

**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.

1. Mahanthe Naidelage Nimal  
Karunaratne

**Accused-Appellant**

**C.A Appeal No: CA 343/2007**

**High Court Kurunegala Vs.**

Case No: HC228/2005

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

**Complainant-Respondent**

**BEFORE** : Deepali Wijesundera J.

L.U Jayasuriya J.

**COUNSEL** : Jeffery Zeinudeen for the Appellant

Thusith Mudalige D.S.G for the A.G

**ARGUED ON** : 19<sup>th</sup> January, 2017

**DECIDED ON** : 10<sup>th</sup> March, 2017

**L.U Jayasuriya J.**

The 1<sup>st</sup> Accused-Appellant was indicted in the High Court of Kurunegala under section 296 of the Penal Code for the murder of a person named Devendra Mulacharige Siyadoris Hamy.

The 2<sup>nd</sup> Accused was indicted under section 296 read with section 102 for aiding and abetting to commit murder.

The High Court, after trial convicted the 1<sup>st</sup> Accused-Appellant for murder and sentenced him to death. The 2<sup>nd</sup> Accused was acquitted.

This appeal is from the said conviction and the sentence.

The story of the prosecution is that the deceased had been sleeping on a carpenter's table in the verandah on the day in question when the son of the deceased had heard the deceased shouting “නිමල් පිහියෙන් අනිනවා”.

He had rushed out and switched on the verandah light and opened the door. While opening the door, he has seen the 1<sup>st</sup> Accused withdrawing the knife from the body of the deceased.

The Accused-Appellant is a close relation of the 1<sup>st</sup> witness.

The Counsel for the Appellant argued that the 2<sup>nd</sup> witness has heard the 1<sup>st</sup> Accused-Appellant calling “අත්තේ අත්තේ”. But this utterance was not heard by the first witness. The 2<sup>nd</sup> witness however, has stated since they are cousins, he could identify the Appellant's Voice.

Both the 1<sup>st</sup> and the 2<sup>nd</sup> witnesses have seen the Appellant near the deceased.

The 2<sup>nd</sup> witness too had heard the deceased shouting “නිමල් පිහියෙන් අනිනවා” (vide page 76 of the brief) prior to which he had heard the 1<sup>st</sup> Accused-Appellant uttering the words “අත්තේ අත්තේ”.

The 2<sup>nd</sup> witness too had gone out with the 1<sup>st</sup> witness at the same time and has seen the 1<sup>st</sup> Accused-Appellant withdrawing the knife.

The learned Counsel for the 1<sup>st</sup> Accused-Appellant further argued that the 1<sup>st</sup> Witness's evidence contradicted with the evidence of the 2<sup>nd</sup> Witness.

On a perusal of the evidence we find that it is not so.

The learned Counsel for the Appellant argued that the dock statement of the 1<sup>st</sup> Accused-Appellant was not analyzed by the learned High Court Judge. The 1<sup>st</sup> Accused-Appellant in his dock statement has stated that he was arrested by the Police and remanded in the year 2003 having been produced before a doctor. The Appellant has not referred to the incident in his evidence although the eye-witnesses have categorically stated that they witnessed the attack which resulted in the murder.

At page 152 of the brief, the learned High Court Judge has considered the dock statement.

For the forgoing reasons, we are not inclined to set aside a well-considered judgment.

The judgment dated 14.06.2007 is affirmed and the appeal is dismissed.

Appeal Dismissed.

**JUDGE OF THE COURT OF APPEAL**

**Deepali Wijesundera J.** :

I Agree.

**JUDGE OF THE COURT OF APPEAL**