

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

In the matter of an appeal in terms of
section 331 of the Criminal Procedure Act
No. 15 of 1979.

Vithanage Shelton Perera
ACCUSED - APPELLANT

CA Case No. 182/2010

HC (Avisawella) Case No 130/2004 Vs

The Hon. Attorney General
Attorney General's Department
Colombo. 12
COMPLAINANT - RESPONDENT

BEFORE

: Deepali Wijesundera J.

L.U. Jayasuriya J.

COUNSEL

: Janaka Gamage for the
Accused – Appellant

Thusith Mudalige D.S.G. for the
Attorney General

ARGUED ON

: 17th November, 2017

DECIDED ON

: 07th December, 2017

L.U. Jayasuriya J.

The accused appellant (hereinafter referred to as the appellant) was indicted in the High Court Avissawella under Section 296 of the Penal Code for the murder of three persons namely Sellaiya Nagamma, Krishnan Rajarathnam and Wellasinghage Done Laisahamy respectively and after trial was convicted for the first and second counts and sentenced to death. He was acquitted on the third count.

This appeal is from the said conviction and the sentence. The story of the prosecution is that on the fateful day the three deceased along with the sole eye witness were sleeping in a line room. In the night the eye witness, prosecution witness no. 1 has heard a noise and woken up to see the appellant (who was his uncle) attacking his grandmother. Then he started shouting and has seen the appellant with a club. Further prosecution witness no. 1 testified that he had seen his uncle (Krishnan Rajarathnam) bleeding from one of his ears. He has seen the incident from the light shedding from a bottle lamp.

After the case for the prosecution was closed the appellant making a dock statement denied killing his mother. The Learned counsel argued that the Learned High Court Judge misdirected himself in concluding that the assault of Sellaiya Nagamma and Krishnan Rajarathnam had taken place at the same time and the same manner.

Prosecution witness no. 1 in his evidence categorically states that he saw Nagamma being attacked by the appellant and has seen

Rajarathnam with a bleeding injury. Therefore the above findings of the learned High Court Judge is correct.

The learned counsel for the appellant cited the judgment in **Withanage Premasiri Perera vs Attorney General CA 14/1998** decided on 30.03.1999 and argued that findings of the expert witness are more important than their opinion.

In the instant case although the Judicial Medical Officer who conducted the post - mortem did not testify at the trial, another Medical Officer has been called to give evidence and marked the post – mortem report. The learned Deputy Solicitor General submitted that the appellant has admitted expertise of the doctor and the doctor who gave evidence has explained the injuries on the deceased persons.

For the forgoing reasons we decide to affirm the judgment dated 16.11.2016 and accordingly dismiss the appeal.

Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL