

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

In the matter of an appeal against an order of the High Court of under Sec. 331 of the Code of Criminal Procedure Act No. 15 of 1979.

Pathirage Premathilake

Koshena

Warakawila

Handapangoda.

3rd ACCUED APPELLANT

C.A. NO. 268/2010

HC Panadura No. 1589/2002

Vs

Hon. Attorney General

Attorney General's Department

Colombo 12.

RESPONDENT

BEFORE

: Deepali Wijesundera J.

: L.U. Jayasuriya J.

COUNSEL

: SaliyaPeiris for the 3rd

Accused – Appellant

DileepaPeiris D.S.G. for the

Attorney General

ARGUED ON

: 16th February, 2017

DECIDED ON

: 27th February, 2017

L.U Jayasuriya J.

The 3rd Accused Appellant, (hereinafter sometimes referred to as the Appellant) was indicted along with the 1st and the 2nd Accused under section 300 of the Penal Code for attempting to murder one Mervin Kularathna alias Appuhami.

After trial, all three were convicted on 29.05.2009.

They were sentenced on 20.08.2010 over one year after the conviction. They were sentenced to 2 years Rigorous Imprisonment suspended for five years and a fine of Rs.5000/- was imposed carrying a default term of nine months.

This appeal is from the said conviction.

All three accused were ordered to pay Rs. 50,000/- each to the victim.

The story of the prosecution is that on the day in question the victim, who was injured in the incident, had heard a noise from Jinadasa's house and called out to Jinadasa's wife Nimala. The 3rd Accused-Appellant had attacked the victim with a sword on the shoulder. There-after, the other two accused too have attacked the victim.

The counsel for the Accused-Appellant submitted that the victim has given evidence to the effect that acid was thrown by the 1st Accused and that he received burn injuries.

However, in the Medical Report, the burn injuries were not shown.

Although the Medical Report does not indicate any corrosive burn injuries, the victim whilst giving evidence has raised his shirt and shown his burn injuries to the Learned High Court Judge. The High Court Judge has noted this.

The victim while being examined by the Judicial Medical Officer has not revealed the fact that he was attacked by the accused.

Therefore, the evidence of the victim does not pass the test of spontaneity.

His evidence shows that he has made the first complaint in sign language.

Hence, the question arises as to how the victim implicated the Appellant and the other accused.

The learned Counsel for the Appellant further argued that the dock statement given by the Appellant was not considered by the learned High Court Judge. On a perusal of the judgment, (at page 10) we find that the learned High Court Judge has merely stated in the judgment that the Appellant made a statement from the dock denying his involvement in the incident.

The learned High Court Judge has not stated whether his statement has been accepted or rejected. The contradictions marked in the trial have not been analyzed in the judgment. On a further perusal of the judgment, we find that reasons have not been given for the conviction as stated in section 283(1) of the code of criminal procedure act.

We find that the judgment is devoid of reasons.

For the foregoing reasons, this court moves to set aside the judgment dated 25.05.2009.

Appeal is allowed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.:

I Agree.

JUDGE OF THE COURT OF APPEAL