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

In the matter of an application made under and in terms of section 14 of the Judicature Act No. 2 of 1978, section 111 of the High Court of the Provinces Special Provisions Act No. 19 of 1990, read together with section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

CA Case NO:

CA/HCC/108/2023

HC Chilaw Case No: 31/2019

The Democratic Socialist Republic of Sri Lanka

Complainant

V.

Kaunagoda Appuhamilage Anura Lanka Ratnasiri alias Manju

Accused

And Now between

Kaunagoda Appuhamilage Anura Lanka Ratnasiri alias Manju

Accused-Appellant

Vs.

The Attorney General

Attorney General's Department

Colombo 12.

Complainant -Respondent

Before : **B. Sasi Mahendran, J.**
Amal Ranaraja, J

Counsel: Rashmini Indatissa for the Accused- Appellant
Lakmini Girihagama , DSG for the Respondent

Argued On: 12.03.2025

Judgment On: 30.04.2025

JUDGMENT

B. Sasi Mahendran, J.

The Accused- Appellant (hereinafter referred to as the Accused) was indicted before the High Court of Chilaw on the charge of committing the offence of murder of one Jawahir Mohamed Amir on 09.09.2014 punishable under Section 296 of the Penal Code as amended.

The Prosecution led the evidence through eleven witnesses and marking productions from P1 to P5 and thereafter closed its case. The Accused in his defence made a dock statement.

At the conclusion of the trial, the Learned High Court Judge by judgment dated 24.02.2023 found the Accused guilty of murder and imposed the death sentence.

Being aggrieved by the afore-mentioned conviction and the sentence, the Accused has preferred this appeal to this Court.

The following are the grounds of appeal as pleaded by the Accused in his Written Submission.

1. That the Learned Trial Judge failed to consider that PW08's evidence is inconsistent and that therefore, he cannot be considered a credible witness
2. That the Learned Trial Judge failed to consider that PW01's evidence as to how he identified the Appellant based on the statement of the deceased is inconsistent
3. The Learned High Court Judge has not considered the accepted legal principles with regard to dying declarations
4. That the Learned High Court Judge failed to consider the accepted legal principles with regard to circumstantial evidence.
5. The Learned High Court Judge erred in law in holding that the Prosecution has proved its case beyond reasonable doubt
6. That the judgment is a mere recital and does not contain a proper evaluation of the evidence.

According to the evidence placed before the Learned High Court Judge, the prosecution has relied on two dying declarations along with the Accused being arrested with a human blood-stained manna knife on the same day who was hiding.

Before we analyse the evidence placed before the trial Court with regard to dying declarations, it is pertinent to consider how our Courts have considered dying declarations to be accepted as a piece of evidence.

It is pertinent to reproduce the sentiments expressed by His Lordship H.N.G. Fernando J in Queen v. Anthony Pillai 68 CLW 57 with regards to how the Court could act on such dying declarations.

> "The failure on the part of the Learned Trial Judge to caution the jury as to the risk of acting upon a dying declaration, being the statement of a person who is not a witness at the trial, and as to the need to consider with special care the question

whether the statement could be accepted as true and accurate had resulted in a miscarriage of justice."

This dictum was considered by Hos Lordship Sisira de Abrew J in Gamini Mahaarachchi vs. The Attorney General, CA 106/2002, Decided On 22.08.2007, held that:

"When a dying declaration is sought to be produced as an item of evidence against an accused person in a criminal trial. the Trial Judge or the jury as a case may be, must bear in mind on the following weakness;

1. Statement of the deceased person was not made under oath.
2. Statement of the deceased person has not been tested by cross-examination vide King vs. Asirivadan Nadar 51 NLR 322 and Justin Pala vs. Queen 66 NLR 409/
3. That the person who made the dying declaration is not a witness at the trial.

As there are inherent weaknesses in a dying declaration which I have stated above, the trial Judge or the jury as a case may be, must be satisfied beyond reasonable doubt on the following matters;

a. Whether the deceased in fact made such a statement
b. Whether the statement made by the deceased was true and accurate
c. Whether the statement made by the deceased person could be accepted beyond reasonable doubt.
d. Whether the evidence of the witness who testifies about the dying declaration can be accepted beyond reasonable doubt.
e. Whether the witness is telling the truth.
f. Whether the deceased was able to speak at the time the alleged declaration was made.
g. Whether the deceased was able to identify the assailant."

(Similar legal principles related to dying declarations were considered by His Lordship Sisira De Abrew in Ranasinghe v Attorney-General [2007], 1 S.L.R 218)

This was followed by His Lordship Achala Wengappuli J in Korinvige Anura Lakshman Silva alias Pechchei alias Chooti vs. The Attorney General, CA No. 288/2013 decided on 04.05.2018 and held that:

> "It is the contention of the accused-appellant that the dying deposition on which he was convicted fails to satisfy these stringent tests, in view of the inconsistencies referred to above and therefore the prosecution has failed to prove its case against him."

With these authorities in mind, it is pertinent to delve into the facts as revealed at the trial Court in terms of the two dying declarations made by the deceased.

According to PW1, Abdul Sameen Mohamadu Rilwan while he was talking to one Jiffry at around 1.30 PM near Kottaramulla Al-Hira School, he saw the deceased in a three-wheeler driven by PW2. The deceased was bleeding at the time and the deceased said 'මාව කැපුවා'. When the PW1 asked 'මොකද වුනේ', the deceased had replied 'මට මංජු කැපුවා'. According to him, he has identified that the name mentioned as Manju refers to the Accused. The deceased had asked PW1 whether to go to the Police or to the hospital. Then PW1 asked PW2 to take the deceased to the hospital immediately. As stated by PW1, then the deceased was taken to the Marawila Hospital and was transferred to the Colombo General Hospital, and passed away there.

PW1 has given evidence at the post-mortem at the Marawila Magistrates Court.

At the cross examination, PW1 affirmed that he met the deceased near Al-Hira School. He further affirmed that when he asked as to what happened from the deceased, he replied saying 'මට මංජු කැපුවා'. Further, PW1 has stated that there is no one else called Manju in the area other than the Accused.

According to PW8, Jayamaha Hitihamilage Dharmarathna Jayamaha, the Police Officer, when he was the Acting OIC of the Koswatta Police, on 09.09.2014, he received a piece of information through 119. Thereafter, he along with some other officers went to the crime scene at around 2.40 PM. He mentions that there were blood stains on the crime scene. Further according to PW8, a person called Rubin showed the crime scene and the people who had gathered there informed them about the Accused.

He states that after the investigation of the crime scene, the Accused was arrested on the same day at around 2.35 PM according to an information they received. According to him, the Accused tried to escape with a manna knife in his hand and was shivering.
On page 182 of the brief;

"සැකකරු අපි දැකලා පැනලා යාමට අතේ මන්න පිහියක් තියාගෙන ඉදිරියට ගැස්සෙමින්, වෙව්ලමින් පැමිණියා."

Further, he states that the said manna knife was blood-stained.

On page 183 of the brief;

"සැකකරු අතේ මන්නා පිහියක් තිබුණා ලේ තැවරුණු."

We note that the Government Analyst Report marked පැ.3 confirms that the blood in the said knife was human blood.

On page 616 of the brief;

"පැ .1 පිහියෙහි සහ පැ. 4 සරමෙහි මා විසින් රතු පාටින් ලකුණු කරන ලද ප්‍රදේශයන්හි වූ තරමක් ඝන පැල්ලම් මත මිනිස් ලේ හඳුනා ගැනීමට යෙදිනි."

Thereafter, PW8 along with other officers had gone to the Marawila Hospital to see the injured. Then, he asked the deceased as to who did this, the deceased had only replied Manju.

On page 188 of the brief;

"ප්‍ර : ඔබ තුවාලකරුගෙන් මේ සිද්ධියට අදාළ යම් කරුණු අනාවරණය කර ගැනීමක් කරන්න උත්සහ කලාද?

උ : එහෙමයි.

ප්‍ර : කොහොමද?

උ : මේ සිද්ධිය කලේ කව්ද කියලා තුවාලකරුගෙන් විමසීමක් කලා.

ප්‍ර : ඒ අවස්ථාවේදී ඔබට යම්කිසි පිලිතුරක් ලැබුනාද?

උ : එහෙමයි තුවාලකරු මංජු කියා පමණක් කියා සිටියා."

Later, the deceased was transferred to the Colombo General Hospital.

At the examination in chief, PW8 identified the manna knife recovered from the Accused at the time of the arrest which was marked as පැ.1.

During the cross-examination, he affirmed that Rubin was the one who showed them the crime scene. Further, he affirmed that through a private spy, they received the information about the Accused. PW8 states that they came to know while inspecting the

deceased that the deceased had met a person called Iruwan on the way and had told him that it was Manju who caused injuries to him. Further, he affirmed the position that when he asked the deceased as to what happened, he mentioned the name of Manju.

When we consider both witnesses, there is no reason for us to dispute their versions as on the same day the Accused was arrested with a human blood-stained manna knife. We are also mindful that PW8 who was a Police Officer had initially gone to the crime scene and thereafter arrested the Accused with a human blood-stained manna knife. Thereafter he had gone to the hospital and there only the deceased had told him what happened.

There is no reason for PW1 and PW8 to implicate against the Accused. We also note that PW1 was consistent in his evidence. Further, his evidence was corroborated by PW2 that he saw the deceased talking to PW1 when he was inside the three-wheeler.

According to PW4, S.D. Malawirachchi, the Judicial Medical Officer, there were several deep-cut injuries on the face and neck area of the deceased. Injury No. 1 was a 16cm long and 1cm deep injury which had cut a bone in the face. Further there were around more than 10 injuries which were more than 5 cm in length. Further, injuries no. 1,3,7 and 8 were deep-cut injuries that had caused heavy blood flow and were life-threatening. Further, she has testified that according to the hospital reports, the deceased had a healthy, conscious mind when taken to the General Hospital.

On page 308 of the brief;

> "ප්‍ර : එතකොට වෛද්‍යතුමියනි ඔබ ප්‍රකාශ කළා රෝගියා ජාතික රෝහලට ගෙන එන කොටත් සිහි කල්පනාව තිබූ බවට ?
>
> උ : එහෙමයි.
>
> ප්‍ර : මතයක් ප්‍රකාශ කරන්න පුලුවන්ද ඔහුට කතා කිරීමට හෝ ප්‍රකාශයක් ලබා දීමට තරම් සෞඛ්‍ය තත්ත්වයක් ඒ අවස්ථාවේදී තිබුනාද කියන කරුණ ගැන?
>
> උ : ස්වාමීනි රෝගියාට කතා කිරීමේ හැකියාව තිබෙන්න පුළුවන්. මොකද මාරවිල රෝහලෙන් පැහැදිලි සටහනක් දාලා තිබෙනවා. හොඳ සිහි කල්පනාව තිබූ බවට conscious rational ලෙස විශේෂයෙන් වෛද්‍යවරයෙකු සටහන් තබා තිබෙනවා. ඊට අමතරව ස්නායු පද්ධතිය සම්බන්ධයෙන් සම්පූර්ණයෙන් හොඳ ක්‍රියාකාරී තත්ත්වයන් තිබූ බවට සටහන් යොදා තිබෙනවා. ජාතික රෝහලට ඇතුලත් කිරීමේදී එම ස්නායු පද්ධතිය සම්පූර්ණයෙන් ක්‍රියාකාරී තත්ත්වයෙන් තිබුනා. සාමාන්‍යයෙන් කහිනවා. කතා

කරනවා. වැනි වෛද්‍යමය සලකුණු යොදා තිබෙනවා. ඒ අනුව රෝගියාට කතා කිරීමේ හැකියාව පැහැදිලිව ප්‍රකාශ කිරීමේ හැකියාවක් තිබෙනවා."

Further, on page 315 of the brief;

"ප්‍ර : ඔබ මුලින් පකාශ කළා මාරවිල රෝහලේ සටහන් යොදා තිබෙනවා කියා මෙම රෝගියා සිහි කල්පනාවෙන් සිටියා කියා?

උ : එහෙමයි . ස්වාමිනි මාරවිල රෝහලෙන් සටහන් ඒවා තිබුනා. මාරවිල රෝහලේ ජාතික රෝහලට මාරු කර යැවීමේදී සටහන් පතක්. මෙය පැහැදිලිව සටහන් කර තිබෙනවා. රෝගියා හොඳ සිහි කල්පනාවෙන් සිටිය පුද්ගලයෙක්ව සිටි බවට. මොකද වෛද්‍යවරුන්ට වගකීමක් තිබෙනවා. රෝගියාගේ ආරම්භක තත්ත්වය ඊළඟ රෝහලට දැනුම් දීම. ගොඩ අසාධ්‍ය නම් වෛද්‍යවරයෙක් සහ හෙදියක් රොගියා සමඟ පැමිණෙනවා. ඒ නිසා නිත්‍යානුකූලව සටහන යොදනවා. රෝගියාගේ තත්ත්වය සම්බන්ධයෙන්. එතකොට රෝගියාගේ තත්ත්වය සම්බන්ධයෙන් යොදා තිබෙන සටහන් අනුව පැහැදිලිව දක්වා තිබෙනවා. මාරවිල රෝහලේ ලියා පදිංචි අංක 27235 වාට්ටු අංක 03 සිට ජාතික රෝහලට ඒවා ඇත. 2004.09.09 වෛද්‍යවරයකු විසින් සටහන් යොදා තිබෙනවා. එහි සටහනක් යොදා තිබෙනවා. concious rational ඊට අමතරව සටහනක් යොදා තිබෙනවා. GCS 15/15 එම සටහනේ දැක්වෙන්නේ ස්නායු පද්ධතියේ පරීක්ෂාවක් GCS 15/15 එම පරීක්ෂණයේදී සාමාන්‍යයෙන් ඇස් දෙක අරින්න පුළුවන්. කතා කරන්නේ නැතිව ඇස් පිල්ලන් ගසන්න පුළුවන්. සාමාන්‍ය විදියට කතා කලොත් කතා කරනවා. නම මොකද්ද කිව්වොත් නම කියනවා. අත උස්සන්න කිව්වොත් අත උස්සනවා. සාමාන්‍යයෙන් වෛදයවරෙකුට සාමාන්‍ය ප්‍රතිචාරයක් සක්වනවා. ඒ වගේම සාමාන්‍ය සම්පූර්ණ ප්‍රතිචාර දැක්වීමේ හැකියාවක් තිබෙන රෝගියෙක් තමයි මාරවිල රෝහලෙන් ජාතික රෝහලට ඒවා තිබෙන්නේ. ඒ කියන්නේ පැහැදිලි වෛද්‍ය සටහනක් තිබෙනවා. ඒ වගේම පෙනහළු රුධිර පීඩනය ගැන සටහනක් දමා තිබෙනවා. ඉතාමත් සාමාන්‍ය තත්ත්වයේ තිබිල තිබෙනවා. හර්ද ස්පන්දනය ගැන සටහනක් තිබෙනවා. එයත් සාමාන්‍ය තත්ත්වයෙන් තිබෙනවා. පෙනහළුවල ක්‍රියාකාරිත්වය ගැන සටහනක් දාලා තිබෙනවා. ඉතා හොඳ තත්වයේ තිබී තිබෙනවා."

The medical evidence substantiates that the deceased was in a conscious mind when he was transferred to the General Hospital. Therefore, it is clear that the statements made by the deceased to both PW1 and PW8 before being transferred to the General Hospital were made when the deceased was in a present mind. Further, according to PW4, the deceased could speak. We are also mindful that PW2 had seen the deceased talking to PW1.

Thus, there is no reason for us to disbelieve that the deceased made the said dying declarations.

Therefore, the Learned High Court Judge had considered the principles related to dying declarations laid in the above judgments and correctly had come to the conclusion that the Prosecution had established that the evidence of the witnesses, PW1 and PW8 who testified about the dying declaration could be accepted beyond reasonable doubt. There is no reason for us to dispute this decision.

Further, PW4, the Judicial Medical Officer who conducted the post-mortem had observed that, injuries 1,3,7,8,11,12,13,14,15 which are deep cut injuries, especially 1,3,7, and 8 are associated with a cut of bone suggesting the application of moderate to severe force in the head, face, and neck area. It shows that the Accused had the intention to cause the injuries that he knew, it would be likely to cause death. Thus, through this evidence, the Court can come to the conclusion that the Accused had the *mens rea* to cause the death of the deceased.

In King vs. Thajudeen 6 NLR 16 at page 19, His Lordship Bonser CJ has held that;

> "But it was urged that they did not intend to break the man's rib and therefore they could not be convicted of grievous hurt. No doubt they had not in their mind at the time they struck him their baton and with their fists any definite idea that they were going to break his ribs or any particular rib; but when people cause injuries to a man, their intent must be judges by the result of their action. They must be deemed in law to have intended what they did."

In the instant case, through the nature of the injuries caused to the deceased, the Court can come to the conclusion that the Prosecution has established that the Accused had the intention to cause bodily injuries knowing it would be likely to cause death.

The fact remains that when the Accused was arrested, he had a human blood-stained knife. Further, when he faced the trial, there were two dying declarations implicating that the Accused caused the injuries to the deceased.

The question then arises as to what the explanation given by the accused is against the said incriminating evidence. We note that he merely denied the charge and stated as follows from the dock:

On page 341 – 342 of the brief;

> **"**මම කරුණාගොඩ අප්පුහාමිලාගේ අනුරලංකා රත්නසිරි. මම මේ සිද්ධියට කිසිම සම්බන්ධයක් නැහැ. මම ඒ සිද්ධිය වුනා කියන දවසෙත් වැඩට ගිහින් හිටියේ. මම රැකියාව හැටියට කරන්නේ කුලී වැඩ. මේ සිද්ධිය සිදු වුනා කියන දවසෙත් මම වත්තක් සුද්ද කරන්න ගිහින් හිටියේ. කිසිම හේතුවක් නැතුව පොලිසියෙන් ඇවිල්ලා මාව අත්අඩංගුවට අරගෙන මාව මේ නඩුවට සම්බන්ධ කළා. මේ මිය ගිහින් තිබෙන පුද්ගලයි, මගෙයි අතර කිසිම තරහක් මතභේදයක් තිබුනේ නැහැ. මම මේ චෝදනාවට නිර්දෝෂී. මට කීමට ඇත්තේ එපමණයි."

We note that the Accused's defence was the denial of the offence.

The Learned High Court Judge has rejected this evidence of the Accused.

We are mindful that our Courts have held that when evaluating a dock statement of the Accused if he raises reasonable doubt in the prosecution case, the defence of the Accused must succeed.

When incriminating evidence is placed against the Accused, our Courts expect the Accused to give the Court an explanation.

At this stage, it is pertinent to reproduce the dictum of Lord Ellenborough in R Vs. Lord Cochrane and others (1814 Gurney's Report 479):

> "No person accused of crime is bound to offer any explanation of his conduct or of circumstances of suspicion which attach to him; but, nevertheless, if he refuses to do so, where a strong prima facie case has been made out, and when it is in his own power to offer evidence, if such exist, in explanation of such suspicious circumstances which would show them to be fallacious and explicable consistently with his innocence, it is a reasonable and justifiable conclusion that he refrains from doing so only from the conviction that the evidence so suppressed or not adduced would operate adversely to his interest."

The above dictum was followed by our Courts in the following judgments.

In Sumanasena vs. Attorney General (1999) 3 SLR 137, His Lordship Justice Jayasuriya held thus;

> "When the prosecution establishes a strong and incriminating evidence against the accused, the accused in those circumstances was required in law to offer an explanation of the highly incriminating circumstances established against him."

In Baddewithana vs. The Attorney General (1990) 1 SLR 275, His Lordship Justice P.R.P. Perera held thus;

> "From the failure of an accused to offer evidence when a prima facie case has been made out by the prosecution and the accused is in a position to offer an explanation, an adverse inference may be drawn under S. 114 (f) of the Evidence Ordinance."

In Aruna Alias Podi Raja v. Attorney General, 2011 2 SLR 44, His Lordship Justice Sisira De Abrew held that:

> "When prosecution established a strong incriminating evidence against an accused in a criminal case the accused in those circumstances is required to offer an explanation of the highly incriminating evidence established against him and the failure to offer such explanation suggests that he has no explanation to offer."

Considering the above judicial decisions, we hold that the Accused failed to offer an explanation against the evidence placed against him. According to the evidence, the Accused was arrested with a blood-stained manna knife. Further, according to PW1 and PW8, the deceased had made two dying declarations to the effect that it is the Accused who caused injuries to the deceased. Already we have indicated that there is no reason to disbelieve the said dying declarations.

We hold that the Learned High Court has properly evaluated the testimonial trustworthiness of PW1 and PW8 to whom the dying declarations were made and had arrived at the correct finding with regard to the dying declarations.

Considering the above evidence and the judicial decisions, we therefore hold that the Learned High Court Judge has correctly applied the principles governing the dying declarations.

For the above-said reasons, we affirm the conviction and the sentence and dismiss the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL