

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

In the matter of an appeal from the High Court in terms of  
Section 331 of the Code of Criminal Procedure Act read with  
Article 138 of the Constitution of the Democratic Socialist  
Republic of Sri Lanka.

The Democratic Socialist Republic of Sri Lanka.

**Complainant**

CA. No. 141/2015

Vs.

High Court of

Mohamed Rasheed Hasan

Trincomalee

**Accused**

Case No. HCT/594/2014

**And Between**

Mohamed Rasheed Hasan

**Accused-Appellant**

Vs.

Hon Attorney General

Attorney General's Department,

Colombo 12.

**Complainant-Respondent**

BEFORE : N. Bandula Karunaratna, J.

: R. Gurusinghe, J.

COUNSEL : M.S.H. Imtias for the Accused- Appellant.

Sudharshana de Silva DSG for the Respondent.

**C.A. No. 141/2015**

**H.C.Trincomalee No. 141/2015/594/2014**

ARGUED ON : 16.02.2021

DECIDED ON : 17.02.2021

R. Gurusinghe, J.

The Accused-Appellant (Appellant) was indicted in the High Court of Trincomalee for committing the murder of Nadarasa Sudharan on 22<sup>nd</sup> of July 2006, an offence punishable under Section 296 of the Penal Code. After trial the learned High Court Judge convicted the Appellant for the offence and sentenced to death.

The Appellant appealed against the said Judgment and sentence dated 23<sup>rd</sup> July 2015 on the grounds set out in the appeal.

The Appellant's position right throughout the trial was that the deceased tried to grab hold of the gun that was in possession of the accused. The Accused-Appellant was serving as a home guard officer at a building called APC building which was located in Kachchakoditeeve an area which was a war zone during the year 2006. The duty of the Appellant was to give security to the APC and the nearby camp. This was the time that war between Army and the LTTE was at its peak.

The incident happened on 22<sup>nd</sup> July 2006 around 11.30 a.m. Appellant came out to the road to see if the vehicle carrying lunch for the soldiers was coming. At that time, he noticed a man (the deceased) on a racing bicycle roaming around in that area. He noticed the deceased three times. The Appellant's position is that all of a sudden, the deceased came towards the Appellant and attempted to grab hold of the gun; the Appellant cried out for help shouting "Corporal, Corporal". However, before the Corporal came for help the Appellant pushed the deceased and the deceased fell on the ground and then the deceased put his hand into the pocket of his shorts that he was wearing inside the sarong. At that moment, the Appellant realised that he was taking out a hand grenade or a pistol and as the Appellant has to act very quickly, he had no option but to fire the deceased. He fired a shot and ran into the APC building.

Prosecution has called the following witnesses and produced the T 56 gun and the post-mortem report of the deceased. The prosecution called PW2 T.K.D.S.Gamini Army Corporal who was in charge of the place, PW10 M.A.N. Jakath, Pw19 the doctor, P1W17 the Inspector of Police, PW1 S.M. Nawas and PW5 S. Mekala.

PW2 has given evidence to the effect that he was in charge of an army sentry point that was located in the APC building of Kachchakoditeeve to provide security. The Appellant was doing his duty as a home guard under witness No. 2 on the day of the incident. PW2 heard the shout “Corporal, Corporal” and immediately he heard a gun fire. PW2 rushed to the scene and inquired from the Appellant as to what had happened. Then the Appellant told him that the deceased had attempted to grab hold of the gun and scuffled and fell. This witness also admitted that there were LTTE activities present during the time of the incident. He further said that neighbouring area was occupied by the LTTE. Witness No. 2 then informed the police and the police came there. When the police tried to lift the body of the deceased, they found a grenade. PW2 said police had asked him to take the grenade and then PW2 had taken it from the pocket of the shorts of the deceased. He said that it was a live grenade. The police witness said that the grenade was detonated later on the orders of the Magistrate.

The deceased was not a known person to the accused. After the prosecution case is closed, the Accused-Appellant has given evidence from the witness box. The Appellant was cross examined by the State. The Appellant has given evidence on oath and stated what had really happened. He has stated that the deceased came on a racing bicycle and tried to grab hold of his gun. He shouted “Corporal Corporal Corporal” for help but before the PW2 came, he pushed the deceased and the deceased fell on the ground. Then the deceased tried to take out something from his pocket of his shorts, the accused said that he had feared for his life and fired a shot at the deceased.

The Accused-Appellant had maintained this position right throughout the trial. There were no eye witnesses who had seen the incident. The witness No. 2 came to the scene immediately after the incident. He had asked from the Appellant what had happened and the Appellant told him the same as he had testified in the Court. In the Judgment the learned trial Judge has stated that the

Accused-Appellant had given evidence from the dock. However, the Accused-Appellant had given evidence from the witness's box and cross examined by the State Counsel. The learned High Court Judge weighed the Accused-Appellant's evidence as unsworn evidence. This is a serious misdirection on the part of the trial Judge.

The High Court Judge had stated in the Judgment that "Court suspects whether one shot only be fired when a person opens fire for his self-defence. It means that the Court does not accept it as true"

The view of the Trial Judge in this regard cannot be accepted. The accused has not exceeded the right of self-defence. In the case of James Chandrasekera 44 NLR page 97, it was held that the onus is not a heavy one. The burden is no higher than that which rests upon a party to civil proceedings.

The Deputy Solicitor General appearing for the Respondent conceded the fact that the Judgment cannot be supported in view of the serious misdirection on the part of the trial Judge. We are of the view that the Accused-Appellant has proved on a balance of probabilities that he had exercised the right of private defence.

The police have found a live hand grenade in the shorts of the deceased. In view of that evidence, it is probable that the deceased had attempted to grab hold of the gun that was in possession of the Accused – Appellant. It is also probable that the deceased attempted to use the grenade he was carrying.

There was no evidence to show that the deceased was a known person to the Appellant. At the time of the incident the accused being a public servant who was entrusted with the task of giving security to that area during the peak of the war, against the LTTE.

The learned High Court Judge seems to have taken the view that the grenade could have been introduced because it dropped when the body was lifted. There is no evidence to support this view; it is purely a conjecture. But the witness No. 2 said it was taken out from the shorts of the

deceased. However, the fact that there was a grenade was proved. It was taken out in the presence of the police.

Therefore, there is no doubt that the deceased was carrying a hand grenade at the time of the shooting. The Accused-Appellant has proved on the balance of probabilities that he had acted in the exercise of the right of private defence.

For the reasons set out above, we are of the view that the conviction is not safe and cannot allow to stand. The conviction is quashed and the Accused-Appellant is acquitted of the charge. The appeal is allowed.

**Judge of the Court of Appeal**

N. Bandula Karunarithna, J.

I agree.

**Judge of the Court of Appeal**