

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

In the matter of an Appeal in terms of
Section 331(1) of the CPC read with
Article 138 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

The Hon. Attorney General

Complainant

C.A Appeal No: CA 56/2006

Vs.

Rajapaksha Pathiranage Jayathilaka

High Court Kaluthara

Accused

Case No: HC 82/01

AND NOW BETWEEN

Rajapaksha Pathiranage Jayathilake

Yatagampitiya, Bulathsinhala

Accused-Appellant

Vs.

The Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Complainant-Respondent

BEFORE : L.U Jayasuriya J.
Deepali Wijesundera J.

COUNSEL : Tirantha Walaliyadda P.C for the Accused-Appellant
Haripriya Jayasundera D.S.G for the A.G

ARGUED ON : 14th December, 2016

DECIDED ON : 14th February, 2017

L.U Jayasuriya J.

The Accused Appellant along with another Accused were indicted under section 296 and 300 of the Penal Code for the murder of a person named Rajapaksha Pathiranage Pedrick Singho and for attempting to commit murder of a person named Rajapaksha Pathiranage Premasiri in the High Court of Kaluthara respectively.

The Appellant was convicted and sentenced to death on the first count.

This appeal is from the said order.

The story of the prosecution is that on the day in question (31.10.1985) the deceased had come to his sister's boutique to have dinner. The Appellant who was residing about 50 yards away from the said boutique has come and attacked the deceased with a knife when he was leaving the said boutique after dinner.

Premasiri, who was closing the doors of the said boutique, having had come to the assistance of the deceased, too was attacked by the Appellant.

It appears from the evidence placed before the High Court that there had been a dispute over an undivided land where both parties had been picking coffee beans.

The Learned President's Counsel submitted that the eye-witness did not see the beginning of the incident and said that the appellant has explained the entire incident in his evidence.

He further submitted that the production which was recovered under section 27(1) of the Evidence Ordinance was not produced by the prosecution.

He argued that the Learned High Court Judge has not considered the lesser culpability on the evidence given by the defense^{c ✓}.

On a perusal of Premasiri's evidence, this court finds that he has witnessed the incident when the deceased sustained stab injuries. This incident has taken place in front of the said boutique.

The investigating officer has found blood stains on the ground in front of the said Boutique as-well.

If the version of the defense^{c ✓} is correct, the investigating officer would have found blood stains on the road[^] as the Appellant states that he was pursued and attacked by the deceased on the road.

The medical officer who performed the Post-Mortem states that the deceased had sustained two injuries and the injury No.1 was caused by a sharp weapon.

The Medical Officer giving evidence has stated that those injuries were not sustained on a sudden fight. This shows the murderous intention of the Appellant.

It was held in **Sudu-Banda Vs. A.G 1998 3SLR 375** that “Although the gun was listed as a production but not produced, the non-production was not fatal to the Prosecution.” This court holds that the legal principal discussed in the above case also applies to the case at hand.

The Learned High Court Judge has considered all these facts in analyzing the evidence placed before him.

On a perusal of the evidence, this court finds that there is absolutely no material to bring down the conviction to a lesser offense.

For the afore-said reasons, we are not inclined to interfere with a well-considered judgment.

The judgment dated 25.04.2006 is affirmed. The Appeal is dismissed.

Appeal Dismissed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.:

I Agree.

JUDGE OF THE COURT OF APPEAL