

SC.Appeal No. 39/2019.
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. 39/2019

CA.Appeal No. 294/2012

HC. Jaffna No. 996/2006

Thiruganapillai Sivakumar,
No.4M, Vaddatam,
Delft West, Delft,
Jaffna.

Presently at

Welikada Prison,
Welikada,
Colombo-10.

Accused-Appellant-Petitioner

-Vs-

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

Complainant-Respondent-Respondent

Before: **Sisira J.de Abrew, J**

 P.Padman Surasena, J &

 E.A.G.R.Amarasekera, J

Counsel: Asela B. Rekawa with Ramalingam Ranjan for the Accused-Appellant-Petitioner.

P.Kumararatnam S/DSG for the Hon. A.G.

Argued &
Decided on: 23.01.2020

Sisira J.de Abrew, J

Heard both counsel in support of their respective cases. In this case the Accused-Appellant was charged for the murder of Thilagaraja Jegath Janani which is an offence punishable under section 296 of the Penal Code. The Accused-Appellant was also charged for the robbery of 03 rings, one pendent and one pair of bangles worth Rs. 124,000/- from the possession of said Thilagaraja Jegath Janani which is an offence punishable under section 383 of the Penal Code.

After trial the learned High Court Judge by his judgment dated 01.11.2012, convicted the Accused-Appellant for the offence of culpable homicide not amounting to murder which is an offence punishable under section 297 of the Penal Code and sentenced him to a term of only 10 years Rigorous Imprisonment. The Accused-Appellant was also convicted for the offence of robbery and was sentenced to a term of 10 years R.I.

Being aggrieved by the said Judgment of the learned High Court Judge, the Accused-Appellant appealed to the Court of Appeal. The Court of Appeal by its Judgment dated 19.05.2017 affirmed both convictions of the Accused-Appellant 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 11.02.2019 granted leave to appeal on the following question of Law. “ Have Their Lordships' of the Court of Appeal erred in law by failure to consider evidence adduced in respect of the identification of the Petitioner.”

The facts of this case as alleged by the prosecution may be briefly summarized as follows;

On the day of the incident Yesurasan, on hearing screams of a woman, ran to the place where the screams emanated and saw the Accused-Appellant grappling with a woman. On hearing the shouts of Yesurasan, a toddy tapper named Marrie and his son Tiron Ranjith came to the scene.

When his son came to scene, he saw a person hiding behind a parapet wall. He chased after this person as he ran away from the scene of offence and attacked him with a club. However he says he could not identifying him as there was mud on his face. He says that this person was a dark short person. But according to Identification Parade notes the Accused-Appellant is a 5 and ½ feet tall person. The Accused-Appellant was arrested 11 months after the incident. Then an identification parade was held in order to identify the Accused-Appellant. Yesurasan, at the Identification parade, identified the Accused Appellant. However Yesurasan's son Tiron Ranjith did not identify the Accused-Appellant at the Identification parade. At the trial, Yesurasan identified the Accused-Appellant as the person who was grappling with the woman on the day of the incident. But his son in his evidence said that the Accused-Appellant in Court is not the person who ran away from the scene of offence. Thus in

our view the evidence of the son of Yesurasan creates a reasonable doubt in the evidence of Yesudasan .If the evidence of Tiron Ranjith who is the son of Yesudasan is accepted, the Accused-Appellant will have to be acquitted. As I pointed out earlier, the evidence of Tiron Ranjith has created a reasonable doubt in the evidence of Yesurasan.

The Accused gave evidence under oath. The learned trial Judge after considering the evidence of the Accused-Appellant did not either accept or reject the evidence of the Accused-Appellant. In a criminal trial when the Accused-Appellant gives evidence it is the bounden duty of the trial Judge to consider the Accused's evidence and come to a conclusion whether he accepts or rejects the evidence of the Accused- Appellant or whether the evidence of the Accused-Appellant creates a reasonable doubt in the prosecution case. . If the learned Trial Judge fails to reject or accept the evidence of the Accused-Appellant, the question must be considered whether he is entitled to be acquitted. In this connection I would like to consider a judicial decision of the Court of Criminal Appeal *Ariyadasa Vs Queen* (*68 NLR page 66*) His Lordship Justice T.S.Fernando, held as follows: “ The Accused is entitled to be acquitted even if his evidence though not believed , is such that it causes a jury to entertain a reasonable doubt in regard to his guilt ”.

In *Martin Singho Vs Queen* (*69 CLW page 21 at page 22*) His Lordship Justice T.S. Fernando made the following observations. “As this Court has pointed out on many occasions in the past where an Accused person is not relying on a general or special exception contained in the Penal Code there is no burden on him to establish any fact. In this case the Appellant was not relying on any such exception. Even if the jury declined to believe the Appellant's version, he was yet entitled to be acquitted on the charge if his version raised in the mind of

the jury a reasonable doubt as to the truth of the prosecution version.”

In *Queen Vs Kularatne* (71 NLR page 529) considering the question as how to evaluate a dock statement Court of Criminal Appeal held as follows: “ The jury must be directed that:-

- a) If they believe unsworn statement it must be acted upon
- b) If it raises a reasonable doubt in their minds about the case for the prosecution the defence must succeed

For the benefit of the Trial Judges and the legal practitioners of this country we would like to state the following guidelines as to how the evidence given by an Accused person should be evaluated.

- 1) If the accused’s evidence is believed, it must be acted upon.
- 2) If the evidence of the accused raises a reasonable doubt, in the prosecution case, the defence of the accused must succeed.
- 3) If the evidence of the accused is neither accepted nor rejected by the trial Court, the defence of the accused must succeed.

In the present case, the learned Trial Judge has failed to follow the above guidelines. Further the learned Trial Judge has failed to decide whether he accepts the evidence of the accused person or rejects it.

The Accused person in his evidence has taken up the position that he did not participate in this crime and he was going to Jaffna from Kaiyts in a bus on that day. Since the learned trial Judge has neither accepted nor rejected the evidence of the Accused-Appellant, we hold that the Accused-Appellant is entitled to be acquitted. We have earlier pointed out that the

evidence of Tiron Ranjith has created a reasonable doubt in the evidence of his father Yesudasan.

Their Lordships' of the Court of Appeal has also failed to consider whether the Accused has been properly identified by the witnesses at the trial. Considering all these matters we answer the above question of law in the affirmative.

Considering all the aforementioned matters, we hold that the prosecution has failed to prove its case beyond reasonable doubt . For the aforementioned reasons, we set aside the Judgment of the Court of Appeal dated 19.05.2017 and the Judgment of the High Court dated 01.11.2012 and acquit the Accused-Appellant from all the charges on which he was convicted.

Accused acquitted.

The Registrar of this Court is directed to send a certified copy of this Judgment to the relevant High Court.

JUDGE OF THE SUPREME COURT

P.Padman Surasena, J

I agree.

JUDGE OF THE SUPREME COURT

E.A.G.R.Amarasekera, J

I agree.

JUDGE OF THE SUPREME COURT

kpm/-