

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

Kokmaduwa Jayasinghe Arachchige
Lakshman

ACCUSED-APPELLANT

C.A. No. 154/2006
H.C. Galle 2163

Vs.

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

COMPLAINANT-RESPONDENT

BEFORE: Anil Gooneratne J. &
Sunil Rajapaksa J.

COUNSEL: Saliya Peiris for the Accused-Appellant
Rohantha Abeysuriya D.S.G., for the Complainant-Respondent

ARGUED ON: 27.08.2014

DECIDED ON: 25.09.2014

GOONERATNE J.

The Accused-Appellant was indicted for the murder of his wife in the High Court of Galle, and convicted and sentenced to death. Date of incident was on 25.9.1998. The conviction is based on circumstantial evidence. The main witness was a boy of 15 years who gave evidence in the non-summary inquiry. He was also treated as an adverse witness in the High Court (pg. 71). In brief his evidence was that he saw both the Accused and deceased leaving the rented premises at about 8.00 p.m on the date of the incident. The witness was the son of the land-lord. On this item of evidence contradictions were marked at the trial, as the witness had been confronted of the fact that both leaving the premises together, since contrary positions had been taken by the witness.

The learned trial Judge has itemized the circumstantial evidence relied upon at folio 183 of the brief. Both learned counsel were of the view that item No. 5 of folio 183 was a total misdirection on the part of the trial Judge and that there had been no recovery made as a result of a Section 27

Evidence Ordinance statement. Further the learned Deputy Solicitor General indicated that he is unable to support the Judgment of the learned High Court Judge. There is also some reference made to certain evidence that transpired at the trial before the High Court at folios 56 to 60, which indicates that the witness had been pressurized to give evidence in the way the answers to questions were elicited, and gives the impression to this court that the witness had had not testified according to his free will and such unnecessary questions would shatter his independence. Once a witness is treated in this manner and or treated as an adverse witness his or her evidence cannot be considered substantial evidence in the case, and no reliance could be placed on such evidence.

I will now turn to the trial Judge's conclusion at pg. 183. Such views consists of seven points. Item (1) and (2) regarding constant quarrelling and leaving the premises together is not supported by evidence. Trial Judge cannot act on (1) and (2) where evidence does not disclose same and mere suggestion and views expressed by the witness about (1) & (2) need to be carefully examined. Items No. (3) is of course based on evidence of the dead body being

found on the road. Unless there is evidence to corroborate and support item No. (3) with other evidence, such an item of evidence would be an isolated item of evidence which cannot incriminate the Accused. Item No. (4) is that the Accused had not returned home or had not gone to see the deceased, after the incident. There is no evidence to corroborate this position. As observed above item (5) is a total misdirection of the learned trial Judge. Item (6) is a comparison with the weapon used to commit the crime based on material evidence. There is no corroboration by other evidence as item No. (6). As regards (7) is the trial Judge's view of accepting the knife P2 of that of the Accused.

It is highly unsafe to act upon items (1) to (7) above and the several circumstances cannot be easily connected to prove guilt of the Accused. H.E Queen Vs. Sumanasena 66 NLR 350, in criminal cases suspicious circumstances do not establish guilt. Nor does the proof of any number of suspicious circumstances relieve the prosecution of its burden of proving the case against the Accused beyond reasonable doubt.

In all the above circumstances the verdict is highly unreasonable and cannot be supported by evidence. Trial Judge has misdirected himself on questions of law. In any event it has resulted in a miscarriage of justice. We proceed to set aside the conviction and sentence and acquit the Accused.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

N.S. Rajapaksa J.

I agree.

JUDGE OF THE COURT OF APPEAL