

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

Court of Appeal case no: CA HC 11 / 2015

W.M.P.Fernando .

295/296

Kadagalla wattha

Panirendawa

Complainant

Vs.

Hon Attorney General

Attorney General's Department

Colombo 12

Respondents

C.A. 11/2015

H.C. Chilaw Case No: H.C. 80/2009

Before : Deepali Wijesundera,J. &
L.U. Jayasuriya,J.

Counsel : Nihara Randeniya Assigned Counsel for the
Accused-Appellant.

A. Nawavi SSC. for the respondent.

Argued &

Decided on : 10.10.2017

L.U. Jayasuriya,J.

Accused-Appellant was indicted in the High Court of Chilaw for the murder of a man named Amarasinghe Arachchilage Premaratne and he was convicted after trial and sentenced to death. This appeal is from the said conviction and the sentence. On a perusal of evidence presented before the High Court, it appears that there had been no eye witnesses to the incident and that the accused has

been convicted based on the evidence of the defence. Further, it appears from the proceedings at page 60 of the brief, that the accused-appellant was unrepresented which offends the provisions of section 195(g) of the Code of Criminal Procedure Act. Further section 4(1) (c) of the Act No 56 of 2007 provides thus “ A person charged of a criminal offence under any written law shall be entitled to have legal assistance assigned to him in appropriate cases where the interest of justice so requires and without any payment by him, where he does not have sufficient means to pay for such assistance.”

In page 8 of the learned High Court Judge’s judgment, we find that he has referred to the accused-appellant’s evidence and said that the accused-appellant admitted in Court that the deceased first attacked him and thereafter he attacked the deceased and that it amounts to a sudden fight. We find that the learned High Court Judge has totally misdirected himself coming into that conclusion.

The Learned Senior State Counsel concedes the fact that the learned High Court Judge has convicted the accused based on his own evidence and that this conviction cannot stand.

The Judges presiding over original courts should bear in mind that the basic issue in criminal evidence is to maintain two things:

- (i) Burden of proof on the prosecution
- (ii) Presumption of innocence on the accused.

For the aforesaid reasons, we decide to set aside the conviction and acquit the accused.

The appeal is allowed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/-