

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

CA Appeal No. 258/2010

HC Colombo 493/2001

Ahangamage Priyantha Sri Senadipathi

No: 855/B,

Thewatta Road,

Ragama.

Appellant

Vs.

Hon. Attorney General

Attorney General's Department

Colombo 12

Respondent

C.A. Appeal No. 258/2010 -H.C. Colombo 493/2001

Before : **ROHINI MARASINGHE, J. &**
H.N.J. PERERA, J.

Counsel : Indika Mallawaarachchi for the Accused-
Appellant

Sudarshane de Silva S.S.C. for the Attorney
General.

Argued &
Decided on : 09.10.2012.

Rohini Marasinghe, J

Accused-Appellant is present in court brought in
custody.

Heard both counsel in support of their respective
cases.

The appellant was charged for the murder of one
Chanarasiri Gunawardena on 10th March 1994. Two of the
prosecution witnesses were Amara who was the wife of the
deceased and one Dharmadasa. Amara in her evidence alleged that
on the day of the incident they were in the house of the
Dharmadasa who was also a close relative. Around 8.30 in the

night the deceased was seated at the dining table talking to Dharmadasa, when Nandasiri who was a brother of the deceased came into the house. The deceased and the appellant were close relatives. The appellant was a nephew of the deceased. Nandasiri abused the deceased blaming him to have been responsible for the land dispute they were having at that time. It appears that some photographs have been taken by the deceased of the place where the land dispute was. When Nandasiri was abusing the deceased the appellant had come into the house. At that time the appellant appeared to be much tensed, but had not done anything. As testified by Amara shortly afterwards she heard a cry and when she came to the place where the deceased was seated she had seen the deceased crying with blood pouring from his head. The appellant was standing by the side of the deceased holding a stick and attempting to strike the deceased. (Vide 15.05.2007, page 2)

In the evidence given by Dharmadasa he said that he was with the deceased at the time of the incident. The deceased was seated at the dining table talking to Dharmadasa when Nandasiri came into the house abusing the deceased referring to the land dispute. He also saw the appellant come into the house. The appellant had come independently and not with Nandasiri. The appellant had left and come back almost immediately with a club. The deceased had continued to be seated at the table when the appellant struck the

deceased with the club from behind the deceased. This was the evidence for the prosecution. The act of the appellant was deliberate and unprovoked. The witnesses had made statements promptly to the police. The accused thereafter had been arrested on the same day at 23.00 hours. His statement had been recorded at 7.00 a.m. on the next day. Pursuant to his statement a club had been recovered which had been marked as P1. The doctor had testified the cause of death as trauma caused to the brain as a result of a blow dealt to the head. The weapon marked as P1 was shown to the doctor who admitted that the injury could have been caused by that club. After the prosecution had closed the case having proved the ingredients of the charge beyond reasonable doubt, the appellant had been called to exculpate himself if he can. The appellant had made a dock statement denying the assault. In his evidence he had stated that on this day he had seen a light flashing which he came to see. And at that time he had seen the deceased running with a camera in his hand.

In the appeal the counsel of the appellant made a weak attempt to demonstrate that – witness Amara had seen a stick as the murder weapon. And, the witness Dharmadasa had mentioned a club as the murder weapon. Both witnesses had not identified the murder weapon. With that evidence the learned

counsel contended that the witnesses for the prosecution had not seen the attack. I am of the view that the evidence led by the prosecution was abundantly clear as to the manner of the killing by the appellant. It was clearly established beyond reasonable doubt that the appellant had acted with malice aforethought. For these reason I consider it safe and reasonable to affirm the conviction and to affirm the sentence of death.

Appeal dismissed.

JUDGE OF THE COUR OF APPEAL.

H.N.J. Perera. J.

I agree.

JUDGE OF THE COURT OF APPEAL.

/mds