

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

C.A. No. 300/2008

H.C.Avissawella No. 29/2002

H.M. Anura

Appellant

Vs.

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

Respondent

C.A. No. 300/2008

H.C.Avissawella No. 29/2002.

BEFORE : ANIL GOONERATNE, J. &
H.C.J. MADAWALA, J.

COUNSEL : Tenny Fernando for the Accused-Appellant.
Rohantha Abeysuriya D.S.G. for the respondent.

ARGUED AND

DECIDED ON : 29th January, 2015.

ANIL GOONERATNE, J.

The accused-appellant has been indicted on three counts in the High Court of Avissawella. Count No.1 relates to the murder of one Stephen Perera, an offence punishable under Section 296 of the Penal Code. Count No.2 refers to a case robbery amounting to a sum of Rs.1050/=cash and cigarettes and a cassette recorder valued as described in the indictment in a sum of Rs.2500/=:, an offence punishable under Section 380 of the Penal Code. Count No.3 relates to retention of stolen items as described in the said charge of the indictment. Learned Deputy Solicitor General submits to Court that

Count Nos. 2 and 3 have been drafted in the alternative. We have heard both Counsel regarding the facts of this case. It is the position of the learned defence Counsel that the only item of evidence referred to by the prosecution is a Section 27 recovery. i.e. a recovery of a part of a cassette tape recorder. Both Counsel agree that the said item namely, a part of the cassette tape recorder does not belong to the deceased person. Evidence has transpired in the High Court that the cassette in question belongs to the bakery owner (as described in the indictment). The accused party as well as the deceased party were employs of the bakery run by a person called Hettiarachchige Sanath Chandralal (PW1). Learned defence Counsel emphasis the fact that the only item of evidence as stated above is a Section 27 recovery. Learned Deputy Solicitor General submits that the accused on the day of the incident has informed the owner of the bakery that he intends to see a musical show at Biyagama and on that basis he had left the bakery in the evening. Both Counsel submit that the evidence that transpired in the High Court indicate that the deceased was on the day in question, was within the premises of the bakery. Learned Deputy Solicitor General submits that the personal effects of the accused party were removed. The above observation has been made by the police and the bakery owner. It is also submitted on behalf of the State that a book which was in the possession of the bakery owner containing particulars of the accused party more particularly, the page containing the name and address of

the accused was torn. According to the submissions of learned Deputy Solicitor General the above are the only items of evidence that the prosecution has been able to place before the trial Court.

Learned defence Counsel submits that an omission has been highlighted in the trial Court as regards the position of the accused party leaving on the day in question to see a musical show. He also submits that another omission has been highlighted in respect of the missing piece of the cassette recorder. Learned defence Counsel submits that the above omission has been referred to by the learned High Court Judge and according to the defence Counsel the 1st statement made by the complainant does not refer to any particular part of a cassette recorder. The dock statement made by the accused-appellant reveals that he has left the bakery due to the fact that he was not properly paid. That seems to be the explanation provided by the accused party.

In all the above facts and circumstances of this case, it would be highly unsafe to act on the evidence placed before the trial Court. In any event a recovery made under Section 27 of the Evidence Ordinance would only demonstrate that the accused party had the knowledge and the whereabouts of the fact discovered. Based on that alone, it is the view of this Court that it would be highly unsafe to convict the accused-appellant. The evidence placed before the learned High

Court Judge does not indicate that the prosecution has proved its case beyond reasonable doubt. Material is not at all convincing to enable this Court to affirm the conviction. As such, we set aside the conviction and sentence and proceed to acquit the accused-appellant.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

H.C.J. MADAWALA, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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