

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

1. Rasingolle Weerasinghe Mudiyansele  
Nandana Senarath Bandara alias Chandi
2. Rasingolle Weerasinghe Mudiyansele  
Kalubanda

**ACCUSED-APPELLANT**

C.A 251/2007  
H.C. Polonnaruwa 101/2006

Vs.

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

**PLAINTIFF-RESPONDENT**

**BEFORE:** Anil Gooneratne J. &  
W.M.M. Malinie Gunaratne J.

**COUNSEL:** Nalin Ladduwahetti P.C. with C. Amaratunge  
For the Accused-Appellant  
C. Gunasekera <sup>DSG</sup> S.C. for Plaintiff-Respondent

**ARGUED ON:** 02.06.2014

**DECIDED ON:** 23.07.2014

**GOONERATNE J.**

Two Accused were indicted in the High Court of Polonnaruwa on two counts. The 1<sup>st</sup> count is a charge of murder, of one W.G. Karunawathie. Count No. 2 is a charge of attempted murder by causing injuries to one W.G. Dharmasena by shooting the said injured person. The incident occurred on or about 12<sup>th</sup> November 1997. The 2<sup>nd</sup> Accused was acquitted by the learned High Court Judge on 5.7.2007. 1<sup>st</sup> Accused-Appellant was convicted on both counts and sentenced to death and on the 2<sup>nd</sup> count a sentence of 15 years rigorous imprisonment was imposed with a fine of Rs. 5000/-, which carries a default sentence of 6 months R.I.

The prosecution version was more or less established by the evidence of the injured person W.G. Dharmasena who was called as witness

No. 1 for the prosecution who gave direct evidence. Witness on the date of incident resided at his parent's house. He had 7 brothers who were all married. Witness had his own paddy field and on the day in question he went to borrow a mammotty and had to pass the Accused house. Accused was known to him for a long period of time. Accused was also a farmer and all of them had worked in a paddy field at some point of time. The evidence revealed that the witness had intervened sometime ago (Singhala new years day) and stopped the Accused assaulting another person. On both days Accused and the witness had an exchange of words. This also happened in the year 1997. Thereafter on the date of the incident the Accused had seen the witness passing his house and had called him. When the witness went near him the Accused held the witness by his shirt collar and threatened him and had also thrown the push cycle of the witness to the nearby drain. Witness ran to his house which was in the vicinity and told his father about the incident. Witness's father had thereafter come to meet the Accused and asked him about the assault <sup>of</sup> on his son and requested for the push cycle. The Accused thereafter returned the cycle and the witness proceeded to the paddy field. On the way witness met his brother's wife the deceased and both of them had been going towards the paddy field.

Evidence disclose that the two of them, witness and the deceased whilst passing the house of the Accused, heard the Accused father shouting and threatening the witness. There is also evidence that transpired by the injured that at that moment itself the Accused came armed with a gun and shot the deceased on the head and she fell. The next gun shot was fired at the witness who as a result of being shot fell and became unconscious. When he regained constiousness saw the deceased's <sup>Bellan</sup> father on the ground with blood.

At the trial various positions had been taken by the Accused party inclusive of self defence. Even at the hearing learned counsel for Appellant was not able to demonstrate an acceptable defence to enable this court to consider whether any relief or leniency could be shown to the Accused-Appellant. The learned trial Judge has dealt with all necessary items of evidence and very correctly convicted and sentenced the Accused. This court having considered all the facts and circumstances of this case see no basis to interfere with the conviction and sentence imposed by the learned trial Judge. As such we dismiss this appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL