

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 under Sec. 331 of the
Code of Criminal Procedure
Act No. 15 of 1979.

01) Anura Chandana SuriyaBandara,
134, Kalubowila Road, Dehiwala

02) Pelapagama Samarasinghe
Dahanayake Rohana,
134, Kalubowila Road,
Dehiwala

Accused

C. A. Case No. : 39 A, B /2011

H. C. Colombo Case No. : 476 /2001

Vs

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

Accused-Appellants

Vs

The Hon. Attorney General

Attorney General's Department,
Colombo 12.

Complainant Respondent

BEFORE : M.M.A. Gaffoor, J &
K. K. Wickramasinghe, J

COUNSEL : AAL Palitha Fernando PC for the 1st Accused-Appellant.
AAL Niranjan Jayasinghe for the 2nd Accused-Appellant.
Rohantha Abeysuriya DSG for the Attorney General.

ARGUED ON : 16th March 2016

WRITTEN SUBMISSIONS: 30th September 2016

DECIDED ON : 25th May 2017

K. K. WICKRAMASINGHE, J.

Two accused appellants along with another accused were indicted in the high court of Colombo on the following two charges:-

Charge No.1:-

On or about 24th of October 1992 within the jurisdiction of this court the 1st accused was found to be in the company of the 2nd and 3rd accused persons did commit the offence of attempted murder of one Jayadeva Mahinda Wijesekera an offence punishable under section 300 of the Penal Code read with section 32 of the Penal Code.

Charge No.2:-

That on the same transaction did cause hurt to one Malinda Dinesh Wijekoon an offence punishable under section 315 of the Penal Code.

After trial the learned high court Judge of Colombo found the 1st and the 2nd accused appellants guilty of the 1st charge while acquitting all three accused from the second charge levelled against them.

The 1st and the 2nd accused were sentenced to a term of 4 years imprisonment and a fine of Rs. 10,000 along with a default term of 6 months imprisonment.

Being aggrieved by the aforesaid conviction and sentence imposed by the learned high court judge, the appellant lodged an appeal and moves this court to quash and set aside the same.

When this matter was taken up for hearing learned counsel for the appellant submitted following grounds of appeal:-

- (1) The accused appellants were not offered a fair trial as there had not been a proper evaluation of the evidence of the prosecution.
- (2) The evidence as regards to the 1st and the 2nd accused appellants in furtherance of a common intention has not been adequately considered by the learned trial judge.
- (3) The issue of accused exercising the right of private defence has not been considered by the learned trial judge.

Both learned counsel for accused appellants submitted that according to the injured, Jayadewa Mahinda he had received a blow from his behind and then he fell down then the 1st and the 2nd accused attacked him with clubs to his hands and legs. They further submitted that the injured had not seen the person who caused injuries to his head. Also submitted that according to witness Dayananda Siriwardena, the 1st accused appellant dealt a blow to Jayadewa Mahinda's head and he fell down. After that they carried him to the road.

The contention of the learned counsel for the appellant was that the medical evidence was hearsay since the dr. who wrote the bed head ticket was not called to give evidence at the trial.

The medical report does not reveal any injuries caused to arms and legs. Further, according to the short history provided by the injured, the 1st accused appellant's name is not implicated as he caused injuries to the injured. It was the 2nd accused appellant who caused injuries.

According to the submissions of the counsel for the first accused appellant was that the only evidence against the 1st appellant was that he was unknown to witness Sugath Dayaynanda Siriwardena who assaulted Jayadewa Mahinda and there was no identification Parade held.

Therefor it was merely doc identification and the learned high court judge had not considered this aspect. Further stated that the learned high court judge neither had the opportunity of observing the demeanour of the witness nor the previous high court judge recoded the same.

Both counsel submitted that there was no proper evaluation of evidence against both the appellants by the learned high court judge.

Learned counsel for the 1st Appellant submitted that in the case of Rex Vs Aranolis 44 NLR 370 it was held that when there were more than one person who could have committed the offence and when there was no evidence of common intention both accused have to be acquitted of the charge. Therefor both appellants in this case need to be acquitted.

The JMO when giving evidence categorically rejected that the injuries were not due to a fall and testified that the injuries were of a very serious nature. According to evidence the injured's skull was crushed to the extent where the fluid inside was leaked out of his ears.

The 2nd accused appellant claimed that a group of 30-40 people invaded his land break opening his gate but that position was not established by evidence. The police officer who conducted the investigation categorically stated that they were no signs of break opening a gate. Therefore it is abundantly clear that there was no such act committed by the victims. According to evidence the appellants had ample time to have recourse to the protection of the public authorities. Thereby they were not entitled to exercise their Right of Private Defence under section 92(3) of the Penal Code.

Though the appellants rely on the defence of the Right of Private Defence, they have not adequately established that they were entitled to exercise their Right of Private Defence within the ambit of the provisions stipulated in section 90 of the Penal code.

Considering all above I am of the view that the learned trial judge has very correctly and cautiously considered the evidence and taken a correct decision .I see no merit in this appeal. Therefore I affirm the conviction and the sentence imposed by the learned High Court Judge.

The appeal is hereby dismissed.

Judge of the Court of Appeal

M.M.A. Gaffoor, J.

I Agree

Judge of the Court of Appeal