

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

In the matter of an Appeal under  
Section 331 of the Code of  
Criminal Procedure Act No. 15 of  
1979, read with Article 138 of the  
Constitution of the Democratic  
Socialist Republic of Sri Lanka.

Democratic Socialist Republic of  
Sri Lanka

**Court of Appeal Case No.  
CA/HCC/0171/2019**

**Complainant**

**High Court of Embilipitiya  
Case No. HCE/35/2015**

V.

Jayawickrama Kankanamge  
Premadasa

**Accused**

AND NOW BETWEEN

Jayawickrama Kankanamge  
Premadasa

**Accused – Appellant**

V.

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

**Respondent**

**BEFORE** : **K. PRIYANTHA FERNANDO, J. (P/CA)**  
**WICKUM A. KALUARACHCHI, J.**

**COUNSEL** : Chathura Amarathunga for the Accused  
– Appellant.

Sudharshana De Silva, Deputy Solicitor  
General for the Respondent.

**ARGUED ON** : 14.03.2022

**WRITTEN SUBMISSIONS**

**FILED ON** : 28.02.2020 by the Accused – Appellant.

04.08.2020 by the Respondent.

**JUDGMENT ON** : 17.05.2022

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**K. PRIYANTHA FERNANDO, J. (P/CA)**

1. The accused appellant (herein after referred to as the appellant) was charged in the High Court of *Embilipitiya* with 2 counts of murder, punishable in terms of section 296 of the Penal Code. Upon conviction on both counts after trial, the appellant was sentenced to death. Being aggrieved by the above conviction and the sentence, the appellant preferred the instant appeal. In the written submissions filed by the learned Counsel for the appellant, the following two grounds of appeal were urged.
  - I. The items of evidence are not sufficient to prove the prosecution case against the appellant beyond reasonable doubt.
  - II. The rejection of the evidence of the accused is wrongful and the learned Judge of the High Court has failed to correctly apply the principles governing the evaluation of a dock statement.

## 2. Facts in brief

According to the evidence of the main eye witness *Pradeep Nalinda Kumara* (PW4), the incident that led to the death of the two deceased persons had happened at about 7:30 to 8:00 p.m. PW4 has seen the appellant going on a motorcycle that was ridden by the 2<sup>nd</sup> deceased *Saman Kumara* (the deceased in count no. 2) at about 7:00 pm. A few minutes later, the 2<sup>nd</sup> deceased has returned alone and started shouting in filth. The appellant has then come running towards the 2<sup>nd</sup> deceased. Then the 1<sup>st</sup> deceased *Manjula Prasanna Siriwardena* (the deceased in count no. 1) has come in between them. The appellant has stabbed the 1<sup>st</sup> deceased. When the 1<sup>st</sup> deceased fell down, the appellant has cut the 2<sup>nd</sup> deceased also with the knife.

3. When the defence was called, the appellant had made an unsworn statement from the dock. His statement was that, when he was about to leave his boutique to go home, the 2<sup>nd</sup> deceased who was his cousin has called him to go to the 5<sup>th</sup> mile post. Before reaching the 5<sup>th</sup> mile post, the 2<sup>nd</sup> deceased has dropped him from the motorcycle. When he came back walking in the dark, someone whom he could not identify has slapped him. Then he has swerved the knife. Then, another person whom he could not identify has come. Thereafter, when he was walking towards the police station, he has met a person called *Jule mali* from whom he asked for a lift to go to the police station. On the way, he has seen the police jeep and has surrendered to the police.
4. At the hearing of this appeal, the learned Counsel for the appellant submitted that there is evidence of a sudden fight and the learned High Court Judge should have considered convicting the appellant for the lesser offence of culpable homicide not amounting to murder based on a sudden fight, instead of murder. Although the above mentioned two grounds of appeal were preferred in the written submissions, the argument advanced at the hearing of the appeal by the learned Counsel for the appellant was, that the learned trial Judge has failed to consider lesser culpability.
5. It was the submission of the learned Deputy Solicitor General for the respondent, that PW4 was an independent witness and

his evidence was never challenged by the defence. It was further submitted, that the defence taken up by the appellant in his dock statement was never put to the prosecution witnesses in cross examination. It was his contention that the learned High Court Judge has considered lesser culpability, but the evidence has not revealed lesser culpability.

6. PW4 can be considered as an independent witness who saw the incident. Although he was cross examined at length by the defence Counsel in the High Court, his evidence was not challenged. He was consistent. It was his evidence that the villagers flocked upon hearing the noise and got the appellant under control. If not for the villagers who controlled the appellant, the appellant would have stabbed some more persons, the witness testified (page 113 of the appeal brief). He has given clear evidence as to how the appellant caused injuries to both the deceased.
7. Where the controversy is about veracity of witnesses, immense importance attaches, not only to the demeanour of the witnesses, but also to the course of the trial, and the general impression left on the mind of the Judge of 1<sup>st</sup> instance, who saw and noted everything that took place in regard to what was said by one or other witness. It is rare that a decision of a Judge of 1<sup>st</sup> instance upon a point of fact purely is over-ruled by a Court of Appeal. (*Fradd v. Brown & CO., LTD. 20 NLR 283*)
8. The 1<sup>st</sup> deceased *Manjula Prasanna Siriwardena* has received a stab injury on the abdomen, penetrating the cavity. He also has received another cut injury on the right elbow. The 2<sup>nd</sup> deceased *Saman Kumara* has received stab injuries on the neck and the chest. The stab injuries caused on both the deceased reflects the murderous intention of the appellant. In his statement from the dock, the appellant has admitted his presence at the scene, and has admittedly swerved the knife, although he did not admit causing injuries to the deceased deliberately.
9. The learned High Court Judge in his judgment has carefully considered and analyzed not only the evidence by the prosecution, but also the dock statement made by the appellant. In his judgment at page 27 (page 342 of the appeal brief), the learned High Court Judge has analyzed the evidence and given good and sufficient reasons for rejecting the dock statement by

the appellant. The evidence adduced at the trial has not revealed any basis for lesser culpability. Hence, I find that the grounds of appeal urged by the appellant are devoid of merit. Therefore, the conviction and sentence imposed by the learned High Court Judge are affirmed.

Appeal is dismissed.

**PRESIDENT OF THE COURT OF APPEAL**

**WICKUM A. KALUARACHCHI, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**