

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

C.A. No.231/2006

H.C.Kalurtara No. 126/2002

H. Victor

H. sumanadasa

H. Preethirathna

Petitioners

Vs.

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

Respondent

C.A. No.231/2006

H.C.Kalutara No.126/2002

BEFORE : VIJITH K. MALALGODA PCJ (P/CA) &
H.C.J. MADAWALA, J.

COUNSEL : Tirantha Walaliyadde P.C. for the
Accused-Appellants
Dappula de Livera A.S.G. for the respondent.

ARGUED AND

DECIDED ON : 19th March, 2015.

VIJITH K. MALALGODA P.C.J (P/CA)

The three accused-appellants along with another accused was indicted in the High Court of Kalutara for the murder of Halwaturage Sirisena an offence punishable under Section 296 of the Penal Code and causing hurt to one Mallawarachchige Lalitha Padmini an offence punishable under Section 314 of the Penal Code. At the conclusion of the High Court trial before a jury by an unanimous verdict all three accused were

found guilty on the first count and acquitted on the 2nd count. The 4th accused was found not guilty on all counts. Being dissatisfied with the said order, the three accused-appellants had preferred this appeal to this Court. Learned President's Counsel appearing for the accused-appellants at the very outset submitted that he would be challenging the conviction on the basis that lot of inadmissible material had placed before the jury during the trial and therefore it is unfair to stand the conviction against them. In support of his contention, he brings to the notice of this Court the evidence led at page 265 of witness I. P. Sivagurunathan who was the main investigating officer. I. P. Sivagurunathan in his evidence had submitted on 3rd October 1990 he was attached to Mathugama Police Station and around 9.50p.m when he was out on some official work he has met three persons namely, Halwathurage Sumanadasa, Halwathurage Victor and Halwathurage Preethiratne who are the accuseds in this case and when questioned them, they informed him that one Sirisena had attacked them and they in return attacked Sirisena but they didn't know as to what happened to Sirisena. Learned Counsel submits that this evidence is inadmissible. He further submits that when the three accused were giving evidence on oath at the trial, they were cross-examined by the prosecutor and contradictions running into more than 60 were marked from their statement and he brings to the notice of this Court of the learned High Court Judge's summing up at page 798 where the learned trial Judge

had referred to the above contradictions and informed the jury not to consider them as evidence but to consider the contradiction when considering the credibility of the accused's version. We in fact observed one such contradiction at page 415 of the brief to the effect “නමා මෙතෙම පොලීසියට කීව්වාද? ඊටපසු අපි සමග සිටි කාගේ හෝ පහරකින් ඔහුගේ ඔලුව තුවාලවී බිම වැටුනා.” which was marked as P16 and submits that all this material was placed before jury and the jury was prejudiced against the accused when they found the accused guilty of the murder count. In support of his contention Mr. Walaliyadde President's Counsel for the accused-appellant brings to the notice of this Court several decisions by the Supreme Court and Court of Appeal including Ranjit Fonseka vs. The Attorney General 1990 1SLR page 50 and King vs. Kalubanda 15 NLR page 422. Learned Additional Solicitor General at this stage concedes that inadmissible material had been placed before the jury, has caused grave prejudice to them, but Learned Additional Solicitor General's contention was that if the jury was properly directed, the jury wouldn't have come to the same conclusion, but would have come to a conclusion where the accused would be found guilty for culpable homicide not amounting to murder. Learned Additional Solicitor General submitted that this Court can consider the above and impose suitable sentence on the accused. Since the appellant in this case is insisting that this Court should consider the merits of this case and come to a finding whether the jury had come to a correct finding from the material placed

before them, we are not going to consider the submissions of the Additional Solicitor General .

We are of the view that the inadmissible material placed before the jury during the trial had caused prejudice against the accused and therefore, we decided to set aside the verdict of guilty and order a retrial in this matter. The appeal is allowed and the conviction and sentence on all three accused are set aside. Registrar is directed to return this case record to the High Court of Kalutara and we direct the High Court Judge of Kalutara to expeditiously conclude this matter since the alleged offence was committed as far back as in the year 1990.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. MADAWALA, J.

I agree.

JUDGE OF THE COURT OF APPEAL

WC/-