

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

In the matter of an Appeal in terms of
Section 331 of the Code of Criminal
Procedure Act.

The Attorney General
Democratic Socialist
Republic of Sri Lanka
Complainant

C.A Appeal No: CA 29-30/2012

Vs.

1. Rangajeewa Ekanayake
2. T.W Ranjith alias Kankanam
Puncha

Accused

High Court of Tangalle

Case No: HC 25/2005

AND NOW BETWEEN

1. Rangajeewa Ekanayake
2. T.W Ranjith alias Kankanam
Puncha

Appellant

Vs.

The Attorney General
Democratic Socialist Republic
of Sri Lanka
Respondent

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

COUNSEL : Neranjan Jayasingha for the 1st Accused-Appellant Appellant
P.K. Dilice Perera
~~N.H.S. Fonseka~~ for the 2nd Accused-Appellant
Dileepa Peiris D.S.G for the A.G

ARGUED ON : 4th October, 2017

DECIDED ON : 10th November, 2017

L.U Jayasuriya J.

The accused appellants (hereinafter sometimes referred to as the appellants) along with deceased accused K Sirisena alias Wadu Sira and three others were indicted before the High Court of Tangalle under Section 140 of the Penal Code, Section 296 of the Penal Code read with Section 146 of the Penal Code for causing the death of a woman named Senarath Rathnayakage Leelawathi and; under Section 296 of the Penal Code read with Section 32 of the said code for causing the death of the said Senerath Rathnayakage Leelawathi.

After trial, the 1st and 2nd Appellants were convicted under the 3rd charge and sentenced to death. This appeal is from the said conviction and the sentence.

The 3rd, 4th and 5th Accused were acquitted on all the charges.

The story of the prosecution is that on the fateful day the sole eye-witness W. Shirani (The daughter of the deceased) went with her mother to a nearby well to fetch water. She saw Wadu Sira and the 2nd Appellant coming towards them. Wadu Sira was armed with a gun. Then they dragged the deceased towards the rear of the Community Hall. When the witness screamed the 1st Appellant slapped her and

uttered the words “කැඟුණුවෙන් තෝවන් ගෙනියනවා”. Thereafter, she has run towards the community hall where Prosecution Witness 3 Nirosha Priyadarshani was conducting a class. Sometime later she had heard a report of a gun. Then she has gone in search of her mother and found her lying on the ground behind the said Community Hall.

Shirani says that Wadu Sira had an animosity with her brother who was serving in the Army.

The medical evidence reveals that the deceased died due to gun-shot injuries received on her head.

Prosecution Witness Inspector Ananda testifies that when he visited the scene of the crime, he found the deceased lying behind the community hall with head injuries. There, he has also observed that there was a tube-well in the vicinity. When the defence was called after the case for the prosecution was closed, the 1st Appellant had denied any involvement to the incident and has testified that Wadu Sira had carried out the murder. The 2nd Appellant has taken up the defence of alibi.

They have called Prosecution Witness 3, Nirosha Priyadarshani Dissanayake as a defence witness, and according to her testimony, Prosecution Witness 1 Shirani came and inquired from her whether she saw her mother. (vide page 143 of the brief “අපේ අම්මා දැක්කද කියල ආහුලා”). The defence witness further testified that thereafter she heard Shirani crying out saying that her mother was murdered.

The main argument of the Counsel for the Appellants is that it was not safe to convict the Appellants on the evidence of Shirani which is not corroborated by any other evidence regarding the main incident. The counsel argued that if Shirani was present and if she had seen how her

mother was taken, then there is no reason for her to ask from the teacher “Did you see my mother”.

The evidence of Nirosha meets the tests of promptitude and consistency and further a question arises as to why the prosecution tried to suppress the evidence of the above-mentioned witness whose evidence is favourable to the defence.

It was held in **W.A Fernando Vs. The Queen 76 NLR 265** that though a prosecutor is not bound to expose every infirmity and weakness in his case, yet when a person is brought up on a capital charge, and there is some item of evidence which casts some serious doubts on his guilt, it is the duty of the prosecutor to draw the attention of the trial Judge to such evidence.

At this juncture it is pertinent to refer to rule 52 of the Supreme Court Rules which provides thus: “It shall be the duty of an Attorney-At-Law appearing for the prosecution to bring to the notice of the Court or Tribunal any matter if withheld may lead to a miscarriage of justice.”

For the foregoing reasons, I am inclined to agree with the submissions advanced by the counsel for the Appellants and proceed to allow the appeal and set aside the conviction and the sentence dated 06.03.2012.

Appeal Allowed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J. :

I Agree.

JUDGE OF THE COURT OF APPEAL