

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

1. Kapuruhamige Manel Samaranayake  
Yakawewa, Halmillawetiya  
Kabithigollawa.
2. Kapuruhamige Chaminda Ekanayake  
Yakawewa, Halmillawetiya  
Kabithigollawa.

**ACCUSED-APPELLANTS**

C.A. 14/2010  
H.C. Anuradhapura 217/2003

Vs.

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

**RESPONDENT**

**BEFORE:** Anil Gooneratne J. &  
P. W.D. C. Jayathilake J.

**COUNSEL:** P. Prince Perera for the Accused-Appellants  
Sarath Jayamanne D.S.G. for the Respondent

**ARGUED ON:** 25.03.2014

**DECIDED ON:** 03.04.2014

**GOONERATNE J.**

The 1<sup>st</sup> & 2<sup>nd</sup> Accused-Appellants were convicted of murder of a man named Weerakoon Mudiyansele Wasantha Hemakeerthi and was sentenced to death. The facts of this case could be summarized as follows.

The incident took place on the new years day 13<sup>th</sup> April 2000. 1<sup>st</sup> & 2<sup>nd</sup> Accused were home guards attached for duties at the 'Yakawewa' police post, in the Kebitigollawa Police division. The 1<sup>st</sup> witness for the prosecution was police constable Ranchagoda Gamage Keerthiratne who was in charge of the 'Yakawewa' Police Post. The deceased was also on duty at the above police post on the day the incident occurred. There is also evidence led at the trial to the effect that all others on duty at various police posts in the area had gathered at the 'Yakawewa' police post in order to observe new year traditional customs of offering beetle etc. According to the version of this witness at about the time when there were several others in the police posts the 1<sup>st</sup> & 2<sup>nd</sup> Accused-Appellant had abused (having consumed liquor) and threatened the witness who was a senior police officer in charge of the police post. As such the witness complained to the Officer-In-Charge of the

Kebitigollawa Police Station (Balagalle, O.I.C) who advised him to take the Accused-Appellants into custody. The witness testified that he saw the 1<sup>st</sup> Accused walking towards his house which was in very close proximity to the police posts. He also at the same moment heard a gunshot being fired, and saw the 1<sup>st</sup> Accused, was having a weapon in his possession. He also saw that the deceased had been shot who had been giving chase behind the 1<sup>st</sup> Accused. As regards the 2<sup>nd</sup> Accused he was not involved in the shooting incident but was seen in the compound of the 1<sup>st</sup> Accused' house, but had absconded after the incident.

The position of the prosecution was that the 1<sup>st</sup> Accused surrendered to the police with a gun. It was submitted to this court by the learned counsel for the Appellant that the 2<sup>nd</sup> Accused was not involved in the shooting incident and that he did not have the required murderous intention to convict him for a charge of murder. As such the 2<sup>nd</sup> Accused should be acquitted. The learned counsel in his submission to court emphasized the fact that Government Analyst's report and the evidence of the Government Analyst was not led at the trial. He invited court to consider such report which is already filed of record, which report would indicate that the gun that was produced and the bullet recovered from the scene of the incident do not tally,

and as such there is a doubt whether the 1<sup>st</sup> Accused in fact shot the deceased. However the learned Deputy Solicitor General very correctly explained the position suggested by learned counsel for the Appellant. It was the position that the 1<sup>st</sup> Accused could not be arrested since he was evading arrest and the 1<sup>st</sup> Accused on his own after a few days surrendered to the police with a gun. Therefore the gun that was produced by the 1<sup>st</sup> Accused is not the gun that was used to commit the crime. Therefore advisedly the prosecution did not want to place that evidence of the Government Analyst.

This court having considered the submissions of both learned counsel has no reason to reject the version of the prosecution. However the evidence and material placed before the High Court would not implicate the 2<sup>nd</sup> Accused, who cannot be held to have entertained a murderous intention. We however find that evidence led by the prosecution had not been challenged by the defence as regards material aspects of the prosecution case, except as regards the 2<sup>nd</sup> Accused. The evidence that transpired in the High Court cannot be held to have implicated the 2<sup>nd</sup> Accused on a charge of murder. The case of each Accused need to be considered separately and in the absence of a murderous intention of the 2<sup>nd</sup> Accused, his conviction and sentence cannot be allowed to stand. We proceed to quash the conviction and sentence of the 2<sup>nd</sup>

Accused. As regard the conviction and sentence of the 1<sup>st</sup> Accused cannot be interfered. As such we affirm the conviction and sentence of the 1<sup>st</sup> Accused.

Appeal allowed only as regards the 2<sup>nd</sup> Accused-Appellant.

Appeal of 2<sup>nd</sup> Accused allowed. The Registrar of this court is directed to send a copy of this judgment to the Prison Authorities.

JUDGE OF THE COURT OF APPEAL

P.W.D.C. Jayathilake J.

I agree.

JUDGE OF THE COURT OF APPEAL