

**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

Maragoda Hewage Piyasena,
Udaduwa watta, Ella Ihala,
Magedera, Galle.

2nd Accused-Appellant.

C.A. Appeal No. 121/2008
High Court Galle No. 2790/2006

Maragoda Hewage Indrananda,
Udaduwa watta, Ella Ihala,
Magedera, Galle.

3rd Accused-Appellant

-Vs-

Honourable Attorney-General,
Department of the Attorney-
General,
Colombo-12.

Respondent

Before: : **W. L. R. Silva, J &**
H.N. J. Perera, J.

Counsel: : **Saliya Peiris for the Accused-Appellants.**

Ms. A. Jinasena DSG for the A.G

Argued &
Decided on: : **12.06.2012**

Ranjith Silva, J

Heard counsel for the accused-appellant as well as the learned DSG for the State. The accused-appellants were charged for murder in the High Court of Galle. After trial they were found guilty convicted for murder and sentenced to death. This appeal is against the said convictions and sentences. In this case the main argument that was put forward by the counsel for the appellant is that there is a doubt whether the witness Ariyawathie who happens to be an eye witness in this case gave a true and full account of what really happened on that day. In other words

counsel for the appellant stressed on the fact that according to the medical report the stomach of the deceased had been so full of alcohol that he expressed the opinion that the deceased would have been drinking even at the time of the incident and Ariyawathie the witness does not say anything about the deceased consuming alcohol At the time of the incident the deceased had been seated in a boutique waiting for his child to arrive after school.

The 2nd accused-appellant had come there and had abused the deceased who was seated. Thereafter according to uncontraverted evidence, the 3rd accused-appellant had come there and he had uttered certain words, and at the same time the 1st accused (deceased) had also came to the scene and the three of them had got together, held the deceased by his collar and dragged him to the rear of the boutique. According to the witness there had been some silence for about 05 minutes which led her to go to the rear of the boutique in order to find out what was happening and at that

times he had seen all the three accused assaulting the deceased and the deceased had been on the ground. One of the accused had remarked that the deceased is dead . On hearing this the witness had dissuaded them from attacking the deceased any further. At that point the 3rd accused had chased the witness away. The witness had seen the 1st accused stabbing the deceased, while the 2nd accused was holding the deceased.

At the trial when this witness gave evidence the defence totally failed to mark any contradictions or omissions. The defence failed to show that the story of the version of the witness was improbable. There is nothing to indicate that the judge observed that the deportment or the demeanour of the witness to be unreliable. Therefore whatever the evidence that was given by Ariyawathie has gone virtually unchallenged in the sense that the defence had failed to show that the evidence was not credible or that the story she narrated was improbable. There was no motive

suggested as to why the witness should make any false allegations or accusations against the accused-appellants.

In this regard it is worthy and pertinent to mention that especially in view of the issue or the ground of appeal taken by the appellant that not a single question was asked from any of the witnesses whether the deceased was consuming alcohol at the time. The accused are trying to take advantage of the fact that the deceased had consumed alcohol before his death.

We are unable to find out any flaw in the evaluation of the evidence. The Judge has not committed any illegality or irregularity.

There was ample evidence to show that the three accused were acting in concert , with the common intention and the evidence

further disclosed that there had been some enmity among them and even the evidence refers to a previous incident between the parties. The deceased was unarmed and it appears that the deceased never expected such an incident to occur at that time.

There is no evidence that there was a sudden fight . There is no evidence that the accused were acting in self defence, to the contrary the evidence is that the three accused converged with a common intention and murdered him by stabbing him to death. There is no evidence that the deceased had retaliated. The evidence clearly indicate that when the incident occurred they all entertained a common intention and although there is no evidence to show that there was a pre-arranged plan, we have no doubt that the three accused acted with a common intention.

Therefore for the reasons, I have adumbrated, I find that there is no substance or merit in this appeal or any of the arguments put forward. I dismiss the appeal.

Judge of the Court of Appeal

H.N.J.Perera, J

I agree.

Judge of the Court of Appeal

Kpm/-