

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of an appeal under and in terms of the Article 138 (1) of the Constitution read with the Section 11 (1) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 with the Section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

Court of Appeal Case No:

HCC - 197 – 199/2018

High Court of Kurunegala Case No:

HC 20/1997

The Democratic Socialist Republic
of Sri Lanka.

Complainant

Vs.

1. Sudu Devayalage Siripala
2. Mallehe Appuhamilage Ajith Sampath
3. Peter Charles Joseph
4. Hathuru Sinhaarachchilage Chandrapala
alias Chandare
5. Salpa Don Arachchilage Shantha
Jayarathna
6. Buvanekabahu Chithra
Muhandiramalage Buddadhasa alias Eta
Ranjith (Deceased)
7. Mallehe Appuhamilage Swarna
Damayanthi

Accused

AND NOW BETWEEN

1. Sudu Deayalage Siripala
2. Mallehe Appuhamilage Ajith
Sampath
3. Peter Charles Joseph

Accused – Appellants

Vs.

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

Complainant – Respondent

Before : Menaka Wijesundera J.
B. Sasi Mahendran J.

Counsel : I.B.S. Harshana for the 1st and 3rd Accused – Appellants.
Indica Mallawarachchy for the 2nd Accused – Appellant.
Maheshika Silva, D.S.G. for the Respondent.

Argued on : 17.07.2023

Decided on : 25.07.2023

MENAKA WIJESUNDERA J.

The instant appeal has been filed by the 1st, 2nd and 3rd Accused-Appellants to set aside the judgment dated 22.06.2018 by the High Court of Kurunegala. In the said judgment the learned trial Judge had found the Accused-Appellants guilty for murder on the basis of common intension.

At the very outset seven Accused had been indicted for murder on the basis of common intension and unlawful assembly. The learned trial Judge had found the 1st,

2nd, 3rd and the 4th accused guilty for murder on the basis of common intension, but the 4th Accused is absconding.

The 1st Accused-Appellant had died pending appeal. The Counsel appearing for the 2nd and the 3rd Accused-Appellants stated that they have studied the brief extensively and they had not been able to formulate compelling grounds of appeal. As such they said that they were making submissions only to assist Court. This conduct of these two Counsel we appreciate very much for being of assistance to Court when the situation demands.

In the instant matter the main eye witness of the case is the wife of the diseased. She had witnessed her husband being attacked by the Accused-Appellants. She had immediately complained to the Police and the Police had visited the scene. There had been a motive to the incident. She had been corroborated by witness No. 03 of the prosecution. The doctor had identified several cut injuries on the body of the diseased and injury No. 3, 4 and 5 had been identified to be necessarily fatal. In the 1st Complaint which had been lodged by the diseased person's wife had mentioned the participation of the Accused-Appellants, and the complaint had been made promptly. The identity of the Accused-Appellants had been substantiated by the evidence of PW 01 and 03.

The learned trial Judge had observed that the evidence led by the prosecution stands uncontradicted although some frivolous contradictions have been marked. The trial Judge had considered the participation of each of the Accused-Appellants convicted and has come to the conclusion on that. They have shared the common intension of causing the death of the diseased and not the common object among themselves along with the Accused already acquitted.

The trial Judge had rejected the dock statements made by the Appellants on the basis that it had not a created reasonable doubt in the Case for the prosecution. As such he had found the Accused-Appellant guilty for causing the death of the diseased on the

basis of common intension. As submitted by the Counsel appearing for the Accused-Appellants this Court finds no compelling reason to set aside the conviction and the sentence entered by the trial Judge.

As such the instant appeal is dismissed and the conviction and the sentence imposed on the Accused-Appellants are hereby affirmed.

JUDGE OF THE COURT OF APPEAL

Hon. Justice B. Sasi Mahendran

I agree.

JUDGE OF THE COURT OF APPEAL