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 Section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

CA-HCC/274/2023

HC of Vavuniya Case No: 2821/2019

Jesuthasan Elengeswaran

Accused-Appellant

Vs.

The Attorney General

Attorney General's Department,

Colombo 12.

Respondent

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

Counsel: K. Kugaraja for the Accused-Appellants
Jayalakshi de Silva, SSC For the Respondents.

Argued On: 28.04.2025

Written Submissions: 07.10.2024 (by the Accused-Appellant)

On

Judgment On: 29.05.2025

JUDGMENT

B. Sasi Mahendran, J.

The Accused- Appellant (hereinafter referred to as the Accused) along with another was indicted before the High Court of Vavuniya on the charge of committing the offence of murder of one Sadasivam Kuganandan on 28.01.2013, punishable under Section 296 of the Penal Code.

The Prosecution led the evidence through fourteen witnesses and marking productions from P1 to P9 and thereafter closed its case. The Accused in their defence made dock statements. At the conclusion of the trial, the Learned High Court Judge by judgment dated 01.06.2023 found the 1st Accused guilty of murder and imposed the death sentence and acquitted the 2nd Accused.

Being aggrieved by the afore-mentioned conviction and the sentence, the 1st Accused has preferred this appeal to this Court.

The following are the grounds of appeal as pleaded by the Accused;

1. Conviction is wholly unsafe in view of the uncertainty and ambiguity attached to the blood sample alleged to have been taken from the deceased's body.
2. Learned Trial Judge has failed to consider the inherent weakness of the prosecution case.
3. Learned Trial Judge has erred in law by examining the defence evidence in the light of the prosecution evidence which tantamounts to shifting the burden of proof to the appellant.
4. Prosecution has not eliminated the possibility of an accident being the reason for the death of the deceased.
5. PW03 is not a credible witness on whose testimony the conviction is based on.

6. Items of circumstantial evidence are wholly inadequate to support the conviction.
7. Learned Trial Judge has failed to apply the principles governing the evaluation of circumstantial evidence cases.

The facts and the circumstances are as follows:

The deceased was a three-wheeler driver and according to the evidence, the wife of the deceased had received a call at around 2 AM on 29.01.2013 stating that the deceased had met with an accident. As per the evidence, the deceased was lying dead near the Marakarampalai School, and the Police were already there when the wife and the son of the deceased reached the scene.

Later, the two Accused, who were also three-wheeler drivers, were arrested along with their three-wheelers NPYQ 4624 and NPYJ 9288. The three-wheeler bearing number NPYQ 4624 had blood stains on the black carpet near the driver's seat and, number plate.

According to the medical evidence, the injuries of the deceased could have been caused by a blunt force or the deceased would have had a heavy fall during which that injury could have occurred.

The blood sample marked ඊ1 01 was the blood sample of the deceased and samples marked from ඊ1 02 to ඊ1 05 were the blood samples found from the scene. These samples were sent for DNA testing through the Magistrate Court. According to the expert evidence, the DNA report reveals that the blood samples found from the scene are consistent with originating from a single source and match with the blood samples of the deceased.

The Learned High Court Judge convicted and sentenced the Accused to death based on the DNA report that the blood found in the three-wheeler of the 1st Accused was of the deceased.

When we consider the evidence of P12, Attanayake, he has stated that he took the blood samples from the place where the deceased's body was lying. He specifically stated that he never obtained any blood samples from the deceased's body. But the Learned High Court Judge misdirected himself that the sample was from the body of the deceased. The particular DNA report was based on the blood sample of the deceased. However, there is no evidence to show that the blood samples were obtained from the deceased's body.

There is no direct evidence against the Accused. This case is solely based on circumstantial evidence.

Thus, it is pertinent to consider the rules governing the cases of circumstantial evidence.

E.R.S.R. Coomaraswamy, *The Law of Evidence*, Page 25:

> "In Sri Lanka, the rule that in order to justify the inference of guilt from purely circumstantial evidence, the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation on any other reasonable hypothesis than that of his guilt, has been repeatedly emphasized and applied by our courts. Thus, in a case based entirely on circumstantial evidence, the fact that the deceased was last seen alive in the company of the deceased would not of itself justify a conviction, where the exact time of death is not established, nor would the fact that the

accused subsequently attempted to dispose of a weapon which might have caused the injuries on the deceased. Again, where the only evidence against two accused, indicted for murder, was that they had the opportunity of committing the offence either jointly or individually and that after the discovery of the body, they absconded and were not apprehended for three years, the verdict of guilty was held to be unreasonable."

In B.R.R.A. Jagath Pramawansha v. The Attorney General, CA Appeal No. 173/2005, decided on 19.03.2009, His Lordship Justice Sisira de Abrew held that;

"The case for the prosecution depended on circumstantial evidence. Therefore it is necessary to consider the principles governing cases of circumstantial evidence. In King v. Abeywicrama 44 NLR 254 Soertsz J remarked thus: "In order to base a conviction on circumstantial evidence the Jury must be satisfied that the evidence was consistent with the guilt of the accused and inconsistent with any reasonable hypothesis of this innocence."

In King v. Appuhamy 46 NLR 128 Kueneman J held thus: " in order to justify the inference of guilt from purely circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable-hypothesis the that of his guilt."

In Podisingho v. King 53 NLR 49 Dias J remarked thus: "That in a case of circumstantial evidence it is the duty of the trial Judge to tell the Jury that

such evidence must be totally inconsistent with the innocence of the accused and must only be consistent with his guilt."

Having regard to the principles laid down in the above judicial decisions, I hold that in a case of circumstantial evidence, if an inference of guilt is to be drawn, such an inference must be the one and only irresistible and inescapably conclusion that the accused committed the offence. When the evidence adduced at the trial is considered, the one and only irresistible and inescapable conclusion that can be arrived at is that the accused committed the murder of Prema Jayawardwene."

His Lordship Justice Aluwihare, PC, in Junaideen Mohamed Haaris v. Attorney General, SC Appeal 118/17, Decided on 09.11.2018 held that:

"Before I consider the facts of the case and the legal issues raised in this appeal, it should be borne in mind that the prosecution relied entirely on circumstantial evidence to establish the charges, for the reason that there were no eyewitnesses to substantiate any of the charges against the Accused-Appellant. 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-

i. The inference sought to be drawn must be consistent with all the proved facts, if it is not, then the inference cannot be drawn.

ii. 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 vs. Blom 1939 A.D. 188)"

In light of the above judicial pronouncements, what I understand is that the available evidence should be reliable and the said evidence and the circumstances so proved must form a chain of events from which the only irresistible and inescapable inference that the Court can arrive at is about the guilt of the accused that can be said to be drawn and no other hypothesis against the guilt is possible. The Court must satisfy itself that various circumstances in the chain of events must be such as to rule out reasonable likelihood of the innocence of the Accused. We are also mindful that there is always a duty cast on the Prosecution to prove the case beyond reasonable doubt. That means, in the words of Lord Denning in Miller vs. Minister of Pensions, 1947 All England Law Reports, p. 372, "Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The Law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice."

By doing so, the Court will be mindful not to allow the suspicious circumstances which may allow the Prosecution to strengthen their case.

The entire case is based on the blood samples taken by PW12, tallying with the blood samples taken from the 1st Accused's three-wheeler. The question before us

is what the evidential value of that blood sample, which was taken from the place where the deceased was lying in fact, belongs to the deceased.

The said SOCO officer has clearly stated that he had not taken any blood samples from the deceased's body. He has taken from the place where the deceased's body was lying.

At page 247 of the translated brief;

> " Q: However, you had not obtained the specimen of the blood that was bleeding from the head.
>
> A: Yes. No blood had been taken from the body of the deceased person. The specimens were taken from the place where the body was found lying.

There is a serious doubt created about the exclusiveness of the said blood sample.

Further, the prosecution has failed to prove the cause of the death. The Judicial Medical Officer, when he gave evidence has stated that the injuries would have been caused due to an accident.

At page 112 of the translated brief;

> "Q: Can you explain the conclusion that you arrived at, to this Court as to how the internal injury that was categorized by you found on the left head could occur under what type of an attack?
>
> A: When the deceased person had been subjected to a very strong attack and or that deceased person, if he had fallen down and when a force becomes heavy through that fall, such a death could take place."

From this evidence, the Prosecution has failed to establish that the death was due to the internal injuries which would have been caused by the Accused.

When we consider the above evidence, we are of the view that the Prosecution has failed to establish the guilt of the Accused beyond reasonable doubt.

Therefore, we allow the appeal.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.
I AGREE

JUDGE OF THE COURT OF APPEAL