

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

In the matter of an Appeal under Section 331 of
the Criminal Procedure Act. No 15 of the 1979,
read with Article 138 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.
CA HCC 275/19

High Court of Rathnapura
Case No. 145/2016

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

Complainant

V.

Gajanange Dayawansha,
Dambagahawila,
Ambewila,
Pallebedda.

Accused

And Now

Gajanange Dayawansha,
Dambagahawila,
Ambewila,
Pallebedda.

Accused-Appellant

V.

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

Complainant-Respondent

BEFORE : **K. Priyantha Fernando, J. (P/CA)**
Sampath B. Abayakoon, J.

COUNSEL : Darshana Kuruppu with Buddhika
Thilakarathne for the Accused- Appellant.
Shaminda Wickrema, SC for the
Respondent.

ARGUED ON : 30.07.2021

WRITTEN SUBMISSIONS

FILED ON : 30.09.2020 by the Accused Appellant.
29.07.2021 by the Respondent.

JUDGMENT ON : 16.09.2021

K. Priyantha Fernando, J. (P/CA)

1. The accused appellant (hereinafter referred to as appellant) was indicted in the High Court of *Ratnapura* with one count of murder and with one count of causing disappearance of evidence of an offence, punishable in terms of sections 296 and 198 of the Penal Code, respectively. After trial, the learned

High Court Judge convicted the appellant for Murder on count No.1 and discharged him on the 2nd count.

2. Being aggrieved by the said conviction, the appellant has preferred the instant appeal. The learned counsel for the appellant has preferred five grounds of appeal in his written submissions. However, at the hearing of the appeal, the learned counsel for the appellant submitted to Court that, after carefully considering the evidence adduced in the High Court, he is of the view that grounds of appeal urged in the written submissions have no merit and therefore he would not peruse any of those grounds of appeal urged. Learned counsel for the appellant however urged, that the Court may consider whether the circumstantial evidence led in the High Court is sufficient to find the appellant guilty for murder.
3. Deceased and the appellant had been married with one child. Both of them had been living in various places together. According to the evidence of the mother of the deceased (PW1), the appellant had been working in the Army and the deceased had been living with the mother (PW1). In year 2002 January or February, the deceased had gone to appellant's house leaving the child with PW1. Thereafter the deceased had come back and leaving the child with PW1 had gone to *Seeduwa* to work in the garment factory where she was working. As the deceased did not come home PW1 had gone to *Seeduwa* to look for the deceased with the elder daughter *Malani*. People at the garment factory had told PW1 that the deceased went home.
4. Thereafter, the appellant had come home and told the PW1 to keep the deceased if she comes home. As the deceased never came home PW1 had gone and made a complaint to the *Godakawela* police station sating that the deceased has gone missing. Thereafter she has not met the appellant. However, the appellant had written letters to the PW1 accusing her.
5. Appellant had not come to the *Godakawela* police station for the inquiry that was held on the complaint made by PW1. Only the father of the appellant has come. Appellant has avoided. She has also complained to *Ratnapura* police station. She had not got any relief.

6. Finally, as she was not getting any relief, some years thereafter she had complained to the Inspector General of Police (IGP). CID has then recorded a statement from her. She had given all the documents including the diagnosis card of the deceased where she had an operation on the spine when the deceased was young. CID had investigated and the body of the deceased (skeletal remains) had been exhumed from a toilet pit where the appellant lived.
7. Prosecution in this case had relied solely upon circumstantial evidence to prove the charges against the appellant beyond reasonable doubt.
8. In case of ***Shankarlal Gyarasilal Dixit V. State of Maharashtra [1981] Cri. L.J 325*** Indian Supreme Court held;

“In a case of circumstantial evidence, the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. It is not to be expected that in every case depending on circumstantial evidence, the whole of the law governing cases of circumstantial evidence should be set out in the judgment. Legal principles are not magic incantations and their importance lies more in their application to a given set of facts than in their recital in the judgment. The simple expectation is that the judgment must show that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis.”

9. In case of ***Junaiden Mohamed Haaris V. Hon. Attorney General. SC Appeal 118/17 [09.11.2018]***, where there were no eye witnesses to substantiate any of the charges against the appellant and the prosecution relied solely on circumstantial evidence, His Lordship Justice ***Aluwihare*** stated;

“... Thus, it was incumbent on the prosecution to establish that the ‘circumstances’ the prosecution relied on, are consistent only with the guilt of the accused-appellant and not with any other hypothesis. Regard should be had to a set of principles and rules of prudence, developed in a series of English decisions, which are now regarded as settled law by our Courts.

The two basic principles are-

1. *The inference sought to be drawn must be consistent with all the proved facts, if it is not, then the inference cannot be drawn.*
2. *The proved facts should be such that they exclude every reasonable inference from them, save the one to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct (per Watermeyer J. in R. V. Blom AD 188)."*

10. Having in mind the legal principles laid down in the above case precedents, now I will turn to consider the proved circumstances relevant to the instant case.

11. The appellant had come and told the PW1 to keep the deceased at home if she comes. The appellant has avoided attending the inquiry that was conducted by the *Godakawela* police on the complaint made by the PW1 on the disappearance of the deceased. Only the appellant's father has attended. The appellant never made any complaint to the police or any other authority that his wife (deceased) was missing. The body of the deceased was found in the toilet pit of the house where the appellant lived. When there was an old toilet pit, this particular pit where the body was found was later built and cement sealed. The pit was very close to the house that the appellant lived in, the distance was about 14 feet. The appellant has confessed to PW 4 *Sunil Jayathissa* that he killed the deceased and put the body into the toilet pit. Without making any complaint to the authorities about the disappearance of the deceased, the appellant married another woman and lived in *Polonnaruwa*.

12. The learned High Court Judge has carefully considered the above proved circumstances and also the statement the appellant made from the dock and found that the prosecution had proved the charge of murder against the appellant beyond reasonable doubt. The above proved circumstances are consistent with the sole hypothesis of the guilt of the accused. The learned High Court Judge in his judgment has carefully evaluated the proved circumstances and rightly concluded that the proved facts exclude any other inferences than that of the guilt of the appellant. Hence, this Court has no

reason to interfere with the judgment of the learned High Court Judge. The conviction and the sentence of the appellant on the charge murder is affirmed.

13. Appeal is dismissed.

PRESIDENT OF THE COURT OF APPEAL

Sampath B. Abayakoon, J.

I agree.

JUDGE OF THE COURT OF APPEAL