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

In the matter of an Appeal Under and in terms of the Article 138(1) of the Constitution read together with the Section 11(1) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 with the Section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

Hon. Attorney General

Complainant

Court of Appeal

Vs.

Case No: CA/HCC/135/2022

Ranasinghe Aarachchige Dushan Suranga

High Court of Balapitiya

Accused

Case No: HC 1825/15

AND NOW IN BETWEEN

Ranasinghe Aarachchige Dushan Suranga
Accused – Appellant

Vs.

Hon. Attorney General

Complainant- Respondent

Before : Menaka Wijesundera J.

B. Sasi Mahendran J.

Counsel : Hafeel Farisz with Sanjeewa Kodithuwakku and Ranjith Samarasekara for the Accused-Appellant.

Chethiya Gunasekara, ASG with Jayalakshi De Silva, SC for the State.

Argued on : 04.12.2023

Decided on : 11.01.2024

MENAKA WIJESUNDERA J.

The instant appeal has been lodged to set aside the judgment dated 9.5.2022 of the High Court of Balapitiya.

The appellant has been indicted for murder under the provisions of the Penal Code.

The appellant has been convicted upon the conclusion of the trial.

The prosecution has led the evidence of the deceased persons son who is an eye witness to the incident.

According to the said witness the deceased had lived with the witness and his two younger brothers, and the witness had been in the Ordinary level class at the time of the incident. On the fateful day the deceased had gone to sleep with the younger two brothers and the witness had gone to sleep a little later in a separate room. On his way to his room, he had switched off the light in the deceased persons room and he had seen the brothers sleeping with the deceased.

A little while later he had heard the deceased shouting and he had gone running to the room of the deceased and he had switched on the light and on doing so he had seen the appellant stabbing the feet of the deceased.

At this point he says that he saw the two younger brothers crying near the fan. He says that he brought the appellant to the drawing room and fought with him further to prevent him from going again to the mother's room. Then he says that

the appellant had fled and when he went for the second time, he saw the deceased entangled in the mosquito net badly injured.

He had immediately run to the relative's house in front and had got their help to take the deceased to the hospital.

According to him the appellant had lived behind their house and there had been a dispute over a roadway between the two parties. The farther comes home during the weekends. All the relatives had corroborated the witness.

The police upon visiting the scene of crime in the wee hours of the same day says that they had observed blood at the scene which is expected and further says that on inspection of the appellants house which is right behind the deceased persons house had observed tiny dots of blood on the verandah around the house of the appellant.

They had further discovered a tea shirt entangled in the fence of the deceased persons house and it had been given to the police sniffer dog Lassi and she had sniffed the same and had gone to the house of the appellant.

The main ground of appeal is that the story for the prosecution is improbable and the trial judge had not considered the same.

The reason for the counsel for the appellant to raise the issue of improbability in the story for the prosecution is that the second son of the deceased had been called by the appellant to give evidence on his behalf , and he had said that at the time of the incident he had been in the year six in school and that on the day of the incident he had woken up for the cries of the younger brother and had seen the mother injured and entangled in the mosquito net and then the elder brother had come in to the room, which means that he had seen only the elder brother inside the room and not the appellant. Hence the Counsel for the appellant urged that the sole eye witness for the prosecution had been kind of hallucinating in the light of the trauma he had been subjected.

But if we may carefully consider the evidence of the defense witness this Court can see that he had woken up for the cries of the younger brother and had seen the mother already injured and he had not seen any person inside the room, which is quite possible because by that time the deceased had been already injured and virtually falling off the bed and at that time the elder son of the deceased had taken the appellant out of the room and had been tussling with him to prevent him from coming in to the room once more.

Hence, we cannot agree with the submission of the Counsel for the appellant that the elder son of the deceased had said an improbable story.

In fact, the relatives who came running had said that the elder boy had said even with them that the appellant had stabbed the deceased.

The recovery of the tea shirt by the police and the reaction of the police dog also sheds further light on the story for prosecution which was unfortunately not brought to our notice by the learned Counsel for the respondents.

The learned trial judge had considered the story of the prosecution and had been very alert to the responsibility of the prosecution in proving their case beyond a reasonable story.

The appellant had made a dock statement and had said that there had been a land dispute between the two parties but had denied any involvement in the incident.

The trial judge had considered the same and had rejected the same which we also think is right because the prosecution had narrated their story through their eye witness and he although subjected to very long cross examination had stood the test quite satisfactorily although there had been minor discrepancies and omissions which the trial judge had very correctly held that has not caused any doubt in the story for the prosecution.

The prosecution witnesses and the defense had spoken of some motive although the learned Counsel for the appellant said that there was no serious motive involved but heavily relied on the improbability of the story for the prosecution.

The trial judge had considered the injuries on the deceased and the way they had been inflicted and had decided that the murderous intention of the appellant was very obvious, and had found him guilty for the charge in the indictment.

It has been held in the case of Kahadagamage Dharmasiri vs The Republic of Sri- Lanka SC Appeal 2-2009 decided on 3.2.2012 by Thilakawardena J that " the Supreme Court accepts the presumption that the trial judge had the benefit of determining the credibility of witnesses both under cross examination and has arrived at a reasonable finding that in the interest of justice ,the Court has overlooked the inconsistencies in the witnesses statements and the evidence at the trial due to various reasons.. and has cited the case of Fattal vs Wallbrook Trustee (jersey) ltd CA (2008) EWCA Civ 427 the Court of Appeal in England and Wales observed that "an appellate court should not interfere with case management decisions by the judge who had applied the correct principles and who had taken in to account matters which should be taken in to account and left out of account matters which are irrelevant". And it has quoted the judgment Ambika Prasad and another vs State of Delhi 2000 SCC Cri 522 where it has said that " a criminal trial is meant for doing justice to the accused victim and the society so that law and order is maintained. A judge does not

preside over a criminal trial merely to see that a no innocent man is punished. A judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties."

As such upon considering the submissions of both sides we are of the opinion that there is evidence to say that the appellant has caused the death of the deceased in a very gruesome manner and thereafter the telemarks at the scene of crime had further implicated him for the charge in the indictment.

As such we have to conclude that the valiant effort of the appellant in denying any involvement had not created any doubt in the story for the prosecution and the trial judge had been correct in concluding that he is guilty for the charge in the indictment.

Hence, we see no merit in the submissions of the Counsel for the appellant as such we dismiss the instant appeal.

JUDGE OF THE COURT OF APPEAL

Hon. Justice B. Sasi Mahendran

I agree.

JUDGE OF THE COURT OF APPEAL