

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

C.A. Appeal No.238/06
H.C. Badulla No.92/2004

The Democratic Socialist Republic of
Sri Lanka

PLAINTIFF

Vs.

Wijesundara Mudiyaamelage Nimal Keerthirathna
"Meraya Villa" Rachlilla Road,
Welimada.

ACCUSED

Wijesundara Mudiyanseleage Nimal Keerthirathna
"Meraya Villa" Badulla Road,
Welimada.

ACCUSED-APPELLENT

Vs.

Hon. Attorney General
Attorney General's Department
Colombo 12.

PLAINTIFF-DEFENDANT

Before : **Sisira J. de Abrew, J. &**
P.W.D.C. Jayathilake, J.

Counsel : Dr.Ranjith Fernando for the Accused-Appellant.
Rohantha Abeysuriya DSG for A/G.

Argued &

Decided on : 20.11.2013

Sisira J. de Abrew, J

Heard both counsel in support of their respective cases.

The accused-appellant in this case was convicted for the murder of a man named Manikka Baduge Keerthi Jayasinghe and was sentenced to death. Being aggrieved by the said conviction and the sentence he has appealed to this Court.

Facts of this case may be briefly summarized as follows:- The deceased person was running a petrol station. On the day of the incident around 5.30 p.m. the accused-appellant came to the petrol station of the deceased person and met the deceased person in the cubical of the petrol station. 5 minutes thereafter

Abeyratne Bandara and Dharmaraj who were working as employees of the petrol station heard a cry of distress of the deceased person. When Abeyratne Bandara looked at the direction where the cry of distress emanated, he saw the accused-appellant stabbing the deceased person. He ran towards the cubical and then the accused-appellant came from the cubical armed with a knife.

Arumugam Ponniah who was a fruit vendor says that around 5.30 p.m. the accused-appellant came to his fruit stall and sat on a box of fruits. He saw the cloths of the accused-appellant stained with blood. Abeyratne Bandara made a prompt statement to the police. At this time the accused-appellant too came to the police station. The investigating police officer later went to the fruit stall of Arumugam Ponniah and the accused-appellant pointed out a knife which had been kept under a box of fruits. This knife was recovered in consequence of the statement made by the accused-appellant.

The accused-appellant, in his dock statement, says that around 5.30 p.m. on the day of the incident he came to the petrol station of the deceased person and discussed with the deceased person inside the cubical, a dispute with regard to the land on which the accused-appellant has constructed a house. The deceased person, according to the accused-appellant, requested him to leave the said house. When the accused-appellant did not agree with the request made by the deceased person, the latter in a threatening voice told the former to leave the

house. In the course of this exchange of words the deceased person took a knife and attempted to stab him. The accused appellant then dragged the knife. This was the summary of the dock statement of the accused-appellant.

Learned Counsel appearing for the accused-appellant submits that he only makes submission in order to get the culpability reduced. We have given anxious consideration to the submissions made by the learned Counsel for the appellant. But we note that the defence of the accused-appellant has not been suggested to the prosecution witnesses. We have gone through the evidence led at the trial. We are unable to conclude that the accused-appellant acted under grave and sudden provocation or in the course of a sudden fight. We are also unable to conclude that the accused-appellant exercised his right of private defence. We therefore hold that we are unable to agree with the submissions of the learned Counsel for accused-appellant. We have gone through the evidence led at the trial and are of the opinion that the learned trial Judge has correctly rejected the dock statement. In our view dock statement cannot be relieved and is not capable of creating any reasonable doubt in the prosecution case. We hold that the prosecution has proved its case beyond reasonable doubt. For the above reasons, we see no reason to interfere with the judgment of the learned trial Judge. We affirm the conviction and the death sentence and dismiss the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

P.W.D.C.Jayathilake, J.

I agree.

JUDGE OF THE COURT OF APPEAL

KLP/-