

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

In the matter of an Appeal against the
Conviction/ Sentence of the High Court of
Kalmunei under the Provisions of the Code of
Criminal Procedure Act No 15 of 1979

Court of Appeal Case No:

HCC-308/15

*HC of Vavunia Case No:
2069/2009*

A. Sasitharan

Accused-Appellant

V.

Hon. Attorney General

Respondent

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

Counsel: Dr.Ranjith Fernando with Champika Monarawita for the Accused-
 Appellant
 Suharshi Herath Jayaweera, DSG for the Respondent

Written 04.05.2018 (by the Accused-Appellant)

Submissions: 02.08.2018(by the Respondent)

On

Order On: 25.09.2023

Sasi Mahendran, J.

The 1st and 2nd Accused (Alagan Sasitharan) along with four others were indicted in the High Court of *Vavuniya* on the following charges.

1. On or around 17th May of 2006, Being members of unlawful assembly and committed an offence punishable under section 140 of the Penal Code.
2. Being members of the aforementioned unlawful assembly and caused the death of *Navarathnarasa Navaranjan* (hereinafter referred to as the deceased) and thereby committed an offence punishable under Section 296 read with 146 of the Penal Code.
3. Causing the death of the *Navarathnarasa Navaranjan* during the above transaction and committing an offence punishable under section 296 read with Section 32 of the penal Code.
4. Being as mentioned in the first charge, being members of an unlawful assembly, wilfully causing grievous injury to *Navarathnarasa Manoraj* and committing an offence punishable under Section 317 of the Penal Code.
5. Being as mentioned in the first charge, during the same transaction causing grievous injury of *Navarathnarasa Manoraj* by attacking him and thereby committing an offence punishable under section 317 read with Section 32 of the Penal Code.

The prosecution presented the evidence of seven witnesses and marked documents as P1 to P7. The Accused testified from the witness box. At the conclusion of the trial, the Learned High Court Judge acquitted and discharged the 2nd and 3rd Accused. However, the 1st and 2nd Accused were convicted for murder, and a death sentence was imposed.

Being aggrieved by the said conviction and the sentence the Appellants preferred this Appeal seeking to set aside the said judgment dated 07th October 2015 by the Learned High Court Judge of Vavuniya.

When the matter came before us on the 19th of July 2023, the learned Counsel for the Accused-Appellant brought to our attention that the Accused-Appellant had faced a similar case in the High Court of *Vavuniya*, Case No. 2084/2010. He was convicted on the 29th of July 2015 by High Court Judge *Premshankar* at the Vavuniya High Court.

The same High Court Judge, in the instant case (Case No. 2069/2009), found the Accused-Appellant guilty on the 13th of November 2015 for the identical offence. This indicates that both cases were presided over by the same judge in the same court. In HCC 107/2015, we delivered the judgment today, affirming the sentence. We believe that it is not appropriate for the same judge to preside over and adjudicate similar offences involving the same individual.

On this basis, we are not satisfied with the conviction recorded on the 13th of November 2015. Therefore, we quash the conviction and the sentence imposed and order a retrial against the Accused-Appellant. This retrial should be overseen by a different judge, excluding High Court Judge *Premshankar*.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera, J.

I AGREE

JUDGE OF THE COURT OF APPEAL