

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

In the matter of an Appeal in terms of  
section 331 of the Criminal Procedure  
Act No. 15 of 1979

**C A No. 216/2012**

**H.C. Batticaloa**

**Case No. 2512/07**

Attorney General,

Attorney General's Department,

Colombo 12.

**Vs.**

Sathasivam Chandrakanthan

**Accused**

**AND NOW BETWEEN**

Sathasivam Chandrakanthan

**Accused Appellant**

**Vs.**

Attorney General,

Attorney General's Department,

Colombo 12.

**Respondent**

**BEFORE**

:     **H.N.J. PERERA, J**  
**P.W.D.C. JAYATHILAKE, J**

**COUNSEL**

:     Dr. Ranjith Fernando with  
  
Samanthi Rajapaksha for the  
  
Accused Appellant.  
  
P. Kumararatnam D.S.G. for the  
  
Respondent.

**ARGUED ON**

: 25.11.2014

**DECIDED ON**

: 26.02.2015

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

Kumutha ChandraKanthan was a Management Assistant attached to a Government Department in Batticaloa. Her husband ChandraKanthan was unemployed after his return from overseas. Both of them were living with her mother in a house owned by the mother. Kumutha and ChandraKanthan quarreled very often for two reasons, namely, ChandraKanthan being unemployed and their not having children. One day Kumutha had been injured in a quarrel and she had to make a complaint to the police. Thereafter she went to live with her elder sister. Mother too sold the house and went to live with one of her daughters. Even after that ChandraKanthan came to see

Kumutha in the evenings as a habit. He used to take her away and bring her back after one to two hours. Though Kumutha's sisters did not like him, Kumutha wanted to live together with him as he was a poor person. 05.01.2006 being a Hartal day, Kumutha did not go to work. Around 6.30 in the evening, Kumutha who was at her sister's, went out saying her mother that husband wanted her to accompany him to give some advance for a house. Mother knew that they were looking for a house on rent to live in, separate from others. That was the moment her mother and sisters saw her last. Mother went to her elder daughter's house in search of Kumutha. Kumutha's sisters were of the opinion that there was no need to worry because she had gone away with her husband. Next morning, they came to know that Kumutha's dead body had been lying on a road in a jungle area.

Sathasiwam ChandraKanthan, the Accused Appellant was indicted for committing the murder of Kumutha ChandraKanthan punishable under Sec. 296 of the Penal Code and convicted for the said charge after trial and sentenced to death.

Being dissatisfied with the said conviction and the sentence, the Accused Appellant has preferred this Appeal to this Court.

The investigating officer who went to the crime scene on a telephone call received by him about the crime had observed that the dead body of Kumutha

had been lying on the back with her neck slashed. He has found a knife, a mobile phone and a pair of slippers by the road in a short distance away. The Judicial Medical Officer had observed the cut injury across the neck pierced through the windpipe which he had categorized as a grievous injury which cause the death in the ordinary course of nature. There were no signs suggestive of being raped as there were no external lacerations and contusions on the face, breasts or female genitals.

Akilson who was a ten year old boy had testified that the Accused Appellant came to their place at about 7.00 in the evening and asked for his bag which he had kept under the bed on a day when he had a fight with Kumutha. The Accused Appellant had been arrested at the Fort Railway Station on 11.01.2006 at 21.15 hours. The police sergeant who arrested the Accused appellant who had been on guard duty in the Fort Railway Station had stated that he arrested the Accused on suspicion for staying in the Railway Station for a long time.

The learned counsel for the Accused Appellant submitted that the prosecution case is entirely dependent on circumstantial evidence. He pointed out that the learned trial judge has considered the items of circumstantial evidence as the links of a chain, but he contends that it has to be considered as codes of a cable. The items of evidence available before trial court were (1) Accused being

last seen with the deceased, (II) the mobile phone found at the scene and (III) the arrest of the Accused Appellant at the Colombo Fort Railway Station. The contention of the counsel for the Accused Appellant was that there couldn't be an irresistible conclusion that only the Accused Appellant could have committed the crime.

The learned Counsel for the Respondent made the following submission. The Accused Appellant had come to the place where he had kept his bag and collected something from the bag and left in the evening of the date of the incident. It was the time that the deceased left her mother by saying that she was going out with her husband, the Accused Appellant. The Accused Appellant has been arrested when staying at the Colombo Railway Station in a suspicious manner for a long time. He emphasized that evidence of the prosecution witnesses has not been challenged.

The learned trial judge, in her judgment, has stated that the circumstantial evidence linked together like in a chain implicating the Accused of the crime. With the said observation, she has come to the conclusion that in the absence of any acceptable explanation from the Accused when considering evidence of the case as a whole, it was the Accused who had committed the murder from which he has no escape.

It was held in sixty eight years ago in the case of, *King V. Gunarathna* (1947, 47 NLR 145) that,

*" In a case of circumstantial evidence the facts given in evidence may taken cumulatively, be sufficient to rebut the presumption of innocence, although each fact, when taken separately, may be a circumstance only of suspicion."*

Cannon J, in that judgment has referred to *Regina V. Exall* (176 English Reports, *Nisi Prius*, at. P. 853) where it has been stated that *" It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the rope might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength."*

Will in his *"Circumstantial Evidence ( Fifth Edition)"* has quoted from *Burnett's Criminal Law of Scotland* (1811) that *"circumstantial are inflexible proofs. They will not bend to the inclinations of parties. Witnesses may be mistaken; may be corrupted; things can be neither; and therefore, so far as they go, deserve unlimited, unreserved faith"*

Will has quoted from *principles of Moral and Political Philosophy* of Paley that *"Circumstances cannot lie".*

If the items of evidence available taken individually, namely, suspicious behavior of the Accused Appellant of collecting something from his bag immediately prior to the leaving of the deceased informing her mother that she was going out with the Accused Appellant, finding of the Accused Appellant's mobile phone near the dead body at the crime scene, Accused Appellant's waiting at the Colombo Railway Station in a suspicious manner they directly connect the Accused Appellant with the crime in a less strong manner. But when they are knitted together as one whole, then it becomes one unit that connects the Accused Appellant in a much stronger manner.

Though the learned trial judge has described those items of evidence as the links of a chain, they actually appear as codes of a cable. Therefore, this court is of the view that the learned trial judge has correctly convicted the Accused Appellant for the charge of murder leveled against him. As such this court affirms the conviction and the sentence passed by the trial judge and dismiss the Appeal.

**JUDGE OF THE COURT OF APPEAL**

**H.N.J. PERERA J**

**I agree**

**JUDGE OF THE COURT OF APPEAL**