

**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 No: 15 of  
1979 and in terms of the  
Constitution of the Democratic  
Socialist Republic of Sri Lanka.

The Hon. Attorney General

Attorney General's Department,  
Colombo 12.

**Complainant**

**Vs**

Suntharam Imayakanth,  
Achchuweli North,  
Achchuweli  
Jaffna.

**Accused**

**C. A. Case No. : 80 /2012**

**and now between**

**H. C. Jaffna Case No. :971/2005**

Suntharam Imayakanth,  
Prisons,  
Jaffna.

**Accused-Appellant**

**Vs**

The Hon. Attorney General  
Attorney General's Department,

Colombo 12.

**Complainant Respondent**

**BEFORE** : M.M.A. Gaffoor, J &

K. K. Wickramasinghe, J

**COUNSEL** : Faiz Musthapha P.C. with AAL N.N Shahid for the Accused-Appellant.

P. Kumararathnam DSG for the Attorney General.

**ARGUED ON** : 3<sup>rd</sup> April 2017

**WRITTEN SUBMISSIONS FILED ON:** 12<sup>th</sup> June 2017

**DECIDED ON** : 13th July 2017

**K. K. WICKRAMASINGHE, J.**

The Accused Appellant (herein after referred to as the Appellant) was indicted in the High Court of Jaffna on a charge of having committed murder of one Vairavi Subash on the 26<sup>th</sup> of April 2002. There were also ancillary charges of unlawful assembly and common intention. After the conclusion of the trial, other accused were acquitted and therefore the other charges does not lie against the appellant. The appellant was convicted for causing death of Vairavi Subash on 14<sup>th</sup> May 2012.

Being aggrieved by the said conviction and sentence, the Accused Appellant made the instant appeal to this court for the vacation of the same.

At the trial the prosecution led evidence of the following witnesses:-

- (a) Sarojadevi –widow of the deceased
- (b) Sabapathy Rasarathnam- Chief priest
- (c) RaveendranThayaline
- (d) Gamini Nandana Batagoda SI of Police
- (e) Judicial Medical Officer Kandiah Rathnasingham

Grounds of Appeal:-

- (1)The evidence of these witnesses is inherently weak and creates a serious doubt as to the identity of the assailant.
- (2) There are contradictions inter se in the evidence of the above mentioned two eye witnesses which renders the prosecution case unreliable.
- (3) The evidence of the defence witness Sunendrarasa clearly exculpate the 1<sup>st</sup> accused as being the assailant and this item of evidence has not been considered at all by the learned High Court Judge.

Facts of the prosecution case in brief:-

On the 26<sup>th</sup> of April 2002, Sarojadevi Subash (PW2) and her husband Vairavi Subash the deceased had gone to the Veluthar Murugan Temple to see the flag descending ceremony done by her father Sabapathy Rasaraththnam- Chief priest (PW8). When the time was up for the ceremony a ladder was placed for the father of the witness to climb up and descend the flag as the statue of the God was brought by the People. The accused appellant has pushed the ladder. At that time the deceased and the people had stopped PW8 from falling from the ladder. At that time the appellant stabbed the deceased with a knife on his neck and his shoulder. At the time of incident she was just a mere two feet away from her husband. She had fainted after witnessing the stabbing.

Witness no. 8 had corroborated that the appellant stabbed the deceased by stating that he saw the appellant taking a knife from his hip. PW2 stated that she only saw the knife when her husband was stabbed but PW8 stated that it was hidden under the clothing of the appellant and there after he stabbed the deceased. He was in his third step when he witnessed the incident.

According to Post Mortem Report the death was due to the loss of blood caused by stabbing due to rapid loss of blood. It was said to be a deep stab injury on the left side of the neck. The knife marked V8 was shown to the doctor and it was revealed that the particular knife can cause such injury.

When the defence was called, the appellant gave evidence and two other witnesses were called to give evidence on behalf of him.

The appellant has admitted the fact that he was carrying a knife for his safety, in view of the ongoing dispute as to which flag should be hoisted.

The recovery of the knife was on a statement given by the appellant, according to section 27 of the Evidence Ordinance. This statement was provided to court by PW10 Tikiri Banda and was corroborated by PW19 Bandula Kumarasiri.

The defense version at the trial was that the appellant showed him the knife when Rathinam held him and took him away and kept him pinned down and he was unable to move. The police arrived at that stage assaulted him and as such he threw the knife. Appellant contradicted himself in his evidence given in examination in chief that he took the knife for his safety and later said that it was taken by him with the intention of getting the flag from them.

The learned counsel for the accused appellant contends that since the PW2 was outside of the temple she could not have possibly seen what happened on the day of the incident. It is pertinent to note that the wife of the deceased (PW8) didn't enter main hall of the temple but she was still inside the temple premises not outside it. When PW2 was cross examined by the counsel for the defence to see whether she was a trustworthy witness she had answered as follows:-

Question-*"I am telling you didn't see the incident with your own eyes"*

Answer-*"without seeing I will not shout like this"*

Therefore it is evident that the wife of the deceased (PW2) had spoken the truth and nothing but the truth. Post mortem report corroborated the evidence of the eyewitnesses.

Section 106 of the Evidence Ordinance stipulate, *"When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him"*. The appellant admitted the fact that he was carrying a knife and pushed PW8 but he did not explain what happened thereafter.

In the case of **Tamil Nadu Vs Rajendra (1999) Cri. L J 4552** it was decided that, *'In case of circumstantial evidence when an incriminating circumstances is put to the accused and the said accused either offers no explanation or an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete'*.

**In Somaratne Rajapakse and others Vs Attorney General (Krishantha Kumaraswami case) 2010 2 SLR at 113** Shirani Bandaranayake J. stated that *"with all damning evidence against the appellant with the charges including murder and rape, the appellants did not offer any explanation with regard to any of the matters referred to above, although there cannot be a direction that the accused person must explain each and every circumstances relied on by the prosecution and the fundamental principle being that no person accused of a crime is bound to offer any explanation of his conduct, there are permissible limitation in which it would be necessary for a suspect to explain the circumstances of suspicion which are attached to him"*.

In the case of **The Attorney General Vs Sandanam Pitchi Mary Theresa 2011 SLR Vol.2 pg.292** it was held that *"Whilst internal contradictions or discrepancies would ordinarily affect the trustworthiness of the statement, it is well established that the Court must exercise its judgement on the nature of the inconstancy or contradiction and whether they are material to the facts in issue. Discrepancies which do not go to the root of the matter and assail the basic version of the witness cannot be given too much importance.*

*Witnesses should not have disbelieved on account of trifling discrepancies and omissions. When contradictions are marked, the Judge should direct his attention to whether they are material or not and the witness should be given an opportunity of explaining the matter".*

When considering evidence, it is apparent that there aren't any contradictions or omissions which go to the root of the case.

Considering above it is abundantly clear that the Learned High Court judge has considered and properly evaluated the available evidence against the appellant and convicted him for murder. Therefore this court has no reason to interfere with the findings of the Learned High Court Judge. Accordingly conviction and the sentence affirmed.

Hereby the appeal is dismissed.

Judge of the Court of Appeal

**M.M.A. Gaffoor, J**

I Agree

Judge of the Court of Appeal