

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

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

Court of Appeal Case No.
CA- HCC- 188/2016

Complainant

High Court Case No.
HC Nuwaraeliya 20/10

V.

Artygala Vithanage Indika Ruwan Kumara

Accused

AND NOW

Artygala Vithanage Indika Ruwan Kumara

Accused Appellant

V.

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

Complainant Respondent

BEFORE

: **K.K. WICKREMASINGHE, J**
K. PRIYANTHA FERNANDO, J

COUNSEL

: Indika Mallawaratchy with K. Kugaraja for
the Accused Appellant.

Dilan Ratnayake DSG for the Respondent.

ARGUED ON

: 18.06.2019

WRITTEN SUBMISSIONS

FILED ON

: 21.05.2018 by the Complainant Respondent
29.01.2018 by the Accused Appellant

JUDGMENT ON

: 23.09.2019

K. PRIYANTHA FERNANDO, J.

01. Accused Appellant (Appellant) was indicted in the High Court of Nuwara-Eliya on one count of murder punishable under section 296 of the Penal Code. After trial, the Appellant was found guilty, convicted and was sentenced to death. Being aggrieved by the said conviction, the Appellant preferred the instant appeal. Grounds of appeal as urged by the counsel for the Appellant in her written submissions are;

1. PW5 namely Manjula Ruwan Kumara on whose testimony the conviction revolves is not a credible witness.

2. Items of circumstantial evidence are wholly inadequate to support the conviction.
3. Learned Trial Judge failed to apply the principles governing the evaluation of circumstantial evidence cases.
4. Learned Trial Judge had drawn adverse inferences relating to motive which is not borne out by evidence causing prejudice to the Appellant.

02. I carefully considered the evidence adduced at the trial, judgment of the learned High Court Judge, grounds of appeal, written submissions filed and the oral submissions made by counsel for the Appellant as well as the Respondent.

Ground of Appeal No.01

03. Counsel for the Appellant submitted that PW5 is not a credible witness. Contention of the counsel is that, PW5 had made the statement to the police few months late, and also after he was arrested with the Appellant on suspicion.
04. The evidence of PW5 was mainly on the confession made to him by the Appellant. According to PW5, the Appellant is his cousin brother. Appellant had eloped with the deceased and had come to his house. His parents along with him had taken the Appellant and the deceased to Pugoda and got them married. Thereafter, Appellant and deceased had lived in their house for about 3 months. Appellant had left with the deceased and after sometime, Appellant had come alone without the deceased and had stayed in PW5's house until he was arrested. During this period, one-day whilst they were working in the vegetable plot, PW5 had asked the Appellant as to what happened to Ganga, the deceased. After making PW5 to promise that he

would not tell anyone, Appellant had confessed to PW5 that he along with 4 others raped, killed and burned the deceased. He had not told anyone about it as he promised the Appellant who was his cousin, that he would not tell anyone.

05. His evidence was that, when both of them were arrested, police had questioned them separately. When they were being questioned while keeping them by the side of each other, he had asked the Appellant whether to tell the police (page 157 of the appeal brief). Then he had narrated to the police what the Appellant confessed to him.
06. Confession made to another person (not to a person in authority or a police officer) is admissible if it was made voluntarily, without threat or inducement, and can be acted upon.
07. V.R. Krishna Ayer J. in case of *Nandini Satpathy V. P.L.Dani [1978] 2SCC 424* said;

‘ ... Confession is a potency to make crime conclusive ’.

08. The learned Trial Judge in his judgment has carefully analyzed the delay in coming out with the Appellant's confession to the police by the PW5. At pages 38 - 42 of his judgment (Pages 388 and 392 of the brief), the learned Trial Judge has extensively discussed on the voluntariness, admissibility and the truthfulness of the confession made by the Appellant to the PW5 and has rightly found that the evidence of PW5 to be credible. Hence, Ground of appeal No.1 would not succeed.

Grounds of Appeal No. 2 and 3.

09. This case is not solely based on circumstantial evidence. Certain other proved circumstances would strengthen the confession made by the

Appellant to his cousin PW5. Although the Appellant challenged the evidence of PW5 in cross examination, in his statement from the dock he has not denied or mentioned anything about the evidence of PW5 on the confession he had made to PW5.

10. After the deceased went missing, the deceased had sent a letter to her twin sister asking not to look for her. However, the witnesses testified that the handwriting in that letter was not of the deceased. Upon investigation it was found that the said handwriting was similar to the handwriting of the Appellant. Examiner of Questioned Documents (EQD) has testified to that effect. The Appellant in his dock statement had been silent on that letter and the evidence of the EQD. It is obvious that the Appellant had written that letter to mislead the family members of the deceased. The learned Trial Judge has given due consideration to all the circumstances proved and analyzed the evidence. He has given good and sufficient reasons for rejecting the dock statement made by the Appellant. As sufficiently reasoned out by the Trial Judge, in the proved circumstances and the confession made by the Appellant to PW5, the only inescapable conclusion that the Court can come to is that the death of the deceased was caused by the Appellant and not by any other. This court has no reason to interfere with the finding of the learned Trial Judge that the Accused is guilty as charged, and that the prosecution has proved the charge beyond reasonable doubt. Grounds of appeal No. 2 and 3 has no merit and should necessarily fail.

Ground of Appeal No.4

11. Counsel for the Appellant contended that the learned Trial Judge has considered that the Appellant had a motive to commit the offence, when in fact there was no evidence to that effect.

12. PW2 who is the twin sister of the deceased in her evidence said that, the Appellant and deceased used to quarrel at home. There had been issues raised by the Appellant on the character of the deceased as well (pages 217 and 218 of the appeal brief). Although the learned Trial judge has taken that also into consideration, he has said that motive is not an essential element to prove the charge. As I have elaborated before, there is sufficient evidence to prove the charge against the Appellant irrespective of the evidence on motive. Hence, it has not caused any prejudice to the Appellant.

In the above premise, I affirm the judgment of the learned Trial Judge convicting the Appellant as charged.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

K.K. WICKREMASINGHE, J

I agree.

JUDGE OF THE COURT OF APPEAL