

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

*In the matter of an appeal from the  
Provincial High Court Holden in  
Kalmunai in terms of Section 331 of  
the Code of Criminal Procedure Act to  
the Court of Appeal.*

CA (PHC) 0245/17

Provincial High Court of Kalmunai

Case No. EP/HCK/Rev/200/2017

Aboobucker Sabir,

No. 96/4, Ampara 11<sup>th</sup> Road,

Sammanthurai.

**COMPLAINANT**

Magistrate's Court of Sammanthurai

Case No. 8241/PVT/13

**Vs.**

Sinnarasa Aboothahir *Alias* Janeer,

No. 352/6, Block J, East-01,

Hira Junction, Sammanthurai.

**ACCUSED**

**AND NOW BETWEEN**

Aboobucker Sabir,

No. 96/4, Ampara 11<sup>th</sup> Road,

Sammanthurai.

**COMPLAINANT-PETITIONER-**

**APPELLANT**

**Vs.**

1. Sinnarasa Aboothahir *Alias*

Janeer,

No. 352/6, Block J, East-01,

Hira Junction, Sammanthurai.

**ACCUSED-RESPONDENT**

**RESPONDENT**

2. The Hon. Attorney General,

Attorney General's Department,

Colombo 12.

**RESPONDENT-RESPONDENT**

**Before** : Sampath B. Abayakoon, J.

: P. Kumararatnam, J.

**Counsel** : A. Mohammed Farook for the complainant-petitioner-  
Appellant

: Shihar Hassan for the accused-respondent-  
respondent

: Nishanth Nagarathnam, S.C. for the respondent-  
respondent

**Argued on** : 05-06-2023

**Decided on** : 27-07-2023

**Sampath B. Abayakoon, J.**

The complainant-petitioner-appellant (hereinafter referred to as the appellant) instituted proceedings against the accused-respondent-respondent (hereinafter referred to as the respondent) by filing a private plaint in terms of section 136(1) of the Code of Criminal Procedure Act No 15 of 1979 before the Magistrate Court of Sammanthurai.

The charge preferred against the respondent was that he assaulted one Sabir Fathima Nusaifa on her head and the hip, and pulled her ear on 24-02-2013, and thereby committed offences punishable in terms of sections 314 and 343 of the Penal Code.

Despite the obvious defects in the charge where the appellant has mentioned two penal offences in one charge, the learned Magistrate of Sammanthurai has decided to issue summons to the respondent. As the respondent has pleaded not guilty to the charge, the matter has proceeded to trial.

At the trial, the alleged victim of the attack has given evidence as PW-02, and it had been her evidence that the respondent who was her uncle, never assaulted her as claimed by the appellant and no such incident as claimed occurred. Even the PW-03 who is the younger sister of the of the alleged victim, has said the same thing in her evidence.

The learned Magistrate of Sammanthurai pronouncing his judgment on 09-09-2016 has very correctly acquitted the respondent as there was no evidence whatsoever against the respondent to prove the charge against him.

The appellant has filed an application in revision in terms of Article 154P of the Constitution before the Provincial High Court of the Eastern Province holden at Kalmunai on the basis of being aggrieved by the said judgment of the learned Magistrate of Sammanthurai.

After hearing the parties, the learned High Court Judge of Kalmunai by his well reasoned out judgment dated 30<sup>th</sup> August 2017, has dismissed the revision application for want of any merit.

It is against the said judgment the appellant has preferred this appeal.

### **The Grounds of Appeal**

At the hearing of this appeal, the learned Counsel for the appellant formulated the following grounds of appeal for the consideration of the Court.

- (1) The learned Magistrate and the learned High Court Judge erred in law by failing to consider the evidence of the appellant recorded at page 99 of the appeal brief.
- (2) The learned Magistrate and the learned High Court Judge failed to consider the evidence as per the section 114 of the Evidence Ordinance.

It was the position of the learned Counsel for the appellant that the evidence given by the appellant, who gave evidence as PW-01, before the learned Magistrate has not been considered and if considered in the correct perspective, there should be a conviction of the respondent. It was also his position that the evidence of the appellant should have been considered in terms of section 114 of the Evidence Ordinance, where the Court may presume the existence of certain facts.

It was the contention of the learned Counsel for the respondent that the appellant was not a person who has witnessed the incidents alleged by him in the plaint filed against the respondent, and whatever he has stated about the alleged incident in his evidence amounts to hearsay, and a conviction cannot be entered based on hearsay. The learned Counsel moved for the dismissal of the appeal.

### **Consideration of the Grounds of Appeal**

It is abundantly clear from the proceedings before the learned Magistrate of Sammanthurai that the appellant has failed to adduce any evidence to prove the charge or charges preferred by him against the respondent by way of a private plaint. Under the circumstances, there was no option for the learned Magistrate, but to acquit the respondent.

It is also abundantly clear that the appellant had no basis to challenge the judgment when he filed the application in revision before the Provincial High Court. The learned High Court Judge has well considered the factual and legal provisions in that regard, and had correctly dismissed the application.

Accordingly, I find no reasons to interfere with the judgment of the learned Magistrate of Samanthurai as well as the judgment of the learned High Court Judge of the Provincial High Court of Eastern Province holden at Kalmunai.

It is the view of this Court that the appellant has filed this appeal before this Court, not for anything else, but to cause the maximum possible harassment to the respondent, knowing very well the strength of his appeal.

The appeal is dismissed as it is devoid of any merit.

The Registrar of the Court is directed to communicate this judgment to the High Court of Kalmunai and to the Magistrate Court of Sammanthurai for information.

Judge of the Court of Appeal

**P. Kumararatnam, J.**

I agree.

Judge of the Court of Appeal