

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

Attorney General

COMPLAINANT

Vs

Seethawaka Liyanage Sugathapala

1ST ACCUSED

Seethawaka Liyanage Sirisena

2ND ACCUSED

CA Case No. 238/09

HC Hambanthota Case No. 63/00

AND NOW

Seethawaka Liyanage Sugathapala

1ST ACCUSED – APPELLANT

Seethawaka Liyanage Sirisena

2ND ACCUSED – APPELLANT

Vs

Attorney General

COMPLAINANT – RESPONDENT

BEFORE

: Deepali Wijesundera J.

L.U. Jayasuriya J.

COUNSEL

: Indika Mallawarachchi for the

1st Accused – Appellant.

Jeffry Zainudeen for the

2nd Accused – Appellant.

Mr. Navavi SSC for the

Attorney General

ARGUED ON

: 23rd May, 2017

DECIDED ON

: 02nd June, 2017

Deepali Wijesundera J.

The first and second accused appellants were indicted under Section 296 of the Penal Code for the murder of Konegala Unangalge Sarath after trial both were convicted for murder and sentenced to death.

On the day of the incident the deceased was seated near the boutique owned by prosecution witness number one Gunadasa who is the sole eye witness to this incident. He has seen the appellants riding a bicycle and having parked the bicycle near the boutique the first appellant had held the deceased by his hair and the second appellant had stabbed the deceased on the back with a knife. Thereafter Gunadasa had seen all three of them grappling on the ground. The second appellant had dashed the deceased's bicycle on the floor. The first appellant had left the place thereafter and the second appellant has stabbed the deceased who had fallen into a drain.

The learned counsel for the appellants referred to injury number seven and said that it is not a fatal injury and that this injury was caused while the first appellant was holding the deceased by his hair. She submitted that the other injuries were caused by the second appellant after the first appellant left the place and walked about 40 meters away from the deceased. The argument of the first appellant was that the common intention ceases at the point the first accused walked away from the scene of the crime.

The counsel for the second accused appellant was gracious enough to inform court that the court should act upon evidence placed before the High Court.

The learned Senior State Counsel for the respondent argued that the accuseds are brothers and that they walked up to the deceased together and that the second appellant stabbed him while the first appellant held him by his hair which proves the common murderous intention as well as premeditated intention. He referred to page 159 of the brief and stated that the learned High Court Judge has analysed the evidence correctly and come to the correct conclusion. He also stated that although the defence counsel referred to injury number seven as a non fatal injury it is not so and referred to the Judicial Medical Officer's evidence.

It appears from the evidence placed before the High Court it is apparent that the first appellant did not try to stop the second appellant from stabbing the deceased. In fact he has held the deceased by his hair while the first stab injury (injury no. 7 in the MLR) was caused. Although

he has walked away from the scene thereafter one can not say he had no common murderous intention.

It has been held in **Lallan Bhai vs State of Bihar AIR 2003 SC 333** that the requirement of statute is sharing the common intension upon being present at the place of occurrence. Mere distancing from the scene can not absolve the accused.

It has been held in **Major Singh vs State of Punjab AIR 2003 SC 342**, the contention that the appellant was physically not in a position because of the sixty per cent, disability due to polio on his lower limbs, to hold the hand of the deceased cannot be accepted. The fact that the accused held the hand of one of the deceased to facilitate assailants to assault deceased, is said to have shared common intention of committing murder of deceased.

The injury number seven was referred to as a non fatal injury by the appellant's counsel, on perusal of the MLR and the Judicial Medical Officer's evidence (page 100 of the brief) it is described by the Judicial Medical Officer as a fatal injury. The Judicial Medical Officer has not been cross examined and his evidence has gone in unchallenged.

The second appellant has stabbed the deceased after he has fallen, continuously which proves his murderess intention. He has also dashed the deceased's bicycle on the ground.

I find that the learned High Court Judge has correctly analysed the evidence placed before him and come to the correct conclusion. I see no

reason to set aside a well considered judgment. Therefore the judgment dated 25/06/2009 is affirmed. Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya J.

I agree.

JUDGE OF THE COURT OF APPEAL