

**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 and in terms of
the Constitution of the Democratic
Socialist Republic of Sri Lanka.

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

Complainant

Vs

Vidanalage Francis Nihal De Mel
Kalutara

Accused

C. A. Case No. : 99 /2000

and now between

H. C. Panadura Case No. : 1192/1997

Vidanalage Francis Nihal De Mel
Remand Prisons,
Kalutatra.

Accused-Appellant

Vs

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

Complainant Respondent

BEFORE : L.T.B.Dehideniya, J
K. K. Wickramasinghe, J

COUNSEL : AAL Gamini Premathilake with AAL Sunil Wanigathunga for the Accused
Appellant

DSG Haripriya Jayasundera for the Attorney General.

ARGUED ON : 23rd May 2017

WRITTEN SUBMISSIONS FILED ON: 04.08.2017

DECIDED ON : 06th November 2017

K. K. WICKRAMASINGHE, J.

The Accused Appellant (herein after referred to as the Appellant) was indicted in the High Court of Panadura on the following charge:-

On or about 08th April 1993, within the jurisdiction of this court the accused Caused the death of one Vidanalage Gracian De Mel, which is an offence of murder, punishable under section 296 of the Penal Code.

The indictment was read over to the Accused Appellant and the trial was commenced before a jury. After trial the jury found the accused guilty on a divided verdict of five to two. Accordingly the Learned High Court Judge of Panadura found the Appellant guilty of Murder and sentenced him to death.

Being aggrieved by the said conviction and sentence the Accused Appellant, made the instant appeal to this court for the vacation of the same.

Facts of the case:-

The appellant and the deceased are relatives and they lived in the same neighbourhood. While the appellant lived facing the St. Peters Lane, the deceased lived towards the interior having access through a by lane that ran along the land of the appellant. According to the wife of the deceased, there have been constant quarrels between the two families over the access road.

During the course of the argument counsel for the Accused Appellant contended that when witness Nimal Soysa was assaulted with a club by the accused, Gratian was not there and Gratian's son was also far away. The prosecution version is that there cannot be such a distance between them not to see each other since the passage was only 12 feet.

The prosecution evidence amply demonstrates that, when the deceased was returning along the side road at the time witness Nimal was attacked. It was the deceased that dispatched the witness to make a complaint to the police. When the entirety of evidence is considered it shows that the deceased was coming home at the time the witness Nimal was attacked, although the witness may not have noticed.

The kris knife which was recovered on a section 27 statement was identified by the eye witness as the murderous weapon which is been compatible with the injuries sustained by the deceased.

According to Investigation, the place of offence (blood stains etc. were present at the scene of crime) is also established as mentioned by the prosecution witnesses.

The judge has very correctly suggested to the jury to consider the defence of a sudden fight.

After considering the relevant facts merits of the case, the jury very correctly returned the verdict that the appellant is guilty of committing murder.

In the case of **Lurdu Nelson Fernando and others Vs AG (1998) 2 SLR 329**, His Lordships of the Supreme Court held that even the points raised by the appellants might be decided in Favour, yet no miscarriage of justice has actually occurred; hence the appeal should be dismissed.

In this present case it is noted that the arguments raised by appellants are not tenable and it should be rejected.

The jury who had the opportunity of watch the evidence had observed the credibility and the demeanour of the witnesses and they were satisfied that they were credible witnesses.

It is pertinent to note that very few contradictions which do not go to the root of the case are present. Those contradictions have been adequately considered by the Jurors on the direction of the Learned High Court Judge. Further the Learned High Court Judge very correctly directed the jury as to the law relates to a Sudden Fight and had summed up the evidence elicited in Court including the doc. Statement of the appellant. There by we have no reason to interfere with the judgement and the sentence imposed by the Learned Trial Judge.

The Appeal is hereby dismissed.

Judge of the Court of Appeal

L.T.B.Dehideniya, J

I Agree

Judge of the Court of Appeal