

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

*In the matter of an Appeal in terms
of Article 127 read with Article 128
of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.*

2. Bothalage Ajith Shantha.
3. Bothalage Sanjeewa Kumara.

Accused - Appellants - Appellants

SC Appeal No. 128/2022

SC SPL LA. 186/2019

CA Appeal No. CA 266-268/2015

HC Chilaw Case No. 102/2005

Vs.

Hon. Attorney - General

Attorney General's

Department,

Colombo 12.

Prosecutor - Respondent - Respondent

BEFORE : P. PADMAN SURASENA, J.,
YASANTHA KODAGODA, PC, J., and
KUMUDINI WICKREMASINGHE, J.,

COUNSEL : Chathura Amarathunga for the 2nd and 3rd Accused-Appellant-Appellant.
Janaka Bandara, DSG for the Respondent- Respondent.

ARGUED & DECIDED ON: 24th October 2023

Yasantha Kodagoda, PC, J.,

In this matter, having heard learned counsel in support and against the corresponding Application seeking *Special Leave to Appeal*, on 20th October 2022 this Court had granted *Special Leave to Appeal* in respect of the following question of law.

“Did the learned High Court Judge and the learned Justices of the Court of Appeal err in considering and evaluating the evidence for the prosecution in relation to the identity of the 2nd and 3rd Accused - Appellants?”

In this matter the two Appellants along with one Dharmajothige Aruna Jeewantha and Gama Arachchilage Siriwardhena alias Ranne were indicted for having committed murder of one Warnakulasooriya Pathiranahalage Shantha Gunathilake, and for having caused grievous hurt to Handugala Dewagae Anoma Indrani and Warnakulasuriya Pathiranahalage Nirasha Madulatha, both of whom being prosecution witnesses. They stood as the concubine and the daughter respectively of deceased Shantha Gunathileka.

According to the evidence presented by the prosecution, the committing of the murder and infliction of grievous hurt had taken place on 10th April 1999 at the residence of the deceased. At the end of the trial held in the High Court presided over by a Judge of the High Court sitting without a jury, the 4th Accused had been acquitted. The 1st, 2nd and the 3rd Accused (of whom the 2nd and the 3rd accused being respectively the 1st and the 2nd Appellants before this Court) were convicted of having committed murder and for having committed the 2nd and the 3rd charges in the indictment, which related to the committing of grievous hurt.

Consequently, the 1st, 2nd and 3rd Accused appealed to the Court of Appeal. Having heard learned counsel, the learned Justices of the Court of Appeal by their judgment dated 3rd April 2019 affirmed the convictions and dismissed their Appeals. It is consequent to that judgment, that all three Accused - Appellants sought *Special Leave to Appeal* to this Court. The Application of the 1st Accused - 1st Appellant - 1st Petitioner seeking *Special Leave to Appeal* was dismissed.

We have heard and benefited from extensive submissions made to this Court on behalf of the 1st and 2nd Appellants and from the submissions of learned Senior Deputy Solicitor General who appeared for the Respondent Attorney - General.

We have considered the evidence in this case. According to the evidence of H.D. Anoma Indrani the concubine of the deceased, on the night of 10th April 1999 after they had gone to sleep, they were woken up due to someone shouting from outside the house, and soon thereafter several persons had come into their residence and attacked the deceased, herself and her daughter W.P. Nirosha Madulatha. As regards the identity of the attackers, she has testified that she was able to identify the 1st and 2nd Appellants at the Identification Parade held on 8th June 1999, which

had been held approximately two months after the incident, while the incident was still fresh in her mind. The notes of the Identification Parade had been produced at the trial and marked in evidence as "X2".

Learned counsel for the Appellant did not contest in this Court the procedure pertaining to the conduct of that Identification Parade, the integrity of the process and the reliability of the findings.

The other victim (W.P. Nirasha Madulatha) in her testimony has stated that in addition to the identification of the 1st Accused, she identified the 2nd and 3rd Accused as well. She has further testified that all three of the Accused had been previously seen by her in their area on several occasions. She has testified to the factual background based upon which she had come to know of their existence and seen them prior to the date of the incident. Those factual circumstances have not been impugned by learned counsel for the Accused when she was cross-examined. She has also stated that she was able identify all three Accused at the identification parade held on 8th June 1999. Once again, learned counsel for the Appellant did not impugn the procedure followed at the Identification Parade, the integrity of the process or the reliability of the identification.

This Court has also considered the history given by the afore-stated witnesses Anoma Indrani and Nirasha Madulatha to the Judicial Medical Officer who conducted the clinical forensic examination pertaining to the injuries sustained by both of them. It appears very evidently that they have taken up the inferential position that all four perpetrators were known to them. They (the injured examinees) have also given the perpetrators' alias names to the doctor. This aspect

has not been contested during the trial stage. In our view, that lends support to their oral testimony pertaining to the identification of the Appellants.

Learned counsel for the Appellant did impugn the integrity of the identification of the Accused by Sameera Sampath Gunathilleka, the son of the deceased. The ground on which learned counsel for the Appellant challenged the identification by that witness was on the footing that he (the witness) had seen the accused being detained inside a police cell when the witness went to the police station. Learned Deputy Solicitor General submitted that in support of the judgment of the High Court as well as the judgment of the Court of Appeal, he does not rely on the identification provided by witness Sameera Sampath Gunathilleka under such circumstances. We are of the view that given the position taken up by the learned Deputy Solicitor General, for the determination of this Appeal, it will not necessary for this Court to arrive at a finding on this matter. It is necessary to observe that the ground on which learned counsel for the Appellant's challenged the evidence of identification given by Sameera Sampath Gunathilleka is quite valid. Therefore, the evidence of witness Sameera Sampath Gunathilleka pertaining to the identification of the Accused will not be taken into account in the determination of this Appeal.

We have considered the basis on which both the learned Judge of the High Court and the leaned Justices of the Court of Appeal have satisfied themselves regarding proof of identity of the two Appellants before this Court, and we are of the view that the said findings should not be disturbed as the said judges have correctly concluded that the identities of the 1st and the 2nd Appellants have been established by the prosecution beyond reasonable doubt.

Learned Senior Deputy Solicitor General drew the attention of this Court to the testimony of Nawadankulame Medhananda Thero who had visited the scene of the crime soon after the perpetration of the murder and the infliction of injuries to the two prosecution witnesses. He had testified that even as at the time he visited the crime scene, child witnesses Nirasha Madulatha and Sampath Gunathileka were still hiding under a bed. This shows the very nature of the attack inflicted, and the fear generated by the perpetrator in the minds of these two child witnesses. This supports the narrative of the incident as provided by witnesses Anoma Indrani and Nirasha Madulatha.

It is to be noted that according to Nirasha Madulatha, prior to the incident, she had seen and known only the 1st and the 3rd Accused. She has admitted that she had no prior knowledge of the 2nd Accused. This lends support to the learned Deputy Solicitor General's submission that this witness was not hell-bent on implicating all the Accused, and was a truthful witness who only went to the extent of providing identification evidence relating to the two persons who were actually known to her from a time prior to the incident.

In view of the totality of the evidence placed before this Court as well submissions made by learned counsel, this Court is of the view that the 1st and the 2nd Appellants have been correctly identified by the two witnesses referred to previously, namely Anoma Indrani and Nirasha Madulatha and that their testimony is reliable.

This Court has also given its anxious attention to the dock statements made by the two Appellants before the High Court. Apart from making very bland unsupported statements from the dock which may tantamount to an unsuccessful attempt at creating an alibi defence, this Court is of the view that no credence can be attached

to the said dock statements which stand untested via cross-examination and uncorroborated. That is particularly in view of the fact that intrinsically the said dock statements lack detail and cogency, and as the positions taken up in the dock statements have not been subjected to cross-examination. In the circumstances, this Court is of the view that the said dock statements do not give rise to a reasonable doubt and should necessarily be rejected.

In the circumstances, this Court proceeds to answer the question of law in respect of which special leave had been granted in the following way.

The learned Judge of the High Court and the learned Justices of the Court of Appeal have not erred in considering and evaluating the prosecution evidence relating to the identity of the 2nd and 3rd Accused appellants.

In the circumstances, this Court while affirming the judgment of the Court of Appeal, dismiss this Appeal. No order for costs is made. Court wishes to appreciate the assistance given by both learned counsel in the dispensation of this appeal.

JUDGE OF THE SUPREME COURT

P. PADMAN SURASENA, J.,

I agree.

JUDGE OF THE SUPREME COURT

KUMUDINI WICKREMASINGHE, J.,

I agree.

JUDGE OF THE SUPREME COURT