

The Honorable Attorney General,  
Attorney general's Department,  
Colombo.

Complainant

Vs.

C.A No: 11/2017  
H.C. Case No: 2967/2010

Hewa Kankanamalage Clinton  
Bogambara Prisons

Accused

AND NOW,  
Hewa Kankanamalage Clinton  
Bogambara Prisons

Accused-Appellant

Vs

The Honorable Attorney General,  
Attorney general's Department,  
Colombo.

Complainant-Respondent

**CA 11/2017**

**HC KEGALLE CASE NO. HC 2967/2010**

**BEFORE** : **Deepali Wijesundara, J &  
Achaia Wengappuli, J.**

Accused-appellant is present in Court produced by the  
Prison Authorities.

**COUNSEL** : Shamila Karunaratne (Assigned Counsel) for the  
Accused – Appellant.  
Chethiya Gunasékara DSG, for the AG.

**DECIDED ON** : 2018.06.08.

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**Deepali Wijesundara, J**

The Accused Appellant is present in court produced by the Prison Authorities.

Heard both counsel in support of the Appeal and against the appeal.

The accused-appellant was indicted in the High Court of Kegalle for committing  
the murder of Wickrama Pedige Nilantha Darmasiri on or above 08.01.2009,

punishable under Section 296 of the Penal Code. After trial, he was found guilty and sentenced to death. This appeal is from the said conviction and sentence.

According to the evidence of the prosecution witnesses namely, the wife and the daughter of the deceased, the deceased was at home on the day of the incident when the appellant came and called him out and attacked him with a knife. The defence of the Appellant was that both of them were drinking together and the deceased took out a knife to attack the Appellant and while he tried to grab the knife from him this happened. But it has not been put to the prosecution witnesses that the knife was brought by the deceased. Therefore, he cannot bring this argument now.

Learned Counsel for the Appellant citing the judgment of Jayathilaka Vs. A.G. 1 SLR 2003 page No. 107 argued that the learned High Court Judge has not considered the state of intoxication of the deceased and the Appellant. There is no evidence to say that the deceased was under the influence of liquor. The Post Mortem Report indicates that "alcohol smell is not clear." The Appellant in his evidence did not say that he was intoxicated at the time of the incident.

The Appellant in his allocutus has admitted that he tried to defend himself. No such suggestion has been made to the witnesses during the trial.

Learned Senior State Counsel then referred to evidence of the witnesses Katherine and Sunil where both of them stated that they had dinner late in night before they went to sleep. The learned High Court Judge has considered the evidence and the medical evidence when delivering his findings. Therefore, we are not inclined to set aside a well considered judgment of the learned High Court Judge. The judgment dated 02.02.2017 is affirmed.

Appeal dismissed.

**JUDGE OF THE COURT OF APPEAL**

**ACHALA WENGAPPULI, J**

I agree

**JUDGE OF THE COURT OF APPEAL**

NW/-