant out of court to provide corroboration against him that lie must be deliberate, it must relate to a material issue, the motive for it must be a realization of guilt and a fear of the truth, and it must be clearly shown to be a lie by evidence other than that of an accomplice to be corroborated, i.e. by admission or by evidence from an independent witness.”

Same principle was adopted by the Supreme Court in *Karunanayake vs. Karunasiri Perera* 1986 2 SLR page 27 wherein His Lordship Justice Atukorale held thus –

“For a lie to be capable of amounting to corroboration firstly it must be deliberate, secondly it must relate to a material issue, thirdly the motive for the lie must be a realization of guilt and a fear of the truth and not merely an attempt to bolster up a just cause or out of shame or a wish

to conceal disgraceful behaviour from the family and fourthly the statement must be clearly shown to be a lie by evidence other than that of the person who is to be corroborated.”

In *Haramanis vs. Somalatha* 1998 3 SLR page 365 His Lordship Justice Jayasuriya held thus –

“Where a party litigant intentionally utters a falsehood in court, such falsehood weakens his case and advances in strength the case of his adversary. Lies uttered by a party could amount to corroboration of the case of his adversary.”

As I pointed out earlier the stand taken up by the accused appellant in his dock statement is false. I hold that the false stand taken up by the accused appellant in his dock statement that is to say that he did not go to the hotel satisfies the principles set out in Lucas’s case (supra). Applying the principles laid down in the above judicial decisions I hold that that if an accused person in a criminal case utters falsehood in court it can be considered against him and that he does so in order to cover his guilty conscious. Having considered the above material, I hold that he took a false stand in his dock statement in order to cover his guilty conscious. According to the room boy Rohana he served omelets to the accused-appellant and the woman who was in the room (this woman was later



identified by him as the deceased person) around 12.00 to 12.30 p.m. The accused-appellant left the hotel around 3.30 p.m.. The room boy opened the door of the room around 6.30 p.m.. When the door was opened the plate on which the omelets were served was empty. The two bottles of beer have also been emptied. When I consider all these matters it appears that the deceased person had partaken the omelets and beer between 12.30 p.m. and 6.30 p.m. The doctor who conducted the postmortem has examined the contents of the stomach. He says that by the time the deceased woman died minimum of one hour and maximum of four hours had passed from the last meal. Assuming that the deceased person partook omelets at 12.30 p.m. then the deceased person, according to the opinion expressed by the doctor, died between 1.30 p.m. and 4.30 p.m.. According to the evidence of Rohana and Chandran Dio the accused person was with the deceased person inside the room between 11.00 a.m. and 3.30 p.m.. Therefore it is seen at the time of death spoken to by the doctor the accused-appellant was in the room. Learned Counsel for the accused-appellant contended that this murder could have been committed by the room boy Rohana who was a drug addict. He made this allegation on the basis that he was a drug addict. But the police officer says that the contents of the hand bag were intact. Some of the jewellery of the deceased person was on the table. Police noticed the two rings on the fingers of the deceased. If Rohana who was a drug addict committed the murder of the deceased person he would have committed it for the purpose of robbing money. Then the question arises as to how her hand bag was not disturbed. When I consider all these matters the contention that Rohana committed the murder

cannot be accepted and that contention does not create any reasonable doubt in the prosecution.

Learned Counsel for the accused-appellant contended that a man whose intention to murder a woman would not come to a hotel with such intention. It is clear from the evidence that the deceased woman had become a problem to the accused-appellant as she was asking the return of her money. This appears to be the motive for the killing. When I consider the evidence led at the trial I am unable to answer the above question in favour of the accused-appellant.

Prosecution case depended on circumstantial evidence. Therefore I would like to consider the principles governing cases of circumstantial evidence. In *King vs. Abeywickrama* 44 NLR 254 Soertsz J remarked as follows. "In order to base a conviction on circumstantial evidence the jury must be satisfied that the evidence was consistent with the guilt of the accused and inconsistent with any reasonable hypotheses of his innocence".

In *King vs Appuhamy* 46 NLR 128 Keuneman J held that "in order to justify the inference of guilt from purely circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt".

In *Podisingho vs King* 53 NLR 49 Dias J held that “in a case of circumstantial evidence it is the duty of the trial Judge to tell the jury that such evidence must be totally inconsistent with the innocence of the accused and must only be consistent with his guilt.”

In *Emperor vs Browning* (1917) 18 Cr. L.J. 482 court held “the jury must decide whether the facts proved exclude the possibility that the act was done by some other person, and if they have doubts, the prisoner must have the benefits of those doubts.”

*Don Sunny vs. AG* (1998) 2 SLR page 1.

“The accused-appellant and two others were indicted on the first Count with having between 1.9.86 and 27.2.87 committed conspiracy to commit murder by causing the death of Amarapala with one G. and others under s. 113(8) ad s.102 Penal Code and on the second count having committed murder by causing the death of the said Amarapala on 27.2.87 under s. 296 Penal Code. After trial the accused-appellant and the absent-accused were convicted and sentenced to death.

**Held:**

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 prosecution must prove that no one else other than the accused had the opportunity of committing the offence, the accused can be found guilty only and only if the proved items of circumstantial evidence is consistent with their guilt and inconsistent with their innocence.”

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 take a decision that the accused is guilty of the offence, such decision must be the one and only, inescapable and irresistible inference that the accused committed offence. The room boy Rohana and Chandran Dio identified the deceased

woman in this case as the woman who came with the accused-appellant to the hotel. The accused-appellant in this case around 11.00 a.m. on the day of the incident came to the hotel with the deceased woman. They both went to a room in upstairs. Around 12.30 p.m. they were served with omelets and beer. Around 3.30 p.m. the accused appellant left the hotel without the woman stating that he was going to bring lunch. He never returned to the hotel. The dead body of the said woman whom he brought to the hotel was found in the room given to them by Chandran Dio and room boy Rohana. According to the doctor who conducted the post-mortem, both the neck and the mouth of the deceased woman had been squeezed. There were several cut injuries on the face and the neck. The death was due to manual strangulation of the neck and loss of blood as a result of the injuries to the neck. What is the irresistible, inescapable and one and only decision that can be arrived when one considers the above evidence? It is the decision that the accused appellant committed the murder of the woman. When I consider all the above matters I refuse to interfere with the judgment of the learned trial Judge. For the above reasons I affirm the conviction and the death sentence and dismiss the appeal.

**Acting President of the Court of Appeal**

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

I agree.

**Judge of the Court of Appeal**