

**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.

Vithana Arachchilage Don Bertu Basil

**Accused-Appellant**

**C.A Appeal No: CA 336/2007**

**High Court Kurunegala**

**Vs.**

Case No: 68/2002

The Hon. Attorney General,

Attorney General's  
Department,

Colombo 12.

**Complainant-Respondent**

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

**COUNSEL** : Indika Mallawarachchi for the Accused-Appellant  
Haripriya Jayasundera D.S.G for the AG

**ARGUED ON** : 6<sup>th</sup> October, 2016

**DECIDED ON** : 17<sup>th</sup> March, 2017

**L.U Jayasuriya J.**

The accused appellant was indicted under section 296 of the Penal Code for the murder of a man named Rathnayake Mudiyanseelage Jayantha Bandara in the High Court of Kurunegala. He was convicted and sentenced to death on 29.10.2007. This appeal is against the said conviction and the sentence.

The version of the prosecution is that on the day in question, the deceased was attacked by a mamoty and succumbed to his injuries. There are no eyewitnesses to narrate the incident and the prosecution has led circumstantial evidence.

Witnesses Rathnayake, Suraweera and Dingiri Menika whilst giving evidence have said that the appellant has admitted that he attacked a person with a mamoty. Out of these witnesses. Dingiri Menika has stated that she witnessed the dispute between the Appellant and the deceased, the day before. She has also said that, the Appellant on the day of the incident came to her house and uttered the words “I attacked Dudly”(Page 59 of the brief)

The learned High Court Judge has inadvertently stated that all the witnesses mentioned the name “Dudly” whereas we find that only Dingiri Menika has referred to the deceased by his name. We find that no prejudice has been caused to the Appellant on that conclusion.

The grounds of Appeal taken up by the learned Counsel for the Appellant were that the High Court Judge misdirected himself on critical issues of facts and failed to assess the testimonial trustworthiness of the witnesses.

On a perusal of the proceedings we find that the witnesses are independent witnesses and that they did not have any reason to falsely implicate the Appellant.

The counsel for the Appellant further argued that the learned High Court Judge misapplied the Allenborough Dictum. The learned High Court Judge has observed that when a strong prima facie case has been established by the prosecution, the appellant should give a plausible explanation. On a perusal of evidence, we find that the prosecution has presented a strong prima facie case and the said finding of the learned High Court Judge is correct.

It was held in **Ajit Samarakoon Vs. The Republic 2004 2SLR** at page 211 that:

“The principles laid down in R V Cochrane and R v Burdette do not place a legal or a persuasive burden on the accused to prove his innocence or to prove that he committed no offence but those two decisions on proof of a *prima facie* case on proof highly incriminating circumstances shift the evidential burden to the Accused to explain away the highly incriminating circumstances when he had both the power and the opportunity to do so.”

The learned D.S.G appearing for the respondent argued that there is ample evidence to show that the Appellant committed the offense while referring to page 54 of the brief. It appears from Dingiri Menika’s evidence in page 53 and page 54 that there had been some incident between the Appellant and the deceased over some monetary transaction. The learned D.S.G said that this shows the motive and the attack was indeed premeditated and a preplanned act. She also referred to the subsequent conduct of the Appellant, which infers guilt.

The Appellant was arrested by the Nikaweratiya Police after a lapse of 12 days from the crime.

The learned D.S.G submitted that the defence has not challenged the medical evidence led in the High Court. She referred to witness Jayalath’s evidence and stated that the Appellant admitted that he attacked a person twice with a mamoty.

The learned D.S.G further stated that the medical evidence is compatible in that the findings point towards an attack by a mamoty on the deceased.

For the foregoing reasons, we are not inclined to interfere with the judgment where this court finds that the evidence has been properly analyzed.

This court affirms the Judgment and conviction dated 22.10.2007 and dismiss the appeal.

Appeal Dismissed.

**JUDGE OF THE COURT OF APPEAL**

**Deepali Wijesundera J. :**

I Agree.

**JUDGE OF THE COURT OF APPEAL**