

**IN THE COURT OF APPEAL OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF SRILANKA**

CA 73/2015

Ponnamperuma Arachige  
WasanthaHigh Court of Jaffna Case No.  
1470/2011Appellant

Vs.

The Ho. Attorney General  
Attorney General's Department  
Colombo 12Respondent

**BEFORE** : M. M. A. GAFFOOR, J.  
A. L. SHIRAN GOONERATNE, J.

**COUNSEL** : Sharon Serasinghe for the Accused-Appellant  
P. Kumararathnam DSG for the Respondent

**DECIDED ON** : 14.09.2018

**M. M. A. GAFFOOR, J.**

Accused-Appellant (hereinafter referred to as the 'Appellant') was convicted by the High Court of Jaffna for committing an offence of murder of Captain Upali Ralapanawa (herein after referred to as the 'deceased') on or about 15<sup>th</sup> May 2007 at Kankesanthurai, Jaffna, thereby, committing an offence punishable under Section 296 of the Penal Code.

The respective charge made against the Appellant in the indictment was read out to him and the Appellant pleaded not guilty to the said charge and opted for a trial without jury.

At the conclusion of the trial, the learned High Court Judge of Jaffna found the Appellant guilty of the offence of murder and sentenced him to death on 28<sup>th</sup> May 2015

Being aggrieved by the said conviction and sentence, the Appellant preferred this appeal, seeking to set aside the judgment dated 28<sup>th</sup> May 2015, delivered by the learned High Court Judge of Jaffna.

Counsel for the Appellant raised the following grounds of appeal:

1. It is not safe to convict the Appellant for murder when he was not given a fair trial.
2. It is not safe to convict the Appellant on the evidence of PW3 which is not credible or not corroborated by the witnesses.

The prosecution case briefly reads as follows:

On the day of the incident the deceased had been engaged in his official duties at the 4<sup>th</sup> Military Unit situated at Kankesanthurai where the Appellant had entered the said office armed with a T-56 automatic rifle and by firing such weapon has caused the death of the deceased. The Prosecution relied on the evidence of Unagolle Pallegedera Seneviratne who was an eye-witness to this incident.

According to this witness which is recorded at page 67 and 68 in the translated brief, he had seen the Appellant firing at the Captain Ralapanawa in front of the office which he was doing his official duties around 3.15 p.m. to 3.30 p.m. on the said date. Having stated 20 feet away from just opposite place where Ralapanawa stayed he saw this incident. He was behind the office of Captain. Ralapanawa when the firing took place. According to his evidence he has clearly seen that the appellant shooting Captain Ralapanawa and carrying the gun entered into his office too. In the evidence given before the prosecution case there is no omission or contradiction marked according to the brief.

According to witness Galkotuwe Gedera Sarath Weerasinghe the Appellant has been issued the T-56 marked 21013172 with 4 magazines and 120 bullets. Soon after the incident this weapon has been recovered in the possession of the Appellant.

Witness Udeya Kumara Jayasekera giving evidence states that he took charge of the T-56 gun and the magazine, 15 bullets and has handed over the said productions to the Police Station. The said productions have been sent to the Government Analyst for examination and the said report has been marked as P4 which has been accepted by the counsel appearing for the Appellant.

One of the grounds of the appeal is that it is unsafe to rely upon the evidence of PW3 which has not been corroborated by any of the official witnesses. PW3 was the only witness who had knowledge of the rifle between the deceased and the appellant and also his testimony was prompt and there are no contradictions or commissions.

It is trite law that when a witness giving cogent, inspiring and truthful testimony in a court, the trial judge do not incline to accept that witness.

In **Sumanasena V. Attorney General** (1999) 3 S.L.R 137 it was held that:-

*"Evidence must not be counted but weighed and the evidence of a single witness if cogent and impressive could be acted upon by a court of law.*

*"When the prosecution establishes strong and incriminating cogent evidence against the accused, the accused in those circumstances was required in law to offer an explanation of the highly incriminating circumstances established against him."*

In **Upali Sarathchandra & Others vs. Republic of Sri Lanka** (2005) 2 S.L.R. 267, the Court had carefully analysed and evaluated and weighed the evidence of the 12 year old eye witness and was convinced that he had given cogent and truthful testimony in court, also by observing the demeanour and deportment of this witness.

Jagath Balapatabendi and Imam JJ Further held that *"no particular number of witnesses shall in any case be required for proof of any fact. Evidence must not be counted but weighed. "*

Same approaches followed in **Walimunige John vs. State**, 76 N.L.R. 488 and **K vs. Davodulebbe**, 50 N.L.R. 274

Thus the court could have acted on the evidence of the victim provided the trial Judge was convinced that PW3 was giving cogent, inspiring and truthful testimony in court.

The next ground for appeal is that the appellant was not given the fair trial. But after conclusion of the case the Appellant was given an opportunity and he has made a dock statement. In his Dock Statement he has only said that *"I do not murder Captain Ralapanawa on 15.05.2007 and I state that I did know to tell anything about it."*

According to the prosecution, they have established their case beyond reasonable doubt and the court given a fair opportunity in order to explain his previous position to show is there any exception or any mitigatory circumstances according to Section 294 of the Penal Code. But according to the prosecution as well as the defence evidence nothing comes out in this nature. Therefore the reasons set out in the case, we are not incline to set aside the judgment dated 28.05.2015 delivered by the learned High Court Judge of Jaffna.

Therefore, we affirm the conviction and the sentence imposed on the Appellant; and dismiss the appeal.

***Appeal dismissed.***

**JUDGE OF THE COURT OF APPEAL**

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

I agree.

**JUDGE OF THE COURT OF APPEAL**

Vkg/-