

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

Aliyar Iqbal

**ACCUSED-APPELLANT**

C.A. 07/2010  
H.C. Trincomalee HCT/193/2007

Vs.

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

**RESPONDENT**

**BEFORE:** Anil Gooneratne J. &  
P.W.D.C. Jayathilake J.

**COUNSEL:** Anil Silva P.C. for the Accused-Appellant  
Dilan Ratnayake S.S.C. for the Respondent

**ARGUED ON:** 25.03.2014

**DECIDED ON:** 29.05.2014

**GOONERATNE J.**

In this case two accused were indicted for murder and convicted and sentenced in the High Court of Trincomalee. Petition of appeal dated 24.3.2010 was filed and the prayer to the petition pleads to set-aside the conviction and sentence imposed on 18.3.2010. It appears that only the 1<sup>st</sup> Accused-Appellant preferred an appeal. In the body of the petition, it is pleaded that trial Judge on 18.3.2010 convicted the Appellant for murder and imposed a death sentence. The brief is in the Tamil language and same has been translated into English. However based on the translation counsel on either side consented to argue this appeal.

The Journal Entry and proceeding (translated) of 18.3.2010 indicates that the charge of murder was reduced to culpable homicide not amounting to murder (Section 297). 1<sup>st</sup> Accused was sentenced to 12 years rigorous imprisonment and a fine of Rs. 5000/- which carried a default sentence of 6 months R.I. The 2<sup>nd</sup> Accused was sentenced to 2 years R.I suspended for 7 years and a fine of Rs. 5000/- (in default a sentence of 6 months R.I). We could clearly see the discrepancy in the petition of appeal and the above Journal Entry.

The facts of this case as far as I could gather from the translation made available is that the incident occurred at about 6.30/7/00 p.m. There has been a political meeting and the electricity supply had been cut suddenly and over that there was a commotion and the people gathered at the meeting had expressed the view that it was the 1<sup>st</sup> Accused who was responsible for cutting down the electricity supply. The material made available was that people gathered fought and the 1<sup>st</sup> Accused had fled the scene and returned to the place of incident after prayers, in a white van, with a weapon (T 56 gun) and fired several shots which ultimately hit the deceased.

When I examine the proceedings, I observe that the way evidence had been led and presented in the High Court is very unsatisfactory. The eye witness says the 1<sup>st</sup> Accused fired several gunshots. He also states the 1<sup>st</sup> Accused shot the deceased. Prior to the alleged shooting incident the material suggest that the 1<sup>st</sup> Accused was assaulted may be by the deceased for disrupting electricity. The trial Judge has considered the version of the Accused and told that evidence given on behalf of the Accused is not trustworthy and had been fabricated. The judgment include a narration of evidence of eye witness which does not appear to be properly recorded. The charge is one of murder which entail a capital punishment. The trial Judge had reduced the charge of murder to culpable

homicide not amounting to murder. I cannot find the reasons recorded to do so. The evidence placed before the High Court appears to be highly unreliable. Trial Judge emphasis on the Accused version of the case, and gives the impression that he had erred in convicting the Accused. There is no proper analysis of the evidence. In all the above circumstances we are not satisfied with the prosecution version and it is doubtful whether the prosecution has proved the case beyond reasonable doubt. As such we set aside the conviction and sentence and allow the appeal.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

P.W.D.C. Jayathilake J.

I agree.

JUDGE OF THE COURT OF APPEAL