

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

In the matter of an application for
Special Leave to Appeal to the
Supreme Court under Article 128 of
the Constitution of Sri Lanka.

SC. Appeal 232/14

SC.Spl. LA 163/2013

Court of Appeal No. 101/2011

Anuradhapura HC No. 345/2004

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

Complainant

Vs.

Dissanayake Appuhamilage
Amarasiri Dissanayake.

Accused

AND BETWEEN

Dissanayake Appuhamilage
Amarasiri Dissanayake.

Accused Appellant

Vs.

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

Complainant Respondent

AND NOW BETWEEN

Dissanayake Appuhamilage
Amarasiri Dissanayake.

Accused Appellant-Appellant

Vs.

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Complainant Respondent-
Respondent

BEFORE : S. E. WANASUNDERA, PC, J.
UPALY ABEYRATHNE, J.
K. T. CHITRASIRI, J.

COUNSEL : Raja Dep with K.A. Upul Anuradha
Wickremaratne for the Accused Appellant-
Appellant
H. I. Peiris DSG for the Complainant
Respondent-Respondent

WRITTEN SUBMISSION ON: 29.05.2015 (the Accused Appellant
Appellant)

ARGUED ON : 10.11.2016

DECIDED ON : 11.07.2017

UPALY ABEYRATHNE, J.

The Accused Appellant-Appellant (hereinafter referred to as the Accused) preferred an appeal to the Court of Appeal against the conviction and sentence imposed upon the Accused by the learned High Court Judge of

Anuradhapura dated 06.10.2011. The Court of Appeal, by judgement dated 28.05.2013, has dismissed the said appeal and affirmed the conviction and the death sentence. This appeal is from the said judgment of the Court of Appeal. Leave to Appeal was granted on the grounds set out in paragraph 9 (a), (b) and (c) of the amended petition of appeal dated 11.11.2013. But in the said amended petition of appeal, the Accused has not set out any question of law, as required by Supreme Court Rules, to be considered by this court.

In paragraph 9 of the petition of appeal the accused has stated that the learned High Court Judge has erred in law allowing to lead in evidence a confessionary statement which was alleged to have been made by the accused to the Police Officer on reserve duty at the Eppawala Police Station at about 1.30 a.m. on 17.10.2000. He has further stated that the Court of Appeal had erred in failing to consider the submission of the counsel for the accused that the prosecution had failed to establish the charges in the indictment beyond reasonable doubt and also the Court of Appeal had erred in coming to the conclusion that the prosecution has established a strong prima facie case against the accused.

The Accused in this case was indicted in the High Court of Anuradhapura for having committed murder of a man named Nishshanka Arachchige Senadeera. The Prosecution has led the evidence of several witnesses. It appears from the evidence that the case for the prosecution entirely depended on circumstantial evidence. It has transpired from the evidence that the deceased was last seen in the company of the accused on a motor cycle ridden by the accused. On 16.10.2000, at about 8.00 p.m. said motor cycle had been given to the accused by the owner on a request made to that effect by the deceased. About one hour to one and half hour later the accused had returned the motor cycle to the owner and the owner has found at that point that the bunch of key of the motor cycle are missing.

At the investigation, the said bunch of key was found at the crime scene near the dead body.

According to the evidence of Police Constable 25019, Sembukuttige Premasinghe on 17.10.2000, at about 1.30 a.m. the accused, armed with a sword, had surrendered to Eppawala Police Station. Thereafter the statement of the accused has been recorded by the Police. Upon the statement of the accused the Police has recovered the dead body of the deceased. The police have reached to the crime scene where the dead body was found, according to the directions given by the accused. At the trial before High Court the Police witness who recorded the statement of the accused had not been cross examined by the accused. Said evidence does not contain any confessional statement made by the accused. Even the accused has not highlighted any such evidence in his petition of appeal or in his written submissions to this court.

The prosecution has led very strong circumstantial evidence against the accused. The accused has not given evidence. He has made a very short dock statement. In his dock statement, he has stated that "I had no animosity with uncle. We were residing in same house. I do not know anything about this".

The police witness said that he proceeded to the crime scene and recovered the dead body on the direction of the Accused. There had been cut injuries on the dead body. Evidence further reveal that the accused was last seen in the company of the deceased. Both of them were seen on a motor cycle ridden by the accused. Said motor cycle was given to the accused on a request made by the deceased. Owner of the motor cycle inquired the accused about the loss of motor cycle key. Said motor cycle key was found at the crime scene. Said circumstances have clearly established the fact that the Accused had been in the crime scene. Since it appears that the knowledge of the said circumstance was exclusively

within the Appellant it should have been explained by him. But the Accused in his dock statement did not offer any explanation.

In the case of State of Tamil Nadu Vs. Rajendran (1999) Cr.L.J. 4552 the Indian Supreme Court observed that ‘In a case of circumstantial evidence when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete.’

The Appellant in his short dock statement had not offered any explanation with regard to the strong and incriminating evidence led against him. When a strong prima facie case has been made out by the prosecution the Appellant has, though he has not been bound by law to offer any explanation, failed and omitted to explain the strong circumstantial evidence led against him. In the case of Rex. Vs. Lord Cochrane and others [1814] Gurney’s Report 479 the Lord Ellenborough held that “No person accused of crime is bound to offer any explanation of his conduct or of circumstances of suspicion which attach to him; but, nevertheless, if he refuses to do so, where a strong prima facie case has been made out, and when it is in his own power to offer evidence, if such exist, in explanation of such suspicious circumstances which would show them to be fallacious and explicable consistently with his innocence, it is a reasonable and justifiable conclusion that he refrains from doing so only from the conviction that the evidence so suppressed or not adduced would operate adversely to his interest.”

Abbot J. in Rex Vs. Burdett (1820) 4 B & Ald 161 at 162 observed that “No person is to be required to explain or contradict until enough has been proved to warrant a reasonable and just conclusion against him, in the absence of explanation or contradiction; but when such proof has been given, and the nature

of the case is such as to admit of explanation or contradiction, if the conclusion to which the prima facie case tends to be true, and the accused offers no explanation or contradiction, can human reason do otherwise than adopt the conclusion to which proof tends.”

In the case of Rajapaksha Devaga Somarathna Rajapaksha And Others Vs. Attorney General (S.C. Appeal) 2/2002 TAB) Justice Bandaranayke observed that “With all this damning evidence against the Appellants 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 circumstance 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 suspect to explain the circumstances of suspicion which are attached to him.”

In the case of Rameshbhai Chandubhai Rathod Vs. State of Gujarat [2009] INSC 828 (27 April 2009) (SC of India) Dr. Arijit Pasayat, J. observed that “The incriminating circumstances enumerated above unmistakably and inevitably lead to the guilt of the appellant and nothing has been highlighted or brought on record to make the facts proved or the circumstances established to be in any manner in consonance with the innocence at any rate of the appellant. During the time of questioning under Section 313 Cr.P.C. the appellant instead of making at least an attempt to explain or clarify the incriminating circumstances inculcating him, and connecting him with the crime by his adamant attitude of total denial of everything when those circumstances were brought to his notice by the Court not only lost the opportunity but stood self-condemned. Such incriminating links of facts could, if at all, have been only explained by the appellant, and by nobody

else, they being personally and exclusively within his knowledge. Of late, courts have, from the falsity of the defense plea and false answers given to court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed. (See: State of Maharashtra v. Suresh). That missing link to connect the accused appellant, we find in this case provided by the blunt and outright denial of every one and all that incriminating circumstances pointed out which, in our view, with sufficient and reasonable certainty on the facts proved, connect the accused with the death and the cause of the death of Gracy and for robbing her of her jewellery worn by her.”

I am mindful of the fact that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See Hukam Singh Vs.State of Rajasthan AIR (1977 SC 1063), Eradu and Ors. Vs. State of Hyderabad (AIR 1956 SC 316); Earabhadrappa Vs. State of Karnataka (AIR 1983 SC 446); State of U.P. Vs. Sukhbasi and Ors. (AIR 1985 SC 1224); Balwinder Singh Vs. State of Punjab (AIR 1987 SC 350); Ashok Kumar Chatterjee Vs. State of M.P. (AIR 1989 SC 1890). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram Vs. State of Punjab (AIR 1954 SC 621), it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt. In the case of C. Chenga Reddy and Others Vs State of A.P.

(1996) 10 SCC 193, wherein it has been observed thus: "In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....".

Having regard to the nature of the circumstantial evidence led by the prosecution I am inclined to accept the submissions of the learned Deputy Solicitor General that the strong items of circumstantial evidence unexplained by the accused would in itself be adequate to establish the charges against the accused. Hence, I am of the view that the learned trial Judge has rightly convicted the Accused for the charge of murder levelled against him. In the said circumstances I see no reason to interfere with the Judgement of the Court of appeal dated 06.10.2011. Hence, I affirm the conviction and dismiss the Appeal of the Accused.

Appeal dismissed.

Judge of the Supreme Court

S. E. WANASUNDERA, PC, J.

I agree.

Judge of the Supreme Court

K. T. CHITRASIRI, J.

I agree.

Judge of the Supreme Court