

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

CA/HC/17-18/2012

H. Nihal

H. Ajith Rohana

Appellant

Vs.

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

Respondent

C.A 17-18/2012**H.C Tangalle Case No: 17/2006**

BEFORE : Deepali Wijesundera, J. &
L.U. Jayasuriya, J.

COUNSEL : Indika Mallawarachchi for the 1st and 2nd Accused-
Appellants.
Rohantha Abeysuriya SDSG for the Attorney General.

ARGUED &

DECIDED ON : 06.02.2017

Deepali Wijesundera, J.

The 1st and 2nd accused –appellants were indicted in the High Court of Tangalle for the murder of one Chandana Priyantha Jayawickrema alias Wasantha under section 296 of the Penal Code read with section 32 of the Penal code. Both of them were convicted for murder and sentenced to death by the High Court Judge of Tangalle on 25.01.2012. This appeal has been filed against the said conviction and the sentence.

Learned counsel for the accused-appellant informed Court at the beginning of the argument that she is not contesting the sentence and conviction of the 1st accused appellant and challenges only the conviction of the 2nd accused appellant.

Learned SDSG informs Court that he is in agreement with the counsel for the appellants and it is not safe to convict on the available evidence in the High Court regarding the 2nd accused appellant. The only eye witness in the case the wife of the deceased had not seen the 2nd accused appellant attacking the deceased and there is no other evidence to say that he participated in the murder of the deceased.

The medical evidence suggests that more than one weapon have been used on the deceased. Since there had been another person present at the scene who was not identified by the witness. The learned High Court Judge had come to the conclusion that it was the 2nd accused who attacked the deceased with the other weapon. Mere presence at the scene cannot be a basis to convict a person for murder. Therefore, since there is a total absence of any evidence against the 2nd accused appellant we decide to set aside the conviction against the 2nd accused appellant and affirm the conviction of the 1st accused appellant. The 2nd accused appellant is

acquitted. Conviction regarding the 1st accused appellant will stand.
Registrar is directed to inform the Prison Authorities.



JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Vkg/-