

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

In the matter of an Appeal made under the  
constitution of the Democratic Socialist  
Republic of Sri Lanka read with section 331(1)  
of the Criminal Procedure Code.

**Hatton M.C. No: 76712**

**H.C. Kandy/18/2003**

**HC/NE/102/2010**

**CA/214/2012**

01. Kumereshan Pushparaj

02. Kumereshan Yougeswaran

03. Kumereshan Thiyagaraja

of Fodaise estate

Dickoya

**Accused Appellant's**

Vs.

Hon. Attorney General,

Attorney General's Department,

Hulftsdorp,

Colombo 12.

**Prosecution - Respondant**

**BEFORE**

: H.N.J. PERERA, J

P.W.D.C. JAYATHILAKE, J

**COUNSEL**

: Indika Mallawarachchi for the Accused

Appellant.

HariPriya Jayasundara DSG for the

Respondent.

**ARGUED ON**

: 04.11.2014

**DECIDED ON**

: 20.11.2014

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

Periannan Pushparaj, Ramasami Kumereshan, Kumereshan Yougeswaran and Kumereshan Thiyagaraja had been indicted for the murder of Nallayan Egambaram

under Sec.296 of the Penal Code. As Ramasami Kumereshan died during the pendency of the trial indictment has been amended by deleting the name of Ramasami Kumreshan and making others 1<sup>st</sup> to 3<sup>rd</sup> accused. The 1<sup>st</sup> Accused has been acquitted after trial and 2<sup>nd</sup> and 3<sup>rd</sup> have been convicted and sentenced to death. This is an appeal filed by the 2<sup>nd</sup> and 3<sup>rd</sup> Accused Appellants against the said conviction and the sentence.

The facts of this case can be briefly summarized in the following manner,

Deceased Nallaha Egambaram was a brother of Nallaha Selwasami. Papathi was Egambaram's wife. Kumareshan Yogeshwaran and Kumereshan Thiyagaraja were sons of Ramasami Kumereshan. Kumereshan Thiyagaraja married the daughter of Egambaram and Papathi. All of them were estate workers and were living in estate workers line rooms which were situated close to each other. On 04.07.1998 at about 3.00 or 4.00 p.m. Selvasami had seen Egambaram being assaulted by the 3<sup>rd</sup> and the 4<sup>th</sup> Accused. The 3<sup>rd</sup> Accused had assaulted the deceased with a crow bar and the 2<sup>nd</sup> Accused with a picas. Papathi too had seen this incident. Egambaram had died after being admitting to the hospital. The course of death according to the judicial medical officer was injuries caused to the brain as a result of blows on the head with a blunt weapon.

It has been suggested to the prosecution witnesses that deceased was suffering from a mental disorder and was in the habit of quarreling with others. As both the

brother and the wife of the deceased had denied the said suggestion, a number of contradictions have been marked by the defense in that respect.

Both the 2<sup>nd</sup> and the 3<sup>rd</sup> Accused have given evidence for their defense. Although they have stated that the deceased had chased them to attack them carrying a picas, they have not said that they attacked the deceased in exercising their private defense, nor do they say that it was a sudden fight.

Even though the learned Counsel for the Accused Appellants contended that the Accused Appellants have been convicted on inadmissible evidence, she started her submission by stating that the learned trial judge has correctly acquitted the 1<sup>st</sup> accused as there was no evidence against him. In perusing the judgment, it appears that the learned trial judge has carefully considered the evidence of the prosecution case and also the evidence of two Accused Appellants.

The learned Deputy Solicitor General supporting the conviction submitted that the evidence of two Accused Appellants completely contradicts not only their previous statements but also the facts revealed in the prosecution case. She emphasized that the learned trial judge has not only correctly acquitted the 1<sup>st</sup> accused but also correctly convicted the two Accused Appellants.

As such this court sees no reason to interfere with the judgment of the learned trial judge. The court decides to affirm the conviction and the sentence and dismisses the appeal.

Appeal dismissed.

**JUDGE OF THE COURT OF APPEAL**

**H.N.J. PERERA J**

I agree

**JUDGE OF THE COURT OF APPEAL**