

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

S.C (Spl) L.A. No. 272/2013

C.A (Criminal) Appeal No. 182/2003

H.C Hambanthota Case No. 05/2006

In the matter of an Application for Special Leave to Appeal.

The Democratic Socialist Republic of Sri Lanka

**COMPLAINANT**

Vs.

1. Lokugalappaththige Cyril
2. Dehiyagoda Pushpalatha Mangalika
3. Karunawathi Weerawarna Wickramatunga

All of Prasanna Tea Room Punchi  
Akurugoda, Tissamaharama.

**ACCUSED**

**AND BETWEEN**

1. Lokugalappaththige Cyril
2. Dehiyagoda Pushpalatha Mangalika
3. Karunawathi Weerawarna Wickramatunga

All of Prasanna Tea Room Punchi  
Akurugoda, Tissamaharama.

**ACCUSED-APPELLANTS**

Vs.

1. The Hon. Attorney General  
Attorney General's Department  
Colombo 12.
2. The Democratic Socialist Republic of  
Sri Lanka.

**COMPLAINANT-RESPONDENTS**

**AND NOW BETWEEN**

1. Lokugalappaththige Cyril
2. Dehiyagoda Pushpalatha Mangalika
3. Karunawathi Weerawarna Wickramatunga

All of Prasanna Tea Room Punchi  
Akurugoda, Tissamaharama.

**ACCUSED-APPELLANTS-PETITIONERS**

Vs.

1. The Hon. Attorney General  
Attorney General's Department  
Colombo 12.
2. The Democratic Socialist Republic of  
Sri Lanka.

**COMPLAINANT-RESPONDENTS-RESPONDENTS**

**BEFORE:**

B. P. Aluwihare J.  
Upaly Abeyrathne J. &  
Anil Gooneratne J.

**COUNSEL:** L.M.K. Arulananthan P.C. with  
Devika Panagoda and Anoj Hettiarachchi  
for the Accused-Appellant-Petitioners

Dappula de Livera P.C., A.S.G. for the  
Complainant-Respondent-Respondent

**ARGUED ON:** 05.08.2015

**DECIDED ON:** 19.10.2016

**GOONERATNE J.**

This is a Special Leave to Appeal application from the judgment of the Court of Appeal delivered on or about 18.09.2013, dismissing the appeal of the Petitioners. When this application was to be supported on 19.3.2014, learned Additional Solicitor General informed court that a preliminary objection need to be raised based on noncompliance of the rules of the Supreme Court, more particularly rule Nos. 3, 6 and 10 of Supreme Court rules of 1990. However on 19.3.2014 this application could not be heard due to an application made on behalf of the learned President's Counsel for the Accused-Appellant-Petitioner for a postponement. Thereafter on 05.08.2016 learned Additional Solicitor General

who appeared on behalf of the Complainant-Respondent-Respondent raised the following objections, and recorded as follows:

1. That the Special Leave to Appeal application does not contain a plain and concise statement of all facts and material as are necessary to enable the Supreme Court to determine whether Special Leave to appeal should be granted including the questions of law in respect of which Special Leave to Appeal is sought and the circumstances rendering the case or matter fit for review by the Supreme Court.
- 2 That in terms of Rule 6, where any such application contains allegations of facts which cannot be verified by deference to the judgment or order of the Court of Appeal in respect of which Special Leave is sought, the Petitioner shall annex in support of such allegation an affidavit or the documents which has not been done in the present application.
3. That in terms of Rule 10, there is no disclosure of any reasonable cause for the appeal to lie

The Petition filed of record dated 17.10.2013 of the Accused-Appellants-Petitioners disclose the following:

- (a) Accused-Appellants were indicted in the High Court of Hambantota under Section 296 of the Penal Code for the murder of J.M. Ariyaratne alias Ariyapala.
- (b) All Accused-Petitioners pleaded not guilty.

- (c) Prosecution led the evidence of witnesses named in para 3 of the petition. Defence led the evidence of witnesses named in para 4 of the petition.
- (d) Learned High Court Judge after hearing submissions of either counsel found the Accused party not guilty of murder but found them guilty of culpable homicide not amounting to murder under Section 297 of the Penal Code. 1<sup>st</sup> Accused-Petitioner was sentenced to 5 years imprisonment and fined Rs. 7500/-. The 2<sup>nd</sup> & 3<sup>rd</sup> Accused were sentenced to 3 years imprisonment and fined Rs. 3000/-.
- (e) Being aggrieved by the above judgment of the High Court all Accused appealed to the Court of Appeal. The Court of Appeal after hearing counsel on either side gave judgment on 18.9.2013 dismissing the appeal. The Court of Appeal brief and judgment are annexed marked 'A' & 'B' respectively.

The above are the matters urged by the Accused-Appellants-Petitioners. What remains to be stated in the petition are the grounds on which Special Leave to Appeal is sought and the questions of law for the determination of this application, and those matters are contained in paras 11 & 12 of the said petition.

I will refer to the main grounds of appeal. It is stated that the Court of Appeal has erred by not considering the totality of evidence led at the trial and

considered the available evidence piecemeal. It is further stated that the required standard of proof has not been considered by reference to the evidence. Failure to consider the evidence on the question of right of 'self defence'. It is stated that, the defence of self defence has not been considered. Further the question of deceased being the aggressor who attacked the Accused party, had also not been considered.

The questions of law are contained in para 12 of the petition, which flows from the grounds of appeal, referred to in para 11.

I wish to observe that there is an absence of the description of the incident itself in a concise manner. On a plain reading of the petition it is not possible to ascertain as to how the incident took place and its background. Attention of this court on the evidence relied upon by the defence had not been highlighted and pleaded. The relevant portions of evidence relied upon by the Accused party to demonstrate the defence of self defence is not contained in the body of the petition. This position may have to be ascertained by a perusal of the judgment of the Court of Appeal and proceedings at the trial court. As such on a plain reading of the petition it is obvious that there is an absence of a plain and concise statement of facts to draw the attention of this court to consider the

question of granting leave. There is absolutely no material referred to in the petition to ascertain whether the deceased party was the aggressor.

The Appellant's position of stating that the Court of Appeal had erred by not considering the totality of evidence is a mere statement. It should be demonstrated in the petition or by an affidavit attached to the petition based on any important items of evidence which had not been considered and the items of evidence on which the prosecution secured a conviction which was affirmed by the Court of Appeal. If the above contention be the position of the Appellant it may be useful to arrive at a decision by the Apex Court and to ascertain the evidence not relied upon by the Trial Court and the Court of Appeal. If it had not been done this court would have to await the submissions of learned counsel for the Appellant at the hearing of this application, and that too also by perusing the judgment of both courts and the evidence relied upon by the Appellants to establish the point that the Trial Court and Court of Appeal, considered evidence piecemeal. I would have to say the same as regard the defence of self defence and the point stressed, that the deceased party was the aggressor. Therefore it is apparent that the requirement contained in Rule Nos. 3 & 6 had not been duly complied with by the Accused-Appellant-Petitioners.

As regards the application of Rule No. 10, the grounds of appeal in a very concise form could be only identified as contained in sub paras (b), (c) (g) & (h) of para 11 of the petition. However it is unsupported with material in the other paragraphs of the petition. Merely because some facts could be verified by reference to the judgment of the Court of Appeal or proceedings, would not suffice where the above rules of court are concerned, as regards the case in hand.

It is the view of this court that the absence of relevant material referred to in the petition as regards the case in hand would amount to noncompliance of Rule Nos. 3, 6 and 10 of the Supreme Court rules and as such Special Leave to Appeal application has to be rejected and dismissed.

Our attention was also drawn to two decided cases viz. Ediriwickrema and another Vs. Ratnasiri and others (Bar Association Law Journal 2013 Vol. XX) and A.G Vs. Bandaranayake and others (reported in the same journal). Both these cases have no relevance at all to the case in hand, and I observe that matters concerning rules need to be decided on a case by case basis. The first one of the cases referred to above very plainly decide on question of belated objection to 'jurisdiction' and belated objections to noncompliance of

Supreme Court Rules. Supreme Court rejected such objections raised belatedly. In the case in hand, the learned Additional Solicitor General raised the objection at the first available opportunity and such an objection cannot be overruled on account of the learned Additional Solicitor General's failure to file written submissions.

In the other case A.G Vs. Bandaranayake preliminary objections were raised on the following (1) to (5)

- 1) The Petitioner-Appellant has failed to comply with Rule 8 of the Supreme Court Rules;
- 2) The Petitioner-Appellant cannot represent State interests and make an appeal against the judgment which the State has failed to comply with;
- 3) The Petitioner-Appellant is not entitled to seek to appeal against a judgment of the Court of Appeal in a case in which he was not a party and was invited by Court to assist court as amicus curiae;
- 4) The application of the Petitioner-Appellant is an abuse of the process of Court and is futile; and
- 5) The application of the Petitioner-Appellant has not been properly made as he has failed to file an affidavit in support of his petition filed in this case.

The matter highlighted in 1 to 5 does not touch upon the case in hand under any circumstances. As such I observe that the above authorities are not helpful at all to decide the case in hand. In a brief manner a fair and full disclosure of all material facts would be essential and should be pleaded in

applications to Superior Courts by parties aggrieved of orders and judgments of the lower courts. In the same manner a “plain and concise statements of all facts and material” would be mandatory for special leave to Appeal Applications to the Supreme Court. A material fact contained in a document which is not expressly stated in the body of the petition would amount to non-compliance of the rules even if the documents itself is filed along with the petition. There is a necessity to give a strict interpretation to Supreme Court Rules.

In the above circumstances the preliminary objection raised by the learned Additional Solicitor General could be maintained and should be up held accordingly. As such we reject the Petitioner’s application for Special Leave to Appeal.

Application dismissed without costs.

JUDGE OF THE SUPREME COURT

B. P. Aluwihare J.

I agree.

JUDGE OF THE SUPREME COURT

Upaly Abeyrathne J.

I agree.

JUDGE OF THE SUPREME COURT

