

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

In the matter of an Appeal against an
order of the High Court under sec. 331
of the Code of Criminal Procedure Act
No. 15 of 1979.

Kalandar Roobiya

ACCUSED - APPELLANT

Case No. CA 169/2016

HC (Kalmunai) Case No. HC 192/12 vs

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

COMPLAINANT - RESPONDENT

BEFORE

: Deepali Wijesundera J.

: Achala Wengappuli J.

COUNSEL

: Dr. Ranjith Fernando for the

Accused – Appellant

P. Kumararatnam DSG for the
Respondent.

ARGUED ON

: 17th September, 2018

DECIDED ON

: 05th October, 2018

Deepali Wijesundera J.

The appellant along with another person was indicted in the High Court of Kalmunai for committing murder of her husband under section 296 of the Penal Code. After trial the other accused was acquitted and the appellant was convicted for murder and sentenced to death.

On the day of the incident the deceased and the appellant who were husband and wife had an argument and thereafter the deceased had gone outside and slept in the veranda and the appellant had slept inside the house. The appellant had got up in the middle of the night and started shouting saying that the deceased had hung himself on a tree. She had run to a neighbor's house with a knife in her hand saying she cut the rope and brought him down. When the prosecution witnesses rushed to the scene they saw the deceased lying on the ground and a cut rope hanging from a tree above. The knife the appellant had in her hand was produced in the High Court and the doctor had said that knife would not have caused the injuries on the deceased's chest.

The Judicial Medical Officer giving evidence had said that if deceased committed suicide the tongue would have been out more than the 2 cm found and there should be blood in the cornea. The Doctor has ruled out suicide. According to the Doctor there were two stab injuries and death was due to the stab injuries which caused cardio respiratory failure following hemorrhage from the heart.

According to the evidence of the investigating officer there was no signs of a person hanging from the branch of the tree from which a cut piece of a rope was hanging. This case was based on circumstantial evidence.

The learned counsel for the appellant argued that the learned High Court Judge failed to attach any significance to the fact that it was the appellant who had alerted the neighbors in a distressed manner according to the witnesses. He also stated that the learned High Court Judge failed to consider what the Doctor testified that stab injuries were not caused by the knife the appellant had in her hand and that the deceased's stomach contents had alcohol and that the neck injury could have been caused by a blunt weapon or a rope tightening around the neck.

The appellant's counsel further stated that the learned High Court Judge erroneously concluded without any evidence that the appellant committed the murder and attempted to show it was suicide by cutting the rope and calling the neighbors and deliberately introduced another knife to mislead the police.

The evidence of the Doctor clearly states that the deceased died from the stab injuries and not from hanging himself. There was an injury on the back of his head which would have been caused by a blow with a blunt weapon. The fracture on his neck the doctor has said would have been caused by a blow or tightening a rope round the neck. All these evidence proves that the deceased was killed and it was not a case of suicide.

The learned Deputy Solicitor General in his argument stated that where the appellant had knowledge with regard to certain circumstances and where there is evidence beyond reasonable doubt against the appellant, the appellant should provide a reasonable explanation. He cited the judgment in **Queen vs Satin Singho (1962) 65 NLR 445**, **Jayasena vs AG (1969) 72 NLR 313**, **Premawansha vs AG SLR 2009 Vol 2 p. 205** and **Coomaraswamy's Law Evidence Vol 1 page 21** to support his argument.

The Deputy Solicitor General further stated that the appellant by her dock statement failed to raise a doubt in the prosecution evidence. He stated that according to the Ellenborough principles where there is a strong prima facie case made against an accused it warrants a reasonable explanation from the accused.

In the instant case appellant was given a fair chance to explain herself but she was unable to create a doubt in the prosecution evidence. There are no material contradictions marked in the prosecution evidence. As pointed out by the learned Deputy Solicitor General in **AG vs Sandanam Pitchi Mary Theresa 2011 SRR Vol. 2 p. 292**. It was held;

“Whilst internal contradictions or discrepancies would ordinarily affect the trustworthiness of the witness statement, it is well established that the Court must exercise its judgment on the nature of the inconsistency or contradiction and whether they are material to the facts in issue. Discrepancies which do not go to the root of the matter and assail the basic version of the witness cannot be given too much importance.

Witnesses should not be disbelieved on account of trifling discrepancies and omissions. When contradictions are marked,

the Judge should direct his attention to whether they are material or not and the witness should be given an opportunity of explaining the matter."

The argument of the appellant's learned counsel that some of the findings of the learned High Court Judge are not supported by evidence led in the case directly or circumstantially can not be easily dismissed. We have to admit that there are discrepancies in the learned High Court Judge's judgment. But it is stated in **section 334(1) proviso of the Code of Criminal Procedure Act (as amended) thus;**

"Provided that the court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred."

Acting under the said proviso we decide by the discrepancies in the judgment no miscarriage of justice has happened.

For the afore stated reasons we decide to affirm the judgment and conviction dated 06/06/2016 and dismiss the appeal.

JUDGE OF THE COURT OF APPEAL

Achala Wengappuli J.

I agree.

JUDGE OF THE COURT OF APPEAL