

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

**In the matter of an appeal under  
and in terms of Section 331 of the  
Criminal Procedure Code Act No. 15  
of 1979.**

The Attorney General of the Democratic  
Socialist Republic of Sri Lanka.

**Complainant**

**Court of Appeal  
Case No. CA/268/2016**

**Vs,**

W. Ranjith Janaka Fernando

**Accused**

**And Now Between**

W. Ranjith Janaka Fernando

**Accused-Appellant**

**High Court of  
Case No. Negombo**

**Vs,**

The Attorney General of the Democratic  
Socialist Republic of Sri Lanka

**Complainant-Respondent**

**Before : S. Thurairaja PC, J &  
A.L. Shiran Gooneratne J**

**Counsel : Indica Mallawaratchy AAL with K. Kugaraja, AAL  
Sudharshana De Silva, SSC**

**Written Submissions : Appellant – 11<sup>th</sup> September 2017  
Respondent – 7<sup>th</sup> February 2018**

**Argument on** : 19<sup>th</sup> June 2018

**Judgment on** : 29<sup>th</sup> June 2018

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## **JUDGMENT**

### **S. Thurairaja, PC. J**

The Accused Appellant Wandhuravalage Ranjith Janaka Fernando, (herein after sometimes referred to as the appellant), was indicted for murder of Kottugodage Isantha Samadhi, and voluntarily causing injury to Kottugodage Vinodhini Sridevi Perera, punishable under Sec 296 and 315 of the Penal Code, respectively.

After the trial, the Appellant was convicted and sentenced to death and one year rigorous imprisonment.

Being aggrieved with the said conviction and sentence, the appellant preferred an appeal to the Court of Appeal and submitted the following grounds for appeal.

- a) The appellant was denied of fair trial as his evidence under oath has not been evaluated.
- b) Denied of a fair trial by learned trial Judge had addressed her mind to inadmissible evidence against the appellant.
- c) Denied of a fair trial by the trial Judge by allowing confessionary materials to suggest to the Accused Appellant, when he gave evidence.

It will be appropriate to consider the facts of the case before we proceed to the grounds of appeal.

The appellant is married to the sister of the deceased and the injured. He also had an affair with the deceased. On the 3<sup>rd</sup> November 2008, according to the Prosecution he had threatened the inmates of the house with a manna knife, bottle of acid and a knife. When the appellant came to their house they threw chilli water (water mixed with chilli powder). Then the appellant had attacked the deceased with the manna knife which he was carrying and attacked the injured with a table knife.

The appellant gives a different version saying that he was called by the deceased to protect her from a dispute with her neighbour. When he came, the deceased and the

injured had thrown chilli water and chilli powder. Then he ran out, there had been a scuffle with the deceased, which eventuated her to land on a manna knife which caused the injury. The injured person also attacked the appellant, due to the fight she received cut injuries.

Prosecution called evidence of Kotugodage Vinodani SriDevi Perera - injured person, Palihawadana Gayani Dilrukshi Fernando, Dr. Solanga Arachige Don Channa Perera Consultant, JMO, CI. Liyanage Samansiri Sigera, IP. Jayalath Hewa Pathiranalage Sajeeva Sampath Kumara, Hermin Milan Bernadate and closed the case for the prosecution. The learned Trial Judge called the Accused for his defence. Prosecutor made an application to call witness for the Prosecution it was allowed and Dr. Wewelage Kumara Senadeera Fernando was called. Once again, the learned Trial Judge called for the defence of the Appellant.

The Appellant opted to give evidence under oaths and called Gajasinghe Madana Arachchige Gayan Rangana Silva, Gamini Patrick Wasantha Silva, Nanda Kumara and Wewelage Rita Fernando

The appellant, prays with the court that he is denied of a fair trial by the learned trial Judge by not properly considering and evaluating the evidence for the prosecution as well as the defence. There is no complaint of the trial proceedings, and the major complaint is that the judgement of the learned trial Judge is not a considered judgement.

The learned SSC, conceded in this court, that the learned trial Judge has not considered the evidence of the Accused Appellant, and his witnesses.

It will be necessary to consider the relevant law regarding Judgment. Section 283 (1) of the Code of Criminal Procedure Act (CCPA) states as follows;

*(1) The judgment shall be written by the Judge who heard the case and shall be dated and signed by him in open court at the time of pronouncing it, and in case where appeal lies shall contain the point or points for determination, the decision thereon, and the reasons for the decision*

In **The King vs. Tholis de Silva and three others** (1937) Volume ix CLW 37. Hearne J held,

*that the **trial Judge must scrutinise the evidence for the defence and that failure to do so is an injustice to the accused**, unless it is overwhelmingly obvious that the witnesses for the defence are so contradictory of each other as to be unworthy of credit.*

(Emphasis is mine)

In **W. M. R. B. Wijayaratna and 4 others v Hon Attorney General** 2010 (B.L.R) 169 (Udathalawinna case), His lordship the Chief Justice J.A.N. De. Silva held.

*(k) In a criminal trial, one aspect of miscarriage of justice would be, where any palpable and substantial illegalities or irregularities affecting a trial and/or the consequences thereof are inextricably interwoven with the final outcome, a miscarriage of justice would be occasioned. To say the above in a more simple way therefore would be that when there is an issue of miscarriage of justice in a case the court will take into consideration all the evidence and the attendant circumstances in deciding the issue.*

*(l) The Judge need not microscopically set down well established principles of law – a reference to the principles would be sufficient to show that the Judge was alive to the legal issues to be considered within the trial- unless the application of even the well-established legal principles was being contested or the nature of evidence itself occasioned a necessity of expressed analysis and application of the law for clarity and to facilitate any examination by a superior court in any event the record must bear out proper and concise application of the law.*

*(m) the inclusion of reasons in a judgment cater to two distinct situations; Public accountability and the need to know. An acceptable judgment must indicate the Judge's absorption of the narrative of events, his evaluation of the evidence with reasons thereon, his application of law and legal principles.*

I perused, the Judgement which is annexed to the brief at Page no 350-370. The alleged Judgement consists of 21 pages. The learned trial Judge has narrated the evidence from Page No 1-19 and evaluation of all the witnesses had been done in one paragraph which consists of 9 lines. There is not a single word to say that the learned trial Judge has considered the evidence of the appellant and his witnesses. The appellant's evidence was neither accepted nor rejected.

With regret, I conclude that there is no proper judgement in the case by the learned trial Judge.

The ideal order in this given circumstance, is sending this case for re-trial, but the incident had happened on the 3<sup>rd</sup> November 2008 almost 10 years ago. The Counsel for the Appellant submits, that this is a case of Culpable homicide not amounting to murder on the basis of Grave and Sudden Provocation, punishable under section 297 of the Penal Code.

Considering the evidence of the incident alleged to have occurred on the 3<sup>rd</sup> November 2008. On a careful perusal of evidence led before the trial Judge by the Prosecution and the Accused Appellant, I find that the Prosecution had failed to prove the indictment beyond reasonable doubt.

Considering the evidence of all witnesses for the Prosecution and the Defence, including the Accused Appellant, I find, that this is a case of Culpable Homicide not amounting to murder on the basis of Grave and Sudden Provocation and/or Sudden Fight. Therefore, we vacate the conviction and sentence imposed by the learned trial Judge. We convict the Accused Appellant for Culpable homicide not amounting to murder, punishable under section 297 of the Penal Code. We impose 8 years Rigorous Imprisonment and a Fine of Rupees 25000/- in default, 6 months Simple imprisonment.

**Appeal Partly allowed.**

**JUDGE OF THE COURT OF APPEAL**

**A.L. Shiran Gooneratne, J**

I agree,

**JUDGE OF THE COURT OF APPEAL**