

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

Nanayakkara Kappetiduwege Thilakananda  
Nanyakkara

**Accused-Appellant**

Vs

The Democratic Socialist Republic of Sri Lanka

**Complainant Respondent**

CA 292/2007

HC Gampaha 162/2004

Before : Sisira J de Abrew J &  
PWDC JayathilakeJ  
Counsel : Anil Silva President's Counsel for the appellant  
Kapila Waidyarathne DSG for the Respondent  
Argued on : 2.4.2013 and 3.4.2013  
Decided on : 30.5.2013

**Sisira J de Abrew J.**

The charges levelled against the accused appellant in this case are that he with others unknown to the prosecution, by throwing a bomb, caused injuries to IP Jayasiri, YP Wilson, WP Gamini Wijesundara, IP Rasika Chaminda, DM Piyarathne, WP Pushpasiri alias Robert, WP Somaweera and WP Nihal. He was charged under Section 4(2) of the Offensive Weapons Act No 18 of 1966. The learned trial Judge after trial convicted the accused appellant of all eight counts and sentenced him on each count to a term of ten years rigorous imprisonment (RI) and to pay a fine of Rs.2,500/- carrying a default sentence of six months imprisonment.

The learned trial Judge directed that ten year RI imposed on each count should run concurrently. Being aggrieved by the said convictions and the sentences the accused appellant has appealed to this court. Facts of this case may be briefly summarized as follows.

Jayasiri who is one of the injured persons in this case took possession of the boutique owned by the accused appellant's mother-in-law on a lease agreement. He was, even at the time of the incident, running the boutique. This boutique which was very close to the house of the mother-in-law of the accused appellant was situated on Naiwala- Diwulapitiya road. On 28.11.99 the accused appellant who was living in the house of the mother-in-law came to the boutique and asked Jayasiri as to when he would be leaving the boutique. Jayasiri told him that he would be leaving on 30.12.99. The accused appellant then told Jayasiri to take the garbage in front of the boutique when leaving the boutique. Around 8.00 p.m. on the same day the accused appellant with four others came to this boutique and two of them entered the boutique. One person gave a slap to Jayasiri's son. Other person took a knife which was in the boutique and assaulted Jayasiri who sustained a cut injury in his mouth. Jayasiri after closing the boutique went and lodged a complaint at the police station. When Jayasiri came back around 11.30.p.m. he met the people who had gathered in front of his boutique. At this time Jayasiri and the crowd saw the accused appellant's car coming from the direction of Naiwala on Naiwala Diwulapitiya road. Before it reached the house of the mother-in-law, the accused appellant reversed the car, turned towards Naiwala and stopped the car. They also saw a motor cycle that came behind the car stooped near the car. A person on the pillion of the motor cycle threw some object at the crowd. At this time the accused appellant got down from his car and threw something which exploded. The accused appellant thereafter drove away the car. Jayasiri and seven others sustained injuries from the explosion which was later proved to be a bomb

explosion. This was the summary of the evidence of Jayasiri and other injured persons. The investigating police officer who came to the scene found a handle of a bomb and an unexploded bomb which was later defused by the bomb disposal squad of the Army. He also noticed some blood stains and damage caused to the road.

The accused appellant gave evidence under oath. His evidence may be briefly summarized as follows. On 28.11.1999 when he went to the boutique run by Jayasiri there was an exchange of words between both of them. Later in the evening (he does not indicate the time) when he with Upalie and Saman came to the boutique, he again had an exchange of words with Jayasiri. At this stage, Upalie and Saman assaulted Jayasiri. When Jayasiri's son took a knife one of them snatched the knife. Thereafter all three went to Upalie's house as Upalie was getting ready to give an alms-giving on the following day. Later when he was at Upalie's house, he received a message from his wife to the effect that around 100 people were waiting to kill him. He after spending some time at Upalie's place, without going to the police station, set off for his house with Upalie and Saman. When he was coming on Naiwala Diwulapitiya road around 11.30 p.m. he saw around 100 people carrying clubs and Jayasiri having an object like a bomb. He, due to fear, reversed the car and turned back facing Naiwala. Saman got down from the car to give directions when he was reversing. When he accelerated he heard a loud explosion. He thereafter went to the police station. Saman did not go to the police station with him and got down on the way to the police station. He went to the police station with Upalie. But he does not know whether Upalie made a statement to the police. The accused appellant denied all charges. This was the summary of evidence of the accused appellant.

Although the accused appellant takes up the position that he went with Upalie to the police station when he was confronted with a portion of his statement

made to the police wherein he had stated that he was unable to produce Saman and Uplaie as he was unaware of their whereabouts, he admitted the said statement to be a correct one. Thus his evidence that he took Uplaie to the police station becomes false. Further Prosecuting State counsel during the cross examination brought to the notice of the court that he (the accused appellant) had failed to give details of Uplaie in his statement made to the police. This was marked as an omission. If the story of the accused appellant is true the question arises as to why he did not give whereabouts of Saman and Uplaie to the police.

The accused appellant admits that Jayasiri and the crowd (about 100 people) were carrying clubs when he came to this place. He says that the bomb brought by Jayasiri's crowd exploded. If that is so, the clubs that these people were supposed to be carrying would have fallen at the scene. Did the police find any club at the scene? The answer is no. These observations would demonstrate that the stand taken up by the accused appellant is false. Learned trial Judge had considered some of the above matters. When I consider all these matters, I hold that the evidence of the accused appellant cannot be accepted and is not sufficient to create a reasonable doubt in the truth of the prosecution case. Therefore in my view the learned trial Judge was right when decided to reject the evidence of the accused appellant.

Learned defence counsel, at the trial, brought to the notice of court a portion of a statement made by Jayasiri to the police and sought to mark a contradiction. According to the said portion of the statement Jayasiri had said that he and the people gathered near his boutique went towards the place where the car was parked in order to see why the car was stopped. Jayasiri said that he could not remember whether he made such a statement. The learned trial judge therefore did not allow him to mark the said contradiction. Learned PC appearing for the accused appellant contended that he could not continue with his line of cross-

examination due to the said ruling. I now advert to this contention. What is the evidence of Jayasiri on this point? He said that at the time that the car was parked facing Naiwala, he and the people gathered at this place were going towards the place where the car was parked in order to go to his house. According to the evidence, in order to go to Jayasiri's house from his boutique one has to go towards the place where the car was parked. Thus when evidence and the statement made to the police are considered there was no contradiction in relation to the direction in which they were proceeding. The only difference is that according to the police statement Jayasiri wanted to see why the car was stopped. But according to the evidence he and the crowd were going home. Even if this contradiction was marked can it be said that it goes to the root of the case. I think not. I therefore hold that the ruling given by the learned trial judge not to mark the said contradiction has not caused prejudice to the accused appellant. For the above reasons, I am unable to agree with the submissions of the learned PC.

Learned PC drawing the attention of court to pages 484, 485 and 486 of the brief next contended that the learned trial Judge had placed a burden on the accused appellant to prove his defence. The evidence of the accused appellant was that at the time of the bomb explosion Saman and Upalie were with him and that on his way to the police station Saman got down at Veyangoda. I have earlier pointed out that his evidence that he took Upalie to the police station is false. Further Prosecuting State Counsel brought to the notice of court, by way of omission, that the accused appellant, in his statement made to the police, had failed to give details about Upalie. The above evidence demonstrates that Upalie and Saman had not made statements to the police and that the accused appellant had not taken Upalie with him to the police station. Learned trial Judge, in his judgment, stated that Upalie and Saman did not give evidence and that they had not

made statements to the police. Learned trial Judge, in his judgment, further observed that the story of the accused appellant was completely different from the story of the prosecution but he (the accused) had failed to support his story. According to the story of the accused appellant Saman and Upalie were present with him at the time of the explosion and he heard it while he was moving away from the place of explosion. At this time Saman and Upalie were present with him in his car. The question that any reasonable prudent man would ask is why didn't Saman and Upalie make statements to the police and support his story by giving evidence. The accused appellant, in his evidence, stated that Saman and Upalie had gone abroad. The fact that Saman and Upalie did not make statements to the police and that they did not give evidence are true incidents. When the trial Judge, in his judgment, states these true incidents it cannot be considered as placing a burden on the accused appellant. When the defence raised by the accused is not proved by evidence it is the duty of the trial judge to state that it had not been proved. When he, in his judgment, makes such an observation it cannot be interpreted to say that he had placed a burden on the accused. If such an observation is not made an argument could be advanced that the learned trial Judge had not considered the defence of the accused. When I consider all these matters, I am of the opinion that when the trial judge makes an observation that the defence of the accused had not been proved, it cannot be interpreted to say that he had placed a burden on the accused. Learned PC did not challenge the fact that eight people had sustained injuries as a result of a bomb explosion at the place described by the prosecution witness.

For the above reasons I am unable to agree with the submissions of learned PC. When I consider the evidence led at the trial and the judgment, I hold the view that there is no ground to interfere with the judgment of the learned trial

Judge. I therefore affirm the conviction and the sentence and dismiss the appeal.  
Appeal dismissed.

Judge of the Court of Appeal

PWDC Jayathilake J

I agree.

Judge of the Court of Appeal.