AMARASEKERE
v.
ATTORNEY-GENERAL

COURT OF APPEAL
ISMAIL, J.,
DE SILVA, J.
C.A. NO. 53/96
H.C. GAMPAHA NO. 41/95
NOVEMBER 11 AND 21, 1997.

Murder – Code of Criminal Procedure Code – S. 203, S. 283 (1) – Trial without a Jury – Verdict – Duty to give reasons.

The accused-appellant was indicted with the murder of his brother before the High Court Judge sitting without a jury – Accused was sentenced to death after trial.

It was contended in appeal that the trial judge had erred in law by failing to indicate in his order that he had considered all the relevant and material points, and further failed to indicate in his judgment that he was in fact alive to the points of law requiring determination.

Held:

1. This was a trial without a jury and hence the trial judge was not required to lay down the law as in the case of a trial before a jury.

2. The trial judge in a trial without a jury had to record a verdict giving his reasons as provided for under S. 203 Criminal Procedure Code.

3. Having regard to the principles set out above, it appears that the trial judge has complied with the provisions of S. 283. Crimind Procedure Code.

APPEAL from the judgment of the High Court of Gampaha.

Cases referred to:

1. *Thiagaraja v. Annakoddai Police* – 50 NLR 107 at 111.
2. *Haramanis Appuhamy v. IP Bandaragama* – 66 NLR 526.
3. *Ibrahim v. IP Ratnapura* – 59 NLR 235.
4. *Karunaratne v. The Queen* – 69 NLR 10 at 17.
5. *Mukhtiar v. State of Punjab* – 1995 Supreme Court cases (Cri) 296.
6. *State of Andra Pradhesh v. Gowthu Ranghunayakulu and others* – 1995 Supreme Court cases (Cri) 540.

Dr. Ranjit Fernando with *Ms. Anoja Jayaratne* for accused-appellant.

Kapila Waidyaratne, SSC for AG.

Cur. adv. vult.

December 15, 1997.

ISMAIL, J.

The accused-appellant was indicted with the murder of his brother Ganeachi Pathirannehelage Upasena on 12th July '92 at Happitya and was tried before the High Court Judge sitting without jury in the High Court, Gampaha. The trial commenced on 5.3.96. The witnesses for the prosecution were Jayakody Aratchilage Heya Nona, the aged mother of the deceased; Ganeachi Pathirannehelage Nandasena, a brother of the deceased; SI Thilakasiri Perera, the investigating officer; and Dr. N. A. Gunatilleke, who performed the post-mortem examination. The accused did not give evidence or make a statement from the dock. He was found guilty and was convicted of the charge. He was sentenced to death. The reasons have been set out by the trial judge in his judgment dated 1.4.96. This appeal is against the said conviction and sentence.

The deceased is a younger brother of the accused. They are two of seven sons in the family. Their father died several years ago. The eldest son had died of natural causes while the youngest of them had also been killed earlier. The deceased was engaged in paddy cultivation with another brother in Rajangana but he had come back to look after their 93-year old mother Heya Nona, the only eyewitness to this killing.

Heya Nona lived separately in a hut with her deceased son in this land planted with coconut trees. The land was undivided and was jointly owned by them. The accused and his family occupied the parental house which was about 100 yards away. Heya Nona had vacated this house due to certain differences with him.

Heya Nona appears to have been active for her age because on the evening of the date of this incident she had gone out alone to the boutique to buy tea leaves and sugar and had returned at about 5 pm. The deceased son Upasena had returned earlier after work at about 4 pm. He was lying down on an improvised bed in the hut talking to his mother who was seated on the floor. The bed on which the deceased was lying could be seen from outside the hut. The time was about 6.30 pm. The evidence of Heya Nona is that she saw the accused walking across the compound. She spoke to him but he went without replying her. She stated that the deceased Upasena too, had asked him why he was going without speaking. About three minutes later the accused came into the hut and in her presence cut the deceased who was lying down several times. He then went away. The deceased had not spoken and appears to have died immediately. The mother Heya Nona came out of the hut and raised cries. She cried out towards the house beyond the field where her son Nandasena was living.

Dr. Gunatilleke who did the post-mortem examination found the following injuries on the body of the deceased:

1. 7" long 1 1/2" deep 1/2" wide cut, which extended from the left side of the forehead backward on the left aspect of the head above the ear cutting the scalp, skull and brain matter.

2. 6 1/2" long 1 1/2" deep 1/2" wide cut, running parallel and 1/2" 1/2" below the injury No. 1 cutting the scalp, bone and brain matter.

3. 8" long 2" deep (at the centre) and 1" wide cut parallel and 1" below injury No. 2 extending from the mid nose on the left aspect of the face backward cutting the ear at the middle, the skull and brain matter."

The cause of death in the opinion of Dr. Gunatilleke was cranio-cereberal injuries caused by a sharp cutting weapon.

Learned counsel for the accused-appellant submitted that the trial judge had erred in law by failing to indicate in his order that he had considered all the relevant and material points on the facts arising for and needing determination. It was submitted that the trial Judge had failed to determine the probative value of the unsupported evidence of the sole witness with failing faculties in the light of her hostility towards the accused. It was pointed out that the accused himself had made no attempt to abscond and that he was arrested in the same garden a few hours later. However, it appears from his judgment that the trial Judge had no hesitation in accepting the evidence of Heya Nona. Although she has given her age as 93 at the time she gave evidence she has withstood the lengthy cross-examination by the defence counsel. She has been consistent in her evidence. Her evidence has been corroborated to a great extent by the evidence of her son Nandasena. He confirmed that his mother raised cries and that when he went there, that she had told him that the accused, his brother Amarasekere, had attacked the deceased several times. The defence has failed to give any convincing reason as to why the 93-year old mother of the accused would want to implicate him in the murder of another son.

It was also submitted that the trial judge had failed to address his mind to the significance of Nandasena's evidence. It was pointed out that Nandasena had failed to tell the police that his mother Heya Nona had told him that the accused Amerasekera had attacked his brother. The evidence of Nandasena is that he had heard from two persons named Bandula and Wasantha that his mother had raised cries that Amerasekera had attacked the deceased. Nanadasena went there a little while later at about 8 pm when it was dark, taking with him a torch and a manna knife, possibly for his protection. Nandasena

was consistent in his evidence and stated that he did not see the incident but confirmed that his mother told him when he went there that his brother Amerasekera had attacked the deceased. His failure to disclose to the police that his mother had told him that Amarasekera attacked the deceased cannot be a factor which could be used to discredit the evidence of either his mother or himself. It appears from the judgment that the trial judge has evaluated and analysed the principal points in the evidence of the main witnesses and the submission in this regard by the defence counsel cannot therefore be accepted.

The next submission was that the trial judge erred in law by failing to indicate in his judgment that he was in fact alive to the points of law requiring determination, thereby failing to comply with the provisions of section 283 (1) of the Code of Criminal Procedure Act. This was a trial without a jury and hence the trial judge was not required to lay down the law as in the case of a trial before a jury. The trial judge in this instance of a trial without a jury had to record a verdict giving his reasons as provided for in section 203 of the Code of Criminal Procedure Act. The Code does not define a judgment but in interpreting the provisions of section 283 (1) of the Code dealing with judgments of trial courts, the need to set out the reasons for a decision has been emphasized in several judgments. – see *Thiagarajh v. Annakoddai Police*[1] at 111; *Haramanis Appuhamy v. IP Bandaragama*[2]; *Ibrahim v. IP Ratnapura*[3].

T. S. Fernando, J. in *Karunaratne v. The Queen*[4] at 17, observed that: "in a case of importance to persons charged and prosecution alike, and a bribery case is invariably one such, a trial judge owes a duty to the parties to address himself with care to all the points particularly those on which an appeal lies to this court".

Learned counsel for the accused-appellant has also cited two Indian decisions, the first being *Mukhtiar v. State of Punjab*[5], in which the judgment of the trial court was not sustained for the following reasons:

> "The *trial court appears to have been blissfully ignorant of* the requirements of section 354 (1) (*b*) CPC. Since, the first appeal

lay to the Supreme Court, the trial court should have reproduced and discussed at least the essential parts of the evidence of the witnesses besides recording the submissions made at the bar to enable the appellate court to know the basis on which the 'decision' is based. A 'decision' does not merely mean the 'conclusion' – it embraces within its fold the reasons which form the basis for arriving at the 'conclusions'. The judgment of the trial court contains only the conclusions and nothing more. The judgment of the trial court cannot, therefore, be sustained".

In the other Indian case of *State of Andhra Pradhesh v. Gowthu Ranghunayakulu and others*[6], the Sessions Judge had perfunctorily come to the finding that the prosecution has failed to prove its case beyond doubt, without a proper appraisal and marshalling of the evidence. It was held that: "in the absence of a proper formulation of the points for decision, the examination of evidence and specific pointwise finding, the judgment was not in accordance with section 354 and not proper".

Having regard to the principles set out above and upon a careful consideration of the judgment in the present case, it appears to me that the trial judge has complied with the provisions of section 283 of the Code of Criminal Procedure Act. He has set out the charge and has dealt with the evidence of the principal witnesses in relation to it and has set out the reasons for his decision in finding the accused guilty. The submissions of defence counsel cannot therefore be accepted.

The conviction and the sentence are affirmed. The appeal is dismissed.

DE SILVA, J. – I agree.

Appeal dismissed.