

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

1. Dissanayake            Mudiyansele  
Karunaratne  
No. 08, Rubberwatte  
Maduganthalawa, Passara.

2. Dissanayake            Mudisyansele  
Piyasena  
Mullekumbura, Maduganthalawa,  
Passara.

**ACCUSED – APPELLANTS**

**C.A. NO. 25/2011**

**HC Badulla No. 219/2003**

**Vs**

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

**RESPONDENT**

**BEFORE**

: Deepali Wijesundera J.

: L.U. Jayasuriya J.

**COUNSEL**

: Kumar Dunusinghe for the

Accused Appellants

Kapila Waidyaratne ASG with

P.Kumararatnam DSG for the

Attorney General

**ARGUED ON**

: 17<sup>th</sup> January, 2017

**DECIDED ON**

: 28<sup>th</sup> February, 2017

**Deepali Wijesundera J.**

The first and second accused appellants were indicted in the High Court of Badulla for the murder of a person named Aththanayake Mudiyanseelage Appuhamy on the 09<sup>th</sup> of August 1998 under sec. 296 read with sec. 32 of the Penal Code and was convicted and sentenced to death on the 07<sup>th</sup> of June 2011.

The story of the prosecution was that on the day in question, the deceased has gone for his usual stroll on his land and to the anicut to have a bath. The two sons of the deceased the first and second prosecution witness have heard the father shouting “ඔදු අම්මෝ මාව මරණෝ” and

rushed to where the cries came from. They have seen the first and second accused appellants lifting the deceased from the stream where he went to have the bath. They watched them carrying him and dumping him under a kandha tree, and run. The deceased, had been breathing when they found him with a slit on his throat. They have carried him home and have run to get help to take him to hospital. But he has been dead by that time. The motive for the killing had been a land dispute. This has been established by the police witness C.I. Gamanpila the inquiring officer. The judgment in the land case was delivered on following day in favour of the deceased.

The argument taken up by the learned counsel for the appellant was that there were two unidentified persons at the scene, and that the weapon said to have killed the deceased was not shown to the Judicial Medical Officer. The inquiring officer has stated that a sharp tool (കിടല) was found near the scene of the crime but there were no blood stains on it. The counsel mentioned two contradictions in the evidence marked as **V1** and **V2**. These two contradictions do not cast a doubt on the evidence of the two eye witness.

The counsel for the appellant argued that the learned High Court Judge has not considered lesser culpability and moved that they be convicted for the lesser offence under *sec. 297 of the Penal Code*. Both

accused in their dock statements have denied the incident and pleaded they were unaware of the incident. Therefore now they can not plea for a lesser offence in the appeal.

The accused appellants have run after dumping the deceased under the kandha tree when the second witness Chandradasa flashed his torch on them this subsequent conduct of the accused appellants proves the prosecution evidence, on intention. The fact that the appellants were seen carrying the injured deceased shows that it was not a spur of the moment incident.

The learned High Court Judge has carefully analysed the evidence placed before the High Court. The appellants have totally denied the incident in their dock statements therefore the learned High Court Judge can not consider a conviction for a lesser offence. In the instant appeal they moved for a conviction for a lesser offence which they can not do after denying knowledge of the incident.

For the above reasons the arguments of the accused appellant fail. Therefore I see no reason to set aside a well considered judgment.

The judgment and conviction of the High Court of Badulla delivered on 07/06/2011 is affirmed.

Appeal is dismiss.

**JUDGE OF THE COURT OF APPEAL**

**L.U. Jayasuriya J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**