

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

The Honorable Attorney General of the
Democratic Socialist Republic of
Sri Lanka

Huldftsdorp, Colombo.

Complainant

C.A. Application No. 104/2010

High Court Panadura 1677/2003

Vs

Colombage Chaminda Rohitha

No. 146, Angulana Road

Moratuwa.

2nd Accused – Appellant

BEFORE

: Deepali Wijesundera J.

L.U. Jayasuriya J.

COUNSEL

: Yalith Wijesundra for the

Accused – Appellant.

Haripriya Jayasundera DSG

For the Attorney - General

ARGUED ON

: 25th January, 2017

DECIDED ON

: 10th March, 2017

Deepali Wijesundera J.

The accused appellant and two others were indicted in the High Court of Panadura for the murder of K.D. Ranjith Niranjan Fernando under *Sec. 296 read with Sec. 32 of the Penal Code*. They were also indicted for causing grievous hurt to one Aponso under *Sec. 315 read with Sec. 32 of the Penal Code*. The first accused has died before the conclusion of the case and the third accused had been acquitted. The learned High Court Judge found the second accused appellant guilty of culpable homicide not amounting to murder and sentence him to five years RI and ordered to pay a fine of Rs. 10,000/= carrying a default sentence of 6 months. This appeal is from the said conviction and sentence.

On the day in question there had been a big match between two Leading Schools in Moratuwa at the Teron Fernando stadium. At about 5.30 in the evening a common fight broken out in the stadium and a crowd had given chase to the deceased. The deceased has sustained stab injuries as a result of him being attacked by the second accused and some others with a sharp instrument.

After watching the match witness Aponso had gone to his friend's house nearby and they have been having tea seated outside in the garden. He had

seen the deceased coming out of the stadium and has noticed some people surrounding and attacking him with clubs and flag poles. Aponso has rushed to the place to break up the fight and had identified the first accused who was holding a sharp pointed instrument in his hand. He has also seen the second and third accused holding poles in their hands. In the mids of this somebody had attacked Aponso but he has not identified the person who attacked him. (page 93).

Witness Aponso had identified the second and third accused at an identification parade held before the Magistrate subsequently. After witnessing the deceased being attacked Aponso had gone to one Dr. Dalpadadu's house and had seen his brother lying on the ground with stab injuries.

The Judicial Medical Officer has observed 7 injuries on the body of the deceased out of which he described wound no. 1 as the fatal wound which he has testified was caused by a sharp instrument.

On perusal of the evidence given in the High Court we find that the only person who carried a sharp instrument was the first accused. But the learned High Court Judge has acquitted him. There was evidence to the effect that the second accused appellant had given a box with weapons to witness no. 4 the Grama Niladari. Grama Niladari in the course of his evidence has testified the

appellant gave the said box to him on the following day. The High Court Judge has analysed the evidence and drawn the wrong inference that since the appellant landed over the said box to the Grama Niladari he was involved in the incident. We find that by coming into this conclusion the High Court Judge has erred. Without convicting the first accused who was holding a sharp instrument the second accused appellant can not be convicted for a lesser offence on the basis of participatory presence.

Sec. 32 of the Penal Code provides;

“When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone”.

For the afore stated reason the conviction can not stand. We decide to set aside the judgment dated 21/01/2010 and acquit the accused appellant.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya J.

I agree.

JUDGE OF THE COURT OF APPEAL