

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

In the matter of an Appeal under  
Section 154(P) of the Constitution  
read with Section 331 of the Criminal  
Procedure Act No. 15 of 1979.

Democratic Socialists Republic of Sri  
Lanka

**Vs**

1. Punchi Hewage Jagath Roshan  
alias Jagath
2. Punchi Hewage Rasika Hasan  
alisan Babu
3. Sudirukku Hennadige Anil  
Prasanna alias Tikira
4. Punchi Hewage Samantha alias  
Mahathun

**ACCUSED**

**Case No. CA 71-72/2016**

**HC Matara Case No. 93/2010**

**AND NOW BETWEEN**

Punchi Hewage Jagath Roshan alias  
Jagath

**1<sup>st</sup> ACCUSED – APPELLANT**

P. Samantha alias Mahathun

**4<sup>th</sup> ACCUSED - APPELLANT**

**Vs**

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

**RESPONDENT**

**BEFORE**

: Deepali Wijesundera J.

**COUNSEL**

: L.U. Jayasuriya J.

: Niranjan Jayasinghe for the  
1<sup>st</sup> Accused – Appellant  
Neville Abeyrathna PC with  
Shanika Dissanayake for the  
4<sup>th</sup> Accused – Appellant  
H.G. Peiris DSG for the  
Respondent

**ARGUED ON**

: 19<sup>th</sup> June, 2017

**DECIDED ON**

: 26<sup>th</sup> July, 2017

**L. Jayasuriya J.**

The first and the fourth accused appellants along with second and third accused were indicted in the High Court of Matara for the murder of a man named Punam Christombuge Chandralal under Section 296 read with Section 32 of the Penal Code. After trial first and fourth accused appellants were convicted and sentenced to death while the second and the third accused were convicted under Section 316 of the Penal Code.

This appeal was lodged by the first and the fourth accused appellants against the conviction and the sentence.

The story of the prosecution is that on the day in question a person who was supplying fish has come to (PW 1) Amali's house to collect money. He had told Amali and her husband that some drunken people were asking for fish and removed the ignition key of the van. The witness's husband and his brother, the deceased had gone to the place where the van was and had told these people that they had only empty boxes and the fish is over. The said people have thrown the key on the ground and gone towards their house.

After some time Amali had seen Lal the deceased going towards his house which is close to the witness's house. When the deceased was coming towards his house Amali has seen the fourth accused appellant attacking the deceased with a rice pounder. She says that the first accused appellant brought the said rice pounder from the house.

The learned counsel for the first accused appellant argued that although the first accused appellant brought the said rice pounder he did not attack the deceased with the rice pounder and therefore he should have been convicted for culpable homicide not amounting to murder.



He also argued that the prosecution has not established the common murderous intention on the part of the first accused appellant on the evidence placed before the High Court. Since this issue has not been considered by the learned High Court Judge the first accused appellant had not been given a fair trial. The police evidence shows that there had been evidence of a fight.

The counsel for the second accused appellant argued that he too sustained injuries and that he was attacked by the deceased. We find that there is no evidence to say that the second accused appellant received injuries. We find from the evidence placed by the prosecution that the deceased had been unarmed and there is no evidence to suggest that the deceased provoked the appellants.

The Judicial Medical Officer has testified that the deceased had died due to the injury caused to his head which position corroborates the evidence of Amali. There is no evidence to say that the appellants acted in furtherance of a common murderous intention and there is no evidence to say that there had been any animosity with the deceased.

The deceased was attacked with a rice pounder by the fourth accused appellant and not by the first accused appellant although he

brought the said rice pounder from the house. Therefore the first accused could not have been convicted under section 296 of the Penal Code. Only the fourth accused who dealt the blow to the head of the deceased can be convicted under section 296 of the Penal Code.

For the afore stated reasons I set aside the conviction of the first accused appellant and convict him under section 297 for culpable homicide not amounting to murder and sentence him to ten years RI. The first accused appellant's conviction under section 296 is affirmed.

With the above variation to the sentence of the first accused appellant. The appeal is dismissed.

**JUDGE OF THE COURT OF APPEAL**

**Deepali Wijesundera J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**