

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

In the matter of an application for Special Leave to Appeal in terms of Article 127 read with Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC.Appeal No.33/2015

SC.SPL.LA NO.207/14

C.A.Appeal No. CA 82/2010

High Court Kandy Case No.24/2002

Duminda Munasinghe alias Kaluwa
Presently at
Bogambara Prison,
Kandy.

Accused-Appellant-Petitioner

Vs.

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

Complainant-Respondent-Respondent

**BEORE : SISIRA J. DE ABREW, J.
K.K. WICKRAMASINGHE, J. &
JANAK DE SILVA, J.**

COUNSEL : Amila Palliyage with Nihara Randeniya, Sandeepani
Wijesuriya, Duminda de Alwis and Ruwanthi
Doralagoda for the Accused-Appellant-Appellant.

Ayesha Jinasena PC ASG for the Attorney-General.

ARGUED &

DECIDED ON : 02.02.2021.

SISIRA J. DE ABREW, J.

Heard both Counsel in support of their respective cases. This is an appeal filed against the judgment of the Court of Appeal dated 22.09.2014. The Accused-Appellant was convicted by the learned High Court Judge by his judgment dated 02.06.2010 for the offence of murder and was sentenced to death. According to the facts of the case the Accused has killed his own wife. Being aggrieved by the said judgment of the High Court, the Accused-Appellant appealed to the Court of Appeal. The Court of Appeal by its judgment dated 22.09.2014 affirmed the conviction and the death sentence and dismissed the appeal. Being aggrieved by the said judgment of the Court of Appeal, the Accused-Appellant has appealed to this court. This Court by its order dated 18.02.2015 granted Leave to Appeal on questions of law set out in paragraph 12 of the Petition of Appeal dated 31.10.2014 which are set out below verbatim;

- i. Is it unsafe to act upon belated statements of some of the main witnesses for the prosecution?
- ii. Has the learned trial judge failed to evaluate the contradictions inter se between the prosecution witnesses?

- iii. Is it unsafe to act on the evidence of the witnesses in the light of the contradictions in their evidence.
- iv. Is there a denial of a fair trial by remanding the witnesses and producing them from remand during the pendency of the trial which would have been influenced on the other witnesses?
- v. Is it unsafe to act upon the belated statement by the witnesses for the prosecution and have the learned trial judge and their Lordships of the Court of Appeal properly considered the validity of those statements?
- vi. Is there a proper evaluation of evidence by the learned trial judge?
- vii. Are the items of circumstantial evidence consistent with the guilt of the Petitioner and inconsistent with his innocence?
- viii. Have their Lordships erred in law by deciding that the only inference that could be drawn is the guilt of the petitioner on the items of circumstantial evidence proved by the prosecution?

Learned Counsel for the Accused-Appellant submitted that after perusing the evidence led at the trial he could not support the above questions of law. Facts of this case may be briefly summarized as follows;

The Accused-Appellant is the husband of the deceased person whose name is Wickramagedara Niroshini Wickramage. On the day of the incident (27.12.1998) around 8 pm. the Accused-Appellant came to the house of the deceased's person. At the time of the incident deceased person was living with her mother and two brothers. On the invitation of the Accused-Appellant the

deceased person went along with the Accused-Appellant to a nearby boutique for the purpose of buying cigarettes. It should be noted here that the Accused-Appellant wanted to buy some cigarettes. After the deceased person went along with the Accused person, the deceased person never returned home. This evidence was given by the mother of the deceased person. On the following day, around 4 pm, the mother of the deceased person found the dead body at Mahaweli river bank which was about ¼ mile away from the house of the deceased person.

On the day of the incident around 10.00 p.m., the Accused-Appellant had met Hussain Khan alias Sunil at a bus stand and had told Hussain Khan that he killed his own wife. In the same night around 11.30 p.m., the Accused-Appellant had told one Mahesh that he killed his own wife.

According to the medical evidence, the course of death was manual strangulation. There were contusions and abrasions on the neck of the deceased person. The Accused-Appellant making a statement from the dock denied the charge.

Learned Counsel for the Accused-Appellant quite correctly submitted that there are no grounds to challenge the evidence of the mother of the deceased, Hussain Khan, Mahesh and the medical evidence.

When we consider the evidence led at the trial, we hold the view that the prosecution has proved its case beyond reasonable doubts. We therefore hold the view that there is no reasons to interfere with the judgment of the High Court and the Court of Appeal. Since the learned Counsel for the Accused-

Appellant submitted in open court that he is not supporting the questions of law, it is not necessary for us to answer the questions of law.

Considering the above material, we affirm the judgment of the Court of Appeal and dismiss this Appeal.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

K.K. WICKRAMASINGHE, J.

I agree.

JUDGE OF THE SUPREME COURT

JANAK DE SILVA, J.

I agree.

JUDGE OF THE SUPREME COURT

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