155/2013

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

In the matter of an appeal against an order of the High Court under Sec.331 of the Code of Criminal Procedure Act as amended.

Amaratunga Arachchilage Ranasinghe

Accused-Appellant

C.A.Case N0:-155/2013

H.C.Ampara Case No:-1459/2011

V.

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

Respondent

Before:- H.N.J.Perera, J &

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

Counsel:-Priyantha Deniyaya for the Accused-Appellant

Dilan Ratnayake S.S.C. for the Respondent

Argued On:-03.12.2014/05.02.2015

Written Submissions:-17.03.2015/14.05.2015

Decided On:-29.05.2015

H.N.J.Perera, J.

The accused-appellant was indicted in the High Court of Ampara for committing injuries to one Wannarachchilage Premaratne by throwing a hand grenade to him on or about 22nd July 2006 an offence punishable under section 4(2) of the Offensive Weapons Act No 18 of 1966.

At the outset the accused-appellant was indicted along with the second accused on the basis of common intention. However the said second accused passed away during the course of trial and the learned trial Judge after trial by his judgment dated 17.09.2013 convicted the accused-appellant and sentenced him to a term of 12 years R.I. A fine of Rs.5000/- and compensation of Rs. 200,000/- was also ordered to be paid by the accused-appellant. Aggrieved by the said conviction and sentence the accused-appellant has preferred this appeal to this court.

The main contention for the Counsel for the accused-appellant at the stage of argument was that the prosecution has failed to establish the identity of the accused-appellant as the evidence of the injured was weak.

It is to be noted that this is a case based solely on the evidence of identification by the victim. The prosecution led the evidence of the injured victim witness W. Seneviratne who alone identified the accused-appellant and the other accused who is now dead as running away from the scene soon after the explosion which caused grave injuries to him.

It was the contention of the Counsel for the accused-appellant that evidence of identification given by the said witness Seneviratne is both unreliable and weak and the identification was done under difficult circumstances in the night.

It was contended by the Counsel for the respondent that the evidence led before the court shows that there was ample light for the said witness Senevitratne to identify his attackers. Further the victim's house was located about 100 meters behind the STF camp fence and that the police observations done the same night also show that there was sufficient light to identify a person within and just outside the house of the victim. It is also the position of the prosecution that the accused-appellant was well known to the victim from his childhood.

The learned High Court Judge in his judgment had very carefully considered the lighting available at the scene and also has considered whether there was sufficient time for the witness Seneviratne to identify the accused-appellant. The learned Judge has concluded that there was sufficient light and time for the witness Seneviratne to identify the accused-appellant. The contradictions marked V2 to V4 all relate to the direction which the two suspects ran soon after throwing the grenade at the witness Seneviratne. The effect of these contradictions were considered by the learned trial Judge who concludes that these contradictions in no way affect the credible evidence of identification given by witness Seneviratne. It was the contention of the Counsel for the Respondent that there was positive evidence not only with regard to the identification of the accused-appellant but also clear evidence as to the means of identification established by the prosecution.

Our law does not require the prosecution to call a number of witnesses to prove a case against an accused. Evidence given by one witness is sufficient. It is the quality of the evidence given by the said witness that matters.

In Sumanasena V. Attorney General [1999] 3 Sri L.R 137 it was held that:-

1. Evidence must not be counted but weighed and the evidence of a single witness if cogent and impressive could be acted upon by a Court of law.
2. Just because the witness is belated witness Court ought not to reject his testimony on that score alone, Court must inquire into the reason for the delay and if the reason for the delay is plausible and justifiable the Court could act on the evidence of a belated witness.

Thus the court could have acted on the evidence of the solitary witness Seveviratne provided the trial judge was convinced that he was giving cogent, inspiring and truthful testimony in court.

It is clearly seen in this case that the learned High Court Judge in the course of his judgment has individually considered each of these contradictions. The learned trial Judge has considered the entirety of the evidence that has been led before him and has come to the conclusion that there were other witnesses to whom the witness Seneviratne has stated the names of his assailants promptly and therefore this contradiction is not affecting the credibility of the witness Seneviratne. The trial Judge has very carefully considered whether the contradictions marked were material and had held that they are too trivial to affect the credibility of the witness Seneviratne's evidence.

The trial judge has come to such a favourable finding in favor of witness Seveviratne as regards his testimonial trustworthiness and credibility. The learned trial judge has very clearly stated that the evidence of witness Seneviratne is supported by the evidence adduced at the trial emanating from other witnesses.

It was further contended by the Counsel for the accused-appellant that the defense taken up by the accused-appellant has not been considered

and the principles relating to evaluation of the defense evidence had not been applied by the trial Judge.

On perusal of the said judgment of the learned trial Judge it is also clearly seen that he has given good reasons why the accused-appellant's alibi is disbelieved by him. The learned trial Judge has very correctly analyzed the defense evidence to see whether it raised any doubt in the prosecution case. The accused-appellant has taken the position that he did not own any land closer to the scene of crime but admits that he came to settle a land dispute two weeks prior to the incident. The prosecution has marked three contradictions X1 to X3. These contradictions show the testimonial inconsistency of the accused-appellant's evidence. The learned trial Judge in his judgment specifically gives reasons why the accused-appellant's evidence is disbelieved by him. The trial Judge has rejected the defense evidence in toto.

Though the prosecution is not bound to prove a motive against the accused-appellant, in the instant case the prosecution has established by convincing evidence a motive against the accused-appellant. Though the prosecution is not required to establish a motive, once a cogent and intelligible motive has been established, the fact considerably advances and strengthens the prosecution case.

In King V. Musthapha Lebbe 44 N.L.R 505 Court of Criminal Appeal held that:-

"The Court of Criminal Appeal will not interfere with the verdict of a jury unless it has a real doubt as to the guilt of the accused or is of the opinion that on the whole it is safer that the conviction should not be allowed to stand."

In my opinion the prosecution has proved the case beyond reasonable doubt.

For the above reasons, I refuse to interfere with the judgment of the learned trial Judge and affirm the conviction and the sentence. I dismiss the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL