

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

CA 93/2011

Sendahakuru Jayantha,
Heepankanda, Nawadagala.

Accused-appellant.

Vs.

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

Respondent.

BEFORE : Deepali Wijesundara, J &
L.U.Jayasooriya, J.

COUNSEL : G.D. Kulathilake for the accused-appellant.
Chethiya Goonesekara, DSG for the AG.

Argued &

Decided on : 12.10.2016

Deepali Wijesundara, J

Heard counsel in support of this appeal. The Accused-appellant was convicted for murder of Manikpura Hakura Weerasena under Section 296 of the Penal Code by the learned High Court Judge of Balapitiya of 20.08.2010.

This appeal has been filed against the said judgment dated 20.08.2010 and at the trial there were no eye witnesses and the conviction has been given based on the statement given by the accused-appellant to a police officer. The High Court Judge has mentioned it in his judgment as follows “මෙම පොලීස් සරයන් සුගතපාලගේ සාක්ෂියට අනුව වූදිත ප්‍රකාශය සිදු කොට ඇත්තේ ඔහු අත්අඩංගුවට ගැනීමට පෙරය. ඔහු කැරත සමග පැමිණ එසේ ප්‍රකාශයක් කොට ඇත . ප්‍රකාශයක් කිරීමෙන් පසුව වූදිත අත් අඩංගුවට ගෙන තිබේ. කැරත සමග පැමිණ ස්වේච්ඡාවෙන් කරන ලද ප්‍රකාශයක් අනුකූල වේ.”

It was held in ***Kamal Kishore vs. State Delhi Administration 1997(2) Crimes 169***. “the confession made while in custody is not to be proved against the accused on the provision of the Evidence Ordinance. Section 25 and 26 of the Evidence Ordinance, do not permit it unless it is made before a Magistrate.

In ***Queen vs. Ovis Appuhamy 54 NLR page 32*** it has been held that the statement made to a police officer before he was taken into custody should not be considered as a voluntary confession made by the accused-appellant.

Section 25 of Evidence Ordinance states that the confession made to a police officer should not be considered as a voluntary confession and should not be proved against the accused.

The accused-appellant has been convicted only on the statement made by him to a police officer, therefore based on the Evidence Ordinance and the judgment cited above we decided that the conviction cannot stand.

The judgment dated 20.08.2010 is set aside, the appeal is allowed.

We direct the Prison Authorities to release the accused-appellant forthwith.

JUDGE OF THE COURT OF APPEAL.

L.U. Jayasooriya, J.

I agree.

JUDGE OF THE COURT OF APPEAL.

NR/-