

## [COURT OF CRIMINAL APPEAL]

1969 *Present* : H. N. G. Fernando, C.J. (President), Sirimane, J., and Weeramantry, J.

R. M. SIRISENA, Appellant, and THE QUEEN, Respondent

C. C. A. APPLICATION No. 25 of 1969

*S. C. 13/1968—M. C. Kalmunai, 30852*

*Trial before Supreme Court—Verdict of jury based on evidence of accomplice—Circumstances when it may be regarded as unreasonable.*

A verdict cannot be said to be reasonable if it is based on the evidence of an accomplice which is not only uncorroborated, but is also shown by other credible evidence relied on by the prosecution to be probably untrue.

APPEAL against a conviction at a trial before the Supreme Court.

*T. S. P. Senanayake* (assigned), for the accused-appellant.

*E. R. de Fonseka*, Senior Crown Counsel, for the Crown.

*Cur. adv. vult.*

May 25, 1969. SIRIMANE, J.—

The appellant, who was charged with the murder of one Amaris, was found guilty of the lesser offence of culpable homicide not amounting to murder by a divided verdict (5 to 2) of the jury.

The facts shortly were, that the deceased left his house on the night of 18th of February, 1967. On the 28th of February his mistress Alice Nona made an entry at the police station that the deceased had not returned.

In about June that year, on certain information that the police had received from a son-in-law of the deceased, some skeletal remains were found by a stream some 300 yards from a "kamatha" belonging to the appellant's father. There was evidence that these bones had first been buried in this "kamatha" and later removed by the appellant's father and brother to the place where they were discovered.

The jury has found, and there is evidence to support that finding, that these bones were the skeletal remains of the deceased Amaris, and the medical evidence proved that death had probably resulted from a blow on the head with a blunt weapon.

The prosecution called as one of its witnesses Alice Nona, the mistress of the deceased. According to her evidence, the appellant, one Pinchappu and the witness Wijayadasa came to their house on the night of 18th February 1967, and these three together with her husband smoked ganja till late in the night and all of them left together.

According to her the time was roughly around 1 a.m. On the next day the appellant and the two others returned without her husband and, on her questioning them, the appellant said that the deceased had gone to Kurunegala. The prosecution relied on this evidence, and there was no suggestion that she was anything but a truthful witness. This evidence makes it quite clear that Wijayadasa was in the company of the deceased till very late, on the night that he disappeared.

Some evidence of a motive against the appellant, which the prosecution sought to establish, was too nebulous to be of any value. It was suggested that the deceased was sexually intimate with his stop-daughter, a married woman named Seelawathie, in whom the appellant "was interested", to use the words of Alice Nona, who also said that she had told the appellant about this relationship between the deceased and Seelawathie. But the evidence was quite definite that the appellant in no way resented the deceased's behaviour, and that the two of them continued to be quite friendly even after the information was conveyed by Alice Nona to the appellant.

The only evidence to connect the appellant with the death of the deceased, was the evidence of Wijayadasa. He said in evidence that when he was passing the appellant's father's "kamatha" about 9 p.m. he saw the appellant and another man, whom he did not identify standing beside a person who lay fallen with his face downwards on the "kamatha" and that the appellant carried a weapon which, too, he could not identify. He also added that the appellant threatened him. He denied that he had gone to the deceased's house that night with the appellant and Pinchappu. He denied that he had smoked ganja with the deceased, and that he left in the company of the deceased and the others late that night. He denied that he returned next morning in the company of the other two without the deceased. It is clear that the evidence of Wijayadasa and Alice Nona cannot stand together. Wijayadasa had made his statement to the police in June after the discovery of the bones. He admitted that before he made that statement, the police, who apparently treated him as a "suspect" had assaulted him and asked him "to make a statement as they wanted".

The learned Judge rightly directed the jury to treat him as an accomplice and to look for corroboration of his evidence. Far from there being any corroboration, his evidence was contradicted at every material point by the evidence of Alice Nona.

A verdict cannot be said to be reasonable, if it is based on the evidence of an accomplice which is not only uncorroborated, but is also shown by other credible evidence relied on by the prosecution to be probably untrue.

We were of the view that the verdict cannot be supported, having regard to the evidence led in the case. We, therefore, quashed the conviction and acquitted the appellant.

*Accused acquitted.*