[IN THE COURT OF CRIMINAL APPEAL]

1954 *Present :* Nagalingam, A.C.J. (President), Pulle, J., and Swan, J.

REGINA *v.* Y. M. DHARMADASA BANDARA

Appeal 78, with Application 134, of 1953

S. C. 4—M. C. Ratnapura, 33,817

Charge of murder—Circumstantial evidence—No evidence of use of lethal weapon—Inference of intention requisite to constitute offence of murder.

The accused was convicted of murder. The verdict of the jury implied that the death of the deceased was caused by the accused. According to the evidence, however, which was purely circumstantial, there were no signs of the use of a lethal weapon.

Held, that in the circumstances the verdict should be altered to one of voluntarily causing grievous hurt.

APPEAL with application for leave to appeal, against a conviction in a trial before the Supreme Court.

A. B. Perera, with *J. C. Thurairatnam* and *Austin Jayasuriya* (assigned), for the Accused-Appellant.

Ananda Pereira, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

February 1, 1954. PULLE, J.—

The appellant by a verdict of five to two was convicted on the charge that he did on or about the 15th November, 1952, commit murder by causing the death of one Welikala Mudiyanselage Danawardena Bandara and was sentenced to death. The evidence against him was purely circumstantial and the principal submission on his behalf which we have to consider is that there was no evidence on which the jury could properly find that the deceased died of violence at the hands of the appellant.

The deceased and the appellant were related to each other as cousins and had since May, 1952, been jointly working a rubber land as sub-lessees. They lived in a hut on this land which had a verandah and one room. On the evening of the 21st November, 1952, the body of the deceased was dug out of this room. The information which led to the discovery of the body had been given by the appellant to one J. G. A. Weerakoon on the 20th November and on the following day he communicated that

information to the Police. But for a loin cloth the body was naked. The knees were drawn up to the chest and tied with a rope one end of which was drawn round the neck. The body was in an advanced state of decomposition. Two post-mortem examinations were held one on the 23rd November by the District Medical Officer, Kahawatte, and the other on the 24th November by the Assistant Judicial Medical Officer, Colombo. Neither of the medical officers could state what the cause of death was. There were no signs of any external ante-mortem injuries. The lungs had decomposed, the heart dried up and the brain had melted into pulp. The condition of these organs precluded the expression of any opinion as to whether the deceased was asphyxiated or not. On the other hand the appellant had numerous linear abrasions on his left arm and left side of chest which might have been caused on the date of the alleged murder.

The inconclusive character of the medical evidence was strongly relied on at the argument in appeal to show that there was no case of any kind to go to the jury. The question, therefore, has to be considered whether the rest of the evidence which was not met by any evidence called for the defence was sufficient to entitle the jury to find that the deceased died as a result of violence inflicted by the appellant.

The deceased was an able bodied young man who was about 22 years old. He and the appellant, who to all appearances were friendly, used to tap the rubber trees on a land called Nebelligodelewatte. The dried latex used to be delivered to a rubber maker and thereafter the sheets sold to a trader in a neighbouring village. There was nothing to suggest that the deceased was otherwise than in normal health on the day of his death which on the appellant's statement to Weerakoon occurred on the 15th November. The deceased was last seen alive about noon-day on the 15th November. He was then returning to his land after a bath in a neighbouring stream. About 3 p.m. the witness Jayasekerage Piyadasa heard the cry of " minimaranawo " coming from the direction of the rubber land. Piyadasa was then weeding his land at a point about 300 yards from the hut. At the same time a woman named Alpi Nona living on a land adjoining Piyadasa's who also heard the cries asked him to find out what they were about. He then set out a short distance and then met the appellant coming towards him. He asked him, " What is the noise I heard from your direction ? ". He replied that a boy called Methya Kolla and the deceased were joking and both of them had cried out in fun. Piyadasa was satisfied with this explanation and they separated, the appellant stating that he was going for a bath and that thereafter he would take some rubber sheets to be smoked. Methya Kolla was called for the prosecution and he stated that he did not know who the deceased was and that he had never visited the hut. The story about Methya was the first of a series of falsehoods uttered by the appellant to allay suspicion as to the fate of the deceased and to prevent those inquiring about his whereabouts from visiting the rubber land or the hut. The appellant had his night meal at Alpi Nona's and slept at Piyadasa's. The reason he gave to Piyadasa for not sleeping in his hut was that he was alone. He said that the deceased had decamped with Rs. 250. On the next day he left saying that he was going to his village. The mother of the

deceased was expecting him to be present at her house on the 19th November being the day fixed for giving notice of his sister's marriage. The appellant met the mother and delivered a false message to the effect that the deceased had said that he could not attend the ceremony because he had obtained employment on an estate. It is needless to advert to other falsehoods which clearly indicate that the appellant's conscience was not at ease. Fearing that discovery was bound to come soon he decided on the 20th November to disclose to J. G. A. Weerakoon a relation of his that the deceased lay buried in the hut. According to the account given by the appellant to Weerakoon the deceased, one Hendrick Mudalali and one Arnolis, the husband of Alpi Nona referred to earlier, came to the hut at about midnight of the 15th November. They were all drunk. He opened the door and the deceased took his plate of rice to the verandah. The appellant was inside the room reclining on a " messa " when he heard the deceased crying out loudly " minimaranawo ". He came out of the room and saw the deceased fallen dead on the ground. On one side of the deceased was Arnolis who was armed with a katty and on the other side Hendrick Mudalali with a long pointed knife. Under threat of instant death he assisted them in tying up the body and burying it inside the hut. Both Hendrick Mudalali and Arnolis were called for the prosecution. Their evidence which appears to have been accepted by the jury shows that they had been falsely implicated. As a result of the appellant's statement these two witnesses were held in custody for three weeks.

The loud cry of distress uttered by the deceased and the admission by the appellant that the deceased was dead before he was buried unmistakably point to violence as being the cause of death. If, as was suggested at the argument that the deceased died suddenly owing to natural causes, the conduct of the appellant in circulating numerous false accounts of the movements of the deceased whom he knew to be buried is wholly inexplicable. In so far as the verdict of the jury implies that the death of the deceased was caused by the appellant we see no reason to differ from them. The evidence, however, throws no light on the mode of violence from which one could infer the intention requisite to constitute the offence of murder. The complete absence of any signs of the use of a lethal weapon on the deceased renders it unsafe to allow the verdict of murder to stand. On the other hand the cries of distress raised by the deceased indicate that he either apprehended or suffered grave violence at the hands of the appellant and that coupled with the fact that he must have died almost immediately afterwards lead to the conclusion that while the appellant may not be guilty of murder he was guilty of the offence of voluntarily causing grievous hurt. To reach such a verdict it is not necessary that we should be in a position to state precisely the manner in which death was brought about.

We accordingly set aside the conviction and sentence under appeal and substitute therefor a verdict under section 316 of the Penal Code and sentence the appellant to six years' rigorous imprisonment.

Verdict altered.