

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

In the matter of an Appeal in terms of Article 138 (1) of the constitution of the Democratic Socialist Republic of Sri Lanka read with Section 331 of the Criminal Procedure Code and Section 19 (B) of the High Courts of the Provinces (Special Provisions) Act No. 19 of 1990.

The Democratic Socialists Republic of
Sri Lanka

COMPLAINANT

Vs

Rankothge Devasena Samarakkodi

ACCUSED

Case No. CA 177/2016

HC (Anuradhapura) Case No. 82/2012 **AND NOW BETWEEN**

Rankothge Devasena Samarakkodi

ACCUSED – APPELLANT

Vs

Hon. Attorney General

Attorney General's Department

Colombo. 12.

COMPLAINANT – RESPONDENT

BEFORE : Deepali Wijesundera J.
: L.U. Jayasuriya J.

COUNSEL : Nayantha Wijesundera for the
Accused – Appellant.
Shanaka Wijesinghe D.S.G. for the
Attorney – General.

ARGUED ON : 11th January, 2018

DECIDED ON : 19th January, 2018

Deepali Wijesundera J.

The appellant was indicted in the High Court of Anuradhapura under section 296 of the Penal Code for the murder of his wife Deepika Kumari and under section 198 of the Penal Code for concealing her body in a pit thereby causing disappearance of evidence of the offence referred to in the first charge. After trial he was convicted for both charges and imposed death sentence for the first charge and 7 years RI was imposed for the second charge with a fine of Rs. 5,000/= with a default term of 3 months.

The appellant did not contest the conviction imposed on him under section 198 of the Penal Code. His only ground of appeal was to vary the

conviction and sentence of death for lesser culpability under section 197 of the Penal Code on the basis of a sudden fight and cumulative provocation.

According to the prosecution the appellant was married to the deceased and living in a village called Pemaduwa in the Anuradhapura District. Mother of the deceased had heard from one of her daughters Pradeepa Kumari that the deceased had gone missing with the child she was expecting. She has gone to the daughter's house and the appellant has told her that the deceased went to the witness's house to deliver the baby. She has testified that she saw the house they were living has been burnt down. Thereafter she has searched for her daughter and failing to find her, she has made a complaint to the police. This witness has told the High Court that her daughter did not have any disputes with the appellant.

The police had received an anonymous petition on the 17/09/2003 and based on this petition the appellant had been arrested and also based on this petition they have dug a certain place in the appellant's compound and had found the body of the deceased. After arrest the appellant had made a statement under *section 127 (3) of the Code of Criminal Procedure Act No. 15 of 1979 (as amended)* to the Magistrate

of Anuradhapura. The prosecution in this case mainly relied on this confession to prove this case.

In the said confession the appellant *inter alia* admitted that he assaulted the wife with his hand and she fell unconscious and that after trying to revive her and failing buried her in a pit in the garden.

The learned counsel for the appellant argued that there had been constant fights between the appellant and the deceased which provoked the appellant to hit the deceased. The main ground of appeal canvassed by the appellant is that the learned High Court Judge has not considered the facts in the confession to establish lesser culpability of the appellant.

Medical evidence reveals that the deceased was assaulted with a blunt weapon, which fact the deceased has suppressed in his confession. He has not specifically denied this fact in his dock statement.

Although the appellant in his confession states that he tried to revive the deceased he failed to get assistance from witness Margaret who was living next door, nor did he try to take her to a doctor. The

medical evidence reveals that the deceased who was expecting a baby has died of suffocation within ten minutes after burial.

It has been held in **Nagamari Theivendran vs AG in S.C. appeal 65/2000** decided on 16/10/02 that an accused could be convicted solely on a confession made to a judicial officer. This case was followed by **Suduaiya and others vs AG 1 SLR 2005 p.358**. On a perusal of the evidence of the Magistrate we find that the Magistrate has given the appellant sufficient time to consider before making the statement and has explained that if he voluntarily makes a confession such confession could be used against by him in a court of Law. When considering the relevant steps taken by the Magistrate one can not say the said confession was not made voluntarily. Therefore the position taken up in the dock statement by the appellant that he was forced to make the confession appears to be an afterthought.

The learned counsel for the appellant cited the judgments in **The King vs Loku Nona and two others 11 NLR 4** and **R vs Thabo Meli 1954 1 NLR 228**. We perused these two judgments and find that the facts in those cases can be distinguished from the instant case.

On perusal of the judgment of the learned High Court Judge we find that the learned High Court Judge has correctly analysed the evidence and convicted the appellant. We see no reason to set aside a well considered judgment. We affirm the judgment dated 15/11/2016 and ~~dismissed~~ the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya J.

I agree.

JUDGE OF THE COURT OF APPEAL