

15, 1950

23

1949

No. 34 of 1949.

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT OF THE ISLAND

OF CEYLON

W.C.1
17 JUL 1953
INSTITUTIONAL RECORDS

INSTITUTE OF ADVANCED
 LEGAL STUDIES,
 25, RUSSELL SQUARE
 LONDON,
 W.C.1.

B E T W E E N

KANNANGARA ARATCHIGE DHARMA SENARATNE
 alias BAAS (Accused)..Appellant

AND

THE KING (Complainant) ..Respondent

CASE FOR THE RESPONDENT

Record

1. This is an appeal by special leave whereby the Appellant seeks to have set aside his conviction by the Supreme Court of Ceylon on the 3rd February 1949 of the murder on or about the 7th November, 1947 of one Govipolagodage Dionysius de Silva Seneviratne (hereinafter called "the deceased") and the sentence of death thereupon passed upon him, and the judgment of the Court of Criminal Appeal dated the 26th March, 1949 which affirmed his conviction.

p.335
 p.336, 1.31
 p.339, 1.28-
 p.344, 1.14

10 2. The deceased had received multiple incised wounds in the region of the neck and also some cuts on the right hand and both elbows. The wounds on the neck were necessarily fatal. The distribution of blood on the floor of the house indicated that the assailant had commenced his attack near the front door, pursuing his victim and hacking him repeatedly thereafter in the front hall and dining room until he fell, dead or dying under a table in the dining room.

p.10, 1.1-
 p.11, 1.33
 p.12, 11, 11-40

20 3. The Appellant did not give evidence on his own behalf to contradict or explain matters upon which the

the prosecution relied. The Respondent submits that there was ample and indeed overwhelming evidence that the Appellant murdered the deceased. This evidence proved the following, amongst other, facts:

p.100, 1.7-
p.101, 1.26;
p.105, 1.34-
p.106, 1.26;
p.109, 11.22-
42

(i) Immediately after the murder the Appellant was seen by witnesses, Ukku Menika, Ran Banda and Sudu Banda, servants employed in the adjoining house, access to which he had gained from the back compound of the deceased's house. All three witnesses identified the Appellant at a parade held the next day 10 in the Magistrate's Court.

p.41, 11.18-21

(ii) The witnesses said that the Appellant was carrying a handbag and a knife with which he tried to cut Ukku Menika when she challenged him. He was covering his head with a sarong which belonged to the deceased's son Oranda and had been hung on a line in the deceased's compound.

p.106, 11.1-23

(iii) Ran Banda attempted to seize the Appellant who ran away after dropping the handbag and knife at the spot where they were found shortly after- 20 wards by the police. The Appellant ran towards Alwis Place, a nearby street, dropping the sarong on his way.

p.110, 1.21-
p.111, 1.36

(iv) A witness, Khalid, who was working on the roof of a house at Alwis Place, saw the Appellant run under the portico of the house he was repairing and across the garden. The Appellant forced his way through the zinc sheets of the boundary fence and ran away, dropping a coat and purse in which were revolver cartridges. The coat was subsequently identified as 30 the coat of the Appellant. Khalid also identified the Appellant at a parade held before the Magistrate.

p.348; p.123,
1.42-p.124,1.8

(v) Human blood was identified by the Government analyst on the bag, the knife, the sarong and the coat. Dr. G.S.W. de Saram, the Judicial Medical Officer, who visited the scene on the day of the murder, found hair adhering to the blade of the knife. Comparing it with a specimen removed from the head of the deceased he found it similar in texture and pigmentation.

(vi) The knife might have been, and in the opinion of the Government analyst was, the detachable blade of a herb-cutter which the Appellant had in his medicine shop.

p.123,11.8-51

(vii) The Appellant when examined on the day of the murder by Dr. de Saram had an oblique incised wound over the inner prominence of his right ankle and an abrasion. These injuries could not have been caused by a dog bite or knife but were consistent with the ankle coming in contact with a sharp edge such as a galvanised or zinc sheet, when the leg was carried in an upward direction.

p.13, 1.32-
p.15, 1.29

4. In addition to the evidence summarised above, the servant of the deceased, Alice Nona, an unsatisfactory witness, gave evidence that on the morning of the murder the Appellant had come to the house of the deceased while he was at market, and had sent the witness out to market also. This witness sought to prove that the murder had been planned by the Appellant and the deceased's wife.

pp.39-74

5. The Appellant was charged jointly with the deceased's wife on three counts, of which the first charged both with conspiracy to murder in consequence of which murder was committed; the second charged the Appellant with the murder of the deceased "in the course of the same transaction as set out in count (1) above"; and the third charged the deceased's wife with abetment of the murder.

pp.1-2

p.2, 11.7-12

p.2, 11.13-19

6. After a full summing-up by the learned Commissioner, the jury returned a unanimous verdict of guilty against both the Appellant and the deceased's wife on the first count, and of guilty of committing murder against the Appellant on the second count. No verdict was returned on the third count.

pp.283-334

p.335, 11.1-14

p.335, 11.15-17

p.335, 11.18-21

7. On appeal the Court of Criminal Appeal held that whether or not the learned Commissioner had refreshed the memory of Alice Nona by a method contrary to law, there was even without her evidence ample evidence to establish the Appellant's guilt on the count for murder. The Court was, however, of opinion that the learned Commissioner had taken an improper part

p.340, 11.22-32

p.340, 1.49-

p.343, 1.49

in the examination of the deceased's wife when she gave evidence and that therefore in her case a new trial should be held.

p.384, 11.13-24.

8. At the new trial the jury rejected the evidence of Alice Nona and on the learned Judge's invitation stopped the case and acquitted the deceased's wife.

9. The Respondent submits that by the second count of the indictment the Appellant was charged with the murder of the deceased and that it was immaterial to that charge and to his conviction thereon that he was alleged to have committed the murder "in the course of the same transaction as set out in count (1)". 10

10. The Respondent therefore submits that this appeal should be dismissed for the following amongst other

REASONS

1. Because the evidence established that the Appellant murdered the deceased.
2. Because any allegation that the murder was committed in the course of a conspiracy was an immaterial allegation. 20
3. Because there has been no miscarriage of justice.

FRANK GAHAN

IN THE PRIVY COUNCIL

No. 34 of 1949

ON APPEAL FROM THE SUPREME COURT
OF THE ISLAND OF CEYLON

B E T W E E N

KANNANGARA ARATCHIGE DHARMASENA
alias BAAS (Accused) Appellant

AND

THE KING (Complainant) Respondent

CASE FOR THE RESPONDENT

BURCHELLS,
9, Bishopsgate, E.C.2.

Solicitors for the Respondent