

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

**CA No. 71A-B/07**

**HC Galle No. HC 2601**

01. Ranepura Hewage Dharmasena (Kalu Chuti)  
Magedara  
Kalumada
02. Magedaradurage Lakshman (Jasitn)
03. Henagama Manage Jayarathna (Banda)  
Magedara  
Kalumada

**Appellant**

**Vs.**

Hon. Attorney General  
Attorney General's Department  
Colombo 12

**Respondent**

**C.A.No.71A-B/07**

**H.C.Galle No.H.C.2601**

**Before** : Rohini Marasinghe,J. and  
H.N.J.Perera,J.

**Counsel** : Anura Gunaratne for the 1st Accused-Appellant.  
Indika Mallawarachchi for the 2<sup>nd</sup> Accused-  
Appellant.  
Rohantha Abeysooriya SSC for Respondent.

**Argued and  
Decided on** : 01.10.2012.

**H.N.J.Perera,J.**

Heard submissions of both counsel.

The learned counsel for the defence submits that the conviction and the sentence of the accused-appellants cannot be sustained for the following reasons. The State Counsel too admit to Court that for the reasons stated below the conviction cannot be sustained.

- 1) The evidence of the Doctor does not in any way indicate that the deceased was able to make a dying declaration immediately after the said incident.

- 2) The evidence led in this case shows that the deceased was not able to speak after the incident on the contrary, the learned trial judge in his judgment has stated that the doctor had confirmed the fact that the deceased was able to speak.
  
- 3) The evidence led in this case shows that the deceased could not have made a dying declaration immediately after the incident.

The wife of the deceased had stated that she heard the deceased crying and shouting when she was in the house. The evidence shows that, that there was no such possibility, and the other witnesses evidence is that he had heard some noise from behind and did not see the deceased nor ~~hear~~ hear him cry out and thereafter he too was attacked. Evidence led in this case does not support the fact that the wife of the deceased was able to identify the three accused who assaulted the deceased. Although she had said so, in evidence the 2<sup>nd</sup> witness namely Royal Jayantha had stated to Court that the accused had run away immediately after the incident. Even this witness had failed to identify the accused properly. His evidence cannot be relied upon. We find that the evidence given by the wife of the deceased too cannot be relied upon. Therefore, for these reasons, the conviction and the sentence

of the Accused-appellants are set aside. The appeal is allowed. The accused-appellants are acquitted from all charges.

**JUDGE OF THE COURT OF APPEAL.**

**Rohini Marastiinghe,J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**

WC/-