

13/1962

IN THE PRIVY COUNCIL

No. 27 of 1961

ON APPEAL FROM  
THE COURT OF CRIMINAL APPEAL OF CEYLON

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
30 MAR 1963  
25 RUSSELL SQUARE  
LONDON, W.C.1.

B E T W E E N :

JAYALAL ANANDAGODA

Appellant

- and -

THE QUEEN

Respondent

68242

CASE FOR THE RESPONDENT

Record

10 1. This is an appeal by Special Leave of the Privy Council dated the 26th day of June 1961 from a judgment of the Court of Criminal Appeal of Ceylon dated the 4th day of August 1960, which dismissed an appeal against the conviction of the Appellant of murder by the Supreme Court of Ceylon, at Anuradhapura, First Midland Circuit, on the 27th day of May 1960.

Pt.I, p.1268.

20 2. The principal question raised by this appeal is whether certain statements made by the Appellant to a police officer and admitted in evidence were confessions within the meaning of section 25 of the Evidence Ordinance which states, "No confession made to a police officer shall be proved as against a person accused of any offence".

3. The Appellant, who was the first accused, was tried with two others on the following charges:-

30 "1. That between the 2nd day of March, 1959 and the 15th day of March, 1959, at Timbiriwewa, in the division of Anuradhapura, within the jurisdiction of this Court, and at Kalutara, Kalawellawa, Colombo, Puttalam and other places, you did agree to commit or abet or act together with a common purpose for or in committing or abetting an offence, to wit,

Pt.II, p.16.

Record

the murder of one Adeline Vitharana and that you are thereby guilty of the offence of conspiracy for the commission or abetment of the said offence of murder in consequence of which conspiracy the said offence of murder was committed and that you have thereby committed an offence punishable under Section 296 of the Penal Code read with Sections 113B and 102 of the said Code.

2. That on or about the 14th day of March, 1959, at Timbiriwewa, within the jurisdiction of this Court, you did in the course of the same transaction commit murder by causing the death of the said Adeline Vitharana and that you have thereby committed an offence punishable under Section 296 of the Penal Code."

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4. The indictment against the third accused was withdrawn by the Crown at the close of the prosecution case.

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5. The Appellant and the second accused were found not guilty on the first Count by a unanimous verdict of the jury.

6. The Appellant was found guilty by a majority verdict of six to one and the second accused found not guilty by a majority verdict of five to two on the second Count.

Pt.I, p.2.

7. At the commencement of the trial counsel for the Appellant applied for a separate trial on the grounds that the second accused had made statements implicating the Appellant, but this was refused.

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8. Evidence was called by the prosecution to show:

(1) that the Appellant had become acquainted with the deceased girl about November 1956; that she had known him by the name Lal Atapattu; that she had become his mistress and bore him a child in August 1957; that she continued to live apart from him and to address her letters to an address furnished by him, which was not his own;

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(2) that the Appellant had made the acquaintance of a girl of better social and financial standing than the deceased with whom he intended to contract a marriage;

(3) that from August 1957 until June 1958 the Appellant did not contact the deceased and she was unable to discover his whereabouts and that in June 1958 she discovered his true identity and he began to send her money;

10 (4) that in November 1958 the Appellant called for the deceased and took her to stay with one Millie Fernando, whom he incorrectly described as his mother, but who in fact was a woman of bad character; that he promised to marry the deceased, but that he left her at Millie Fernando's house and failed to return, so that the deceased returned home;

(5) that on the 11th January 1959 the Appellant said to the elder sister of the deceased "Look here, if your sister is prepared to sever connection with me, I am prepared to give her Rs.3000/-";

20 (6) that on the 19th day of January the deceased wrote a letter to the Principal of Gnanodaya College, where the Appellant was employed as a teacher stating that the Appellant was the father of her child, that she had again conceived by him, that he had promised to marry her, but was not doing so, and that she proposed to complain about him to the Director of Education; that this letter was shown to the Appellant;

30 (7) that on the 2nd March the deceased left her home intending to see the Appellant at Kalutara to obtain some money and to visit her father who was ill at Gonagala;

(8) that the deceased was seen in Kalutara and that the Appellant picked her up there in a car;

40 (9) that the same evening the deceased was seen in a village called Kalawella apparently staying with one Alosingho and his family; that during the next seven days the Appellant was seen in the neighbourhood and that on the 14th day of March the Appellant was seen to pick up the deceased from the house of Alosingho and with the second accused drive off in the direction of Horana;

Record

(10) that the Appellant was seen with the deceased and second accused at Horana Petrol Shed about 2.30 p.m. on the 14th March and they purchased four gallons of petrol;

(11) that about 9.30 p.m. the first and second accused were seen with a lady 'appearing' to be the deceased at the Taj Mahal Hotel, Puttalam;

(12) that between 12 and 12.30 a.m. on the morning of the 15th March the body of the deceased was found on the Puttalam - Anurahapura road about 27½ miles from Puttalam; that her body had suffered multiple injuries consistent with being run over by a car more than once; that she was found to be pregnant;

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(13) that on the 15th day of March the Appellant hired a car in Colombo and travelled a distance of 277 miles this being sufficient to make a trip to the point at which the body of the deceased was discovered;

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(14) that the Appellant had caused his car to be serviced on the 16th March, but that subsequently four hairs similar to (but not proved to have been identical with) the hair of the deceased were found adhering to the undercarriage of his car.

9. In addition the following evidence of Inspector Dharmaratna was given:-

Pt.I, p.1203,  
1.25 - p.1205,  
1.5.

"Q. And at about 10.10 a.m. on the 22nd March the first accused made a statement to you?

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A. Yes.

Q. Did the first accused tell you his relationship with Adeline Vitharana?

(Mr. Saravanmuthu [Counsel for the Appellant] objects. Over-ruled).

A. Yes, he told me that Adeline Vitharana was his mistress for about 2 or 3 years and she has a child by him.

Q. Did he tell you anything about any request made to him by Adeline Vitharana?

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A. Yes. He said that Adeline was insisting that he should get married to her but he was putting it off.

Q. Did he tell you what Adeline Vitharana's attitude to him after that was?

A. He said that Adeline Vitharana was disgracing him and that she was an unbearable nuisance to him.

10 Q. Did he tell you anything of what happened on the 2nd March 1959?

(Mr. Saravanamuthu: I object on the ground that it is a leading question.)

Court: Q. I do not think it is. I overrule that objection.)

20 A. He said Adeline Vitharana came and saw him at Kalutara on the 2nd March and that he took her to Kalawellawa on that day and left her in the house of Podisingho. No. I am sorry. (Mr. Saravanamuthu: I object to the reference to the book.)

Court: Q. How can you object?).

A. He said he left her at a place at Kalawellawa.

Q. Did he tell you where he was on the 14th of March 1959?

30 A. He told me that on the 14th March he started in his car with Adeline Vitharana, the second accused Podisingho for Anuradhapura via Puttalam. They reached a Muslim hotel at Puttalam between 8 and 9 p.m.

Q. Did he tell you what he did on the 15th March?

A. Yes. He said he got a red Vanguard from Avis Motors and came to Anuradhapura via Puttalam with his watcher Sirisena.

Q. Did he tell you where he was about 3 or 3.30 p.m. on the 15th March?

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A. Yes. He said he passed the scene of murder. (Mr. Saravanamuthu objects).

Q. That is the place where the body was?

A. Yes.

Q. Please refresh your memory?

A. He said that he passed the body of Adeline Vitharana and that he slowed down and noticed people and police officers there."

10. The Appellant neither gave evidence nor called any evidence.

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11. On appeal to the Court of Criminal Appeal the only ground of appeal considered by the Court was the argument that the admissions made to Inspector Dharmaratna taken together amounted to a confession and were therefore led in evidence in contravention of section 25 of the Evidence Ordinance.

12. The Court of Criminal Appeal held that on a charge of murder the facts in issue are only whether the person charged did a particular act, whether that act caused the death, and whether that act was done with a murderous intention and that the law declares to be a confession, only that kind of statement which is an admission of one of the self same facts or an admission suggesting the inference that one of the self same facts is correct. 'The admission by an accused of facts which can establish motive, or opportunity, or knowledge of death, does not suggest an inference which such a fact suggests is only that he may have had a reason or an opportunity for, or knowledge as to the commission of, the offence'; and further held that each of the admissions in this case, considered by itself was relevant and admissible and that therefore all taken together were equally admissible, and the Court dismissed the appeal.

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13. The Court further held 'that the Crown had ample evidence with which to prove its case, even if evidence of the challenged admissions had not been received.'

14. Special Leave to appeal to Her Majesty in Council was granted by Order in Council dated the 12th day of June 1961.

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15. The Respondent submits that this appeal should be dismissed for the following among other

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R E A S O N S

- (1) BECAUSE the evidence of the 'admissions' by the Appellant was properly admitted.
- (2) FOR the reasons given by the Court of Criminal Appeal.
- (3) BECAUSE there was no miscarriage of justice.

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E.F.N. GRATIAEN.

THOMAS O. KELLOCK.

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