IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

Court of Appeal Case No.
CA/HCC/18-22/2013

High Court of Monaragala
Case No. 268/2008

The Democratic Socialist Republic of Sri Lanka

Complainant

V.

1.Dissanayake Mudiyanselage Chaminda Dissanayake

2.Koggala Hewage Udayakantha Wijithaveera

3. Sumith Ashoka Punchihewa

4.Herath Mudiyanselage Manjula Sisira Kumara

5. Tennakoon Mudiyansealage Amarasena

Accused

AND NOW

1. Dissanayake Mudiyanselage Chaminda Dissanayake

2. Koggala Hewage Udayakantha Wijithaweera

3. Sumith Ashoka Punchihewa

4. Herath Mudiyanselage Manjula Sisira Kumara

5. Tennakoon Mudiyansealage Amarasena

Accused – Appellants

V.

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

Respondent

BEFORE : **ACHALA WENGAPPULI, J**

K. PRIYANTHA FERNANDO, J

COUNSEL : Anil Silva, PC for the 1st, 2nd, 3rd and 5th Accused Appellants

Indika Mallawarachchi for the 4th Accused Appellant.

A.Navavi, DSG for the Attorney General.

ARGUED ON : 12.03.2020,13.07.2020,25.08.2020, 26.08.2020 and 28.08.2020

WRITTEN SUBMISSIONS FILED ON : 12.10.2017 by the 1st, 2nd, 3rd and 5th Accused Appellants.

20.09.2018 by the 4th Accused Appellant.

09.07.2018 by the Respondent.

JUDGMENT ON : 06.10.2020

K. PRIYANTHA FERNANDO, J.

1. The 1st to 5th accused appellants (hereinafter referred to as the 1st to 5th appellants) were indicted on seven counts in the High Court of *Monaragala*:-

1) That, they were members of an unlawful assembly with the common object of causing hurt on *Ratnayake Mudiyanselage Madduma Bandara,* an offence punishable under Section 140 of the Penal Code.

2) That, one or more members of the said unlawful assembly committed the murder of *Herath Mudiyanselage Premachandra* in prosecution of the said common object or such as the members of such assembly knew to be likely to be committed in prosecution of the said object, an offence punishable under Section 296 read with Section 146 of the Penal Code.

3) That one or more members of the said unlawful assembly committed the murder of *Herath Mudiyanselage Dayaratne* in prosecution of the said common object or such as the members of that assembly knew to be likely to be committed in prosecution of the said common object, an offence punishable under Section 296 read with Section 146 of the Penal Code.

4) That one or more members of the said unlawful assembly committed hurt on *Ranasinghage Gunapala* by shooting in prosecution of the said common object or such as the members of that assembly knew to be likely to be committed in prosecution of the said object and as they would be guilty of murder if *Ranasinghage Gunapala* was killed in the circumstances and on knowledge or intention of the person or persons who committed the said act of shooting, an offence punishable under Section 300 read with Section 146 of the Penal Code.

5) That they committed the murder of *Herath Mudiyanselage Premachandra* punishable under Section 296 read with Section 32 of the Penal Code.

6) That they committed the murder of *Herath Mudiyanselage Dayarathne* punishable under Section 296 read with Section 32 of the Penal Code.

7) That they committed hurt on *Ranasinghage Gunapala* by shooting and as they would be guilty of murder if *Ranasinghage Gunapala* was killed in the circumstances and on knowledge or intention of the person or persons who committed the said act of shooting, an offence punishable under Section 300 read with Section 32 of the Penal Code.

2. After trial, the learned High Court Judge found all the appellants guilty on counts 1,2,4,5 and 7 and convicted them accordingly. All appellants were acquitted on counts 3 and 6. All accused appellants have appealed against their convictions and sentences.

3. The following grounds of appeal were urged on behalf of the appellants.

GROUNDS OF APPEAL (1st, 2nd, 3rd and 5th ACCUSED - APPELLANTS)

1. Has the prosecution proved their case beyond the reasonable doubt?
2. Has the learned Trial Judge taken into consideration matters favorable to the Accused?
3. Has the learned Trial Judge adequately considered the Defendant taken by the Accused?

GROUNDS OF APPEAL (4th ACCUSED - APPELLANT)

1. Evidence led at the trial does not support the ingredients of count 1, namely, the formation of an unlawful assembly.
2. In the absence of an unlawful assembly, count 2 which is murder on the footing of common object necessarily fails.
3. Non- explanation of the injuries on the 5th accused creates a serious doubt with regard to the veracity of the prosecution version.
4. Contradictory evidence between PW1 namely Ranjith Madduma Bandara and PW15 namely Cyril further creates a doubt with regard to the prosecution version.

5. Trial court has failed to evaluate the dock statement of the 4th accused appellant in its correct judicial perspective.

6. In the absence of participatory presence on the part of the 4th accused appellant, conviction for murder against the 4th accused appellant on the basis of common murderous intention is untenable and flawed.

Facts in brief

4. This prosecution is consequent to an incident of shooting on 09.12.1999 at a pre presidential election meeting held at *Walakumbura* junction to support the then United National Party presidential candidate. The accused appellants had been the supporters of the opposing candidate.

5. The prosecution had called upon three eye witnesses to the incident. *Ranjith Maddumabandara* had testified as Prosecution Witness No.1 (hereinafter referred to as PW1). According to his evidence, at about 5.30 pm he had started making his speech to the crowd of about 150 people who had come to see the meeting. He had seen the police officers stopping a lorry which came from the direction of *Bibile.*

6. He had seen some persons getting down from the lorry. The lorry had turned back and stopped by the side of the road towards *Bibile*. Without heeding to what police said, around six to seven persons got down from the lorry and came towards the stage. They approached the stage and threatened PW1 and the people around, stating that they would not let them have the meeting. PW1 identified the 1st, 2nd, 3rd, and 5th appellants as some of the persons who came and threatened him. He further said that when the police officers and his bodyguards pushed them back towards the lorry they came from, he heard gunshots.

7. He had seen the 1st and the 2nd appellants holding T56 guns and firing towards the crowd. PW1 also testified that he saw the 3rd appellant holding an object that looked

like a bomb when he came near the stage. He also had seen locally made guns (*galkatas*) and bottles with some of them. After shooting, they escaped in the lorry and the injured was taken to hospital.

8. *Kanattahewage Cyril* (hereinafter referred to as PW15) had been a police officer in charge of security duty at the place where the meeting was held. According to his testimony, he had left the police station at about 3.00pm with two constables and a security officer. When he was on duty at the place where the meeting was to be held, at about 3.45 pm, a van came from the direction of *Bibile* and stopped near the stage. Five persons including one *Samantha* alias *Naya* had got down from the van and had spoken to him. They had wanted to burn a tyre. PW15 said that it could not be allowed. They had left after having an argument with two other persons. He had informed the officer in charge (OIC) of the incident and the OIC came and placed two more home guards with weapons.

9. At about 5 pm PW1 came and he had started the meeting by 5.30pm. When PW1 was making his speech, a lorry came at a high speed towards *Badulla* from the direction of *Bibile.* As the lorry was coming at a high speed, he had ordered the lorry to be stopped. Including the driver, there had been 5 persons seated on top of each other. Thereafter, on his directions, the driver turned the lorry and parked it by the side of the road towards *Bibile.* He had identified the five appellants as the persons who came in the lorry. The 3rd appellant had been the driver.

10. The 5th appellant had been armed with a bottle and he had broken the bottle into two by hitting the lorry with it. All the appellants were drunk and enraged, and they made their way towards the stage. The witness had tried to push them towards the lorry and had managed to push the 1st appellant inside the lorry. When he was trying to push the other appellants also into the lorry, people around them threw stones at the appellants. Then, he had seen the 1st appellant shooting towards the *Badulla* direction from the direction of *Bibile*. When he shouted at the 1st appellant not to shoot, he heard a firing sound from the stage. PW1's security guards had fired

towards the lorry. He had seen two of the body guards carrying weapons and firing. He said that the 1st appellant started the shooting first. When the 1st appellant was shooting, the other appellants had been between the lorry and the stage. PW15 bent down shouting not to shoot. In the mean time all appellants had escaped in the lorry towards *Medagama.* The injured who was lying near the boutique had been taken to hospital.

11. The other eye witness who testified had been *Ranasinghalage Gunapala* who had stopped at the meeting whilst he was on his way back home from the paddy field carrying his mamoty, to listen to PW1's speech. He had been standing near the boutique when he heard gunshots from the direction of *Bibile,* which was towards his left. He said that it happened after the lorry came and turned back towards *Bibile* and stopped. He felt a burning sensation on his shoulder and fell unconscious. He regained consciousness only once he was in the hospital.

12. The police officers who investigated gave evidence on the recovery of a weapon from the 1st appellant when he was arrested, and also on the recovery of spent ammunition scattered close to the place where the lorry was parked.

13. All appellants had made statements from the dock. The 1st appellant had denied his presence at the crime scene and also the evidence of the police officers that he was arrested with a weapon. The 2nd, 3rd 4th and 5th appellants in their dock statements admitted their presence at the crime scene, but denied any involvement in any unlawful assembly or the alleged crime.

14. The main ground of appeal pursued by both learned Presidents Counsel for the 1st, 2nd, 3rd and 5th appellants and the learned Counsel for the 4th appellant was that the prosecution has failed to prove that the appellants shared the common object as alleged in the counts 1, 2, 3 and 4 in the indictment. The common object mentioned in the above charges was to cause hurt on *Ratnayake Mudiyanselage Madduma Bandara* (PW1). It is the contention of learned Counsel for the appellants, that the

prosecution had failed to prove beyond reasonable doubt on the evidence placed before High Court that the appellants shared the above common object.

15. Learned Presidents Counsel for the 1st, 2nd, 3rd and 5th appellants submitted that, if any common object was shared by the appellants, according to the evidence adduced by the prosecution, it may have been to disrupt the election meeting chaired by the Member of Parliament PW1 but not to cause hurt on him. Hence, as the prosecution has failed to establish the common object of the alleged unlawful assembly, counts 1, 2, 3 and 4 should fail.

16. Learned Deputy Solicitor General appearing for the respondents submitted that, the evidence adduced by the prosecution established that the common object of the unlawful assembly (the members of which are the appellants) had been to cause hurt to PW1. Learned DSG submitted that the appellants had gone up to the stage and had told PW1 that they had wanted him stating *"රංජිත් නෝ කමයි අපට ඕන බැහැපන්"*

17. The common object of the unlawful assembly referred to in count 1 is that of causing hurt on PW1. Hence, the prosecution has to prove beyond reasonable doubt, the following;

    1) That there was an assembly of five or more persons, and
    2) That the common object of those members of the assembly was to cause hurt on PW1.

18. There is ample evidence to prove that the 1st appellant had also come in the same lorry with the other appellants to the *Yalkumbura* junction where the meeting was held, although he had denied his presence in his dock statement. It was also evident that the lorry they were travelling in was driven at a high speed and that the lorry was ordered to be stopped by the police. The best witness to testify as to what happened as soon as the lorry was ordered to be stopped is PW15. According to PW15, the appellants had got down from the lorry unarmed, except for the 5th appellant who had been armed with a broken bottle. When the appellants tried to

approach the stage, he had managed to push the 1st appellant back to the lorry. When he tried to push the other appellants back to the lorry, the crowd had pelted stones towards the appellants. He had then seen the 1st appellant shooting first, towards the stage and *Badulla* direction. Thereafter, the security guards of PW1 had fired towards the lorry.

"රංජිත් මද්දුම බණ්ඩාර මැතිතුමාගේ නිළධාරීන් දෙදෙනා අතේ අවි තිබුනා. ඒ දෙකෙන් වෙඩි තිබ්බා."

19. Although PW1 said in evidence that the appellants came near the stage armed with guns asking him to get down from the stage, the appellants had not caused any hurt to the PW1. PW1 himself had said that the appellants threatened him stating "*රැස්වීම නියන්න දෙන්නේ නැහැ කියලා තර්ජනය කලා.*" Even if the evidence of PW1 as to what happened at that point in time is accepted, and if the object of the appellants was to cause hurt on PW1, the appellants could have done so at that stage of the events. Thus, there is a reasonable doubt as to whether the object of the appellants was to cause hurt on PW1 or to disrupt the meeting.

20. It is pertinent to note that according to PW15, when the appellants initially got down from the lorry, at that point in time the appellants had been unarmed. Further, according to PW15, he had immediately managed to push the 1st appellant back to the lorry. Thus, if the 1st appellant threatened PW1 having gone near the stage as he initially got down from the lorry, it could not have escaped the knowledge or the field of vision of PW15. When considering the evidence of PW15 as a whole, it can be concluded that the evidence of PW15 is credible and safe to act upon.

21. It was evident that, the same afternoon at about 3.30, *Sampath* alias *Naya* with others had come and sought permission from PW15 to burn tyres. The learned DSG contended that the afternoon incident makes it further clear that there had been an unlawful assembly which continued. The learned DSG relied upon the case of ***Vithanalage Anura Thushara De Mel and others V. Hon. Attorney General SCTAB/2A-D/2017(Duminda Silva* case).** The learned DSG submitted that the

sequence of events show that the unlawful assembly in this case had continued as in case of ***Dumunda Silva*** **(supra).**

22. In the ***Duminda Silva*** case, the common object of the unlawful assembly mentioned in the charges was criminal intimidation of voters with the use of fire arms, and that, in prosecution of that common object the other offences were committed. The common object in that case was not, to cause hurt on the deceased or other victims. However, in the instant case the common object mentioned in the charge of unlawful assembly is to cause hurt on PW1. Hence it is incumbent upon the prosecution to prove beyond reasonable doubt that the common object of the unlawful assembly was to cause hurt to PW1. Therefore, on the issue of common object, the ***Duminda Silva*** case would not be relevant to this case. There is a clear doubt created about the common object, as to whether it was to cause hurt on PW1 or to disrupt the meeting that was to be held, when the sequence of events is taken into consideration.

23. In the case of ***Sirisena Ranawaka and Others V. The Attorney General*** **[1985] 2Sri LR 210** it was held;

> *'The only common object of the unlawful assembly alleged in count No.1 was to cause hurt to Heen Banda. The act of setting fire to the car was in no way connected to the common object of the unlawful assembly as specified in count No.1. The offence must be committed in prosecution of the common object. Hence Count 4 fails.'*

24. In the case of ***Samy and Others V. Attorney General [2007] 2 Sri LR 216 (Bindunuwewa Murder Case)***, it was observed;

> *'The effect of this section was considered in the early case of* ***Kulathunga V. Mudalihamy*** *(1) where it was held that the prosecution must prove that there was an unlawful assembly with a common object as stated in the charge. ...'*

25. In the case of ***Ratnayake Mudiyanselage Sunil Ratnayake V. Hon. Attorney General (SC TAB 01/2016 25.04.2019) (Mirusavil case),*** the Supreme Court observed;

> *'Hence the prosecution case has starved the case of evidence as to whether those two who took Raviwarman made any gestures causing apprehension to Raviwarman that those two persons were about to use criminal force on him. With the paucity of evidence on this aspect, a doubt lingers as to whether the reason for taking Raviwarman away was with the object of questioning Raviwarman in order to ascertain the reasons for their presence in the locality or to commit assault within the meaning of section 342 of the Penal Code. In this context, I hold that the prosecution had failed to establish that there was an unlawful assembly with the common object of committing assault on Raviwarman within the meaning of section 342 of the Penal Code. Thus, counts 1 to 10 of the indictment must necessarily fail. Accordingly, I set aside the conviction of the Accused-Appellant on counts 1 to 10.'*

26. With the above line of case precedents, it is settled law that it is incumbent upon the prosecution to prove beyond reasonable doubt that the alleged common object was shared by the appellants, in this case that it was to cause hurt on PW1. As I mentioned before, the prosecution has failed to prove beyond reasonable doubt that the common object of the assembly of the appellants was to cause hurt on PW1 as alleged. Therefore, I find that the above ground of appeal has merit and that counts 1 to 4 should fail.

27. I will now turn to the rest of the grounds of appeal urged by the appellants, that refers to common intention. The remaining counts 5 and 7 are based on vicarious liability of common intention. All the evidence adduced before the trial Court has to be considered holistically to come to a finding on the person or persons who committed the offences alleged in counts 5 and 7 and whether the appellants shared the common intention when committing those acts. It is also important to note that a

common intention could be formed in the spur of the moment without any pre-planning.

28. It is the contention of the learned Presidents Counsel for the 1st, 2nd, 3rd and 5th appellants as well as the learned Counsel for the 4th appellant that in terms of the evidence of PW15, none of the other appellants shared a common intention with the 1st appellant. In his unsworn statement from the dock, the 1st appellant denied his presence at the scene.

29. Although the 1st appellant had denied his presence at the crime scene there is cogent evidence to prove not only that the 1st appellant was present but also that he fired shots from a T56 weapon from the place where the lorry they came was parked, towards the direction of *Badulla* where the deceased in count 5 and the injured in count No. 7 had been standing. As I stated before, it is evident that it was PW15 who ordered to stop the vehicle. When the appellants initially got down from the lorry, they had been unarmed except for the 5th appellant who carried a bottle. Although the PW 1 had denied any one pelting stones on the appellants, PW15 had clearly testified that the crowd threw stones at the appellants. He then had seen the 1st appellant whom he pushed into the lorry before, firing with a T56 weapon. It is obvious that the 1st appellant had used the weapon that had been in the lorry. Hence, the rest of the appellants could not have had the opportunity to share any common intention of committing the acts of firing with the 1st appellant even in the spur of the moment.

30. The learned High Court Judge has relied solely on the evidence of PW1, to come to the conclusion that the 2nd appellant also used a T56 weapon to shoot at the stage or the crowd. PW1 in his evidence said that the 2nd appellant also carried a weapon when he initially came near the stage. However, if the 2nd appellant carried a weapon when he came out of the lorry, PW15 should have seen it. It was the evidence of PW15 that only the 1st appellant used a weapon, and that is also after the 1st appellant was pushed inside the lorry by him. Therefore, it was unsafe for the learned High Court Judge to conclude that the 2nd appellant also used a weapon

based on the sole evidence of PW1, when in fact PW15 had not seen the 2nd appellant using or carrying a gun. The learned High Court Judge in his judgment at page 36 (page 630 of the brief) has opined that PW1 could be considered an independent witness, and also that he had given evidence with some exaggeration. In this context it is unsafe to justify the inconsistencies between the evidence of PW1 and PW15 especially on the evidence of the 2nd appellant using a weapon, when in fact PW15 who was much closer to the 2nd appellant did not see him using a weapon. It is also unsafe to conclude on the sole evidence of PW1, that all the appellants carried weapons when they came towards the stage, when in fact the credible and reliable PW15 clearly stated that they did not. It is clear from the evidence of PW15 that the 1st appellant started shooting only after he was pushed inside the lorry and that even the 1st appellant did not carry a weapon when he initially got down from the lorry and approached the stage.

31. In the case of ***The Queen V. P.G. Arasa and another*** **[1966] 70 NLR** at page 404 it was held;

> *'This court has held on numerous occasions that mere presence is not a sufficient circumstance to justify an inference of common intention. Such an inference would not have been reached in this case but for are ference by the learned Trial Judge to the fact that the second appellant "did nothing to prevent the first accused from stabbing". According to the evidence the stabbing took place so suddenly that it was in our opinion quite unreasonable to suggest to the jury that the second appellant should have tried to interfere.'*

32. In the case of ***King V. Assappu*** **[1948] 50 NLR 324** it was held;

> *" We are of opinion that in all cases where the question of common intention arises the Judge should tell the Jury that, in order to bring the rule in section 32 into operation, it is the duty of the prosecution to satisfy them beyond all reasonable doubt that a criminal act has been done or committed ; that such act was done or committed by several persons ; that such persons at the furtherance of the common intention of*

all; and that such intention is an ingredient of the offence charged, or of some minor offence. The Judge should also tell the Jury that in applying the rule of common intention there are certain vital and fundamental principles which they must keep prominently in mind – namely (a) the case of each prisoner must be considered separately ; (b) that the Jury must be satisfied beyond reasonable doubt that he was actuated by a common intention with the doer of the criminal act at the time the alleged offence was committed ; (c) they must be told that the benefit of any reasonable doubt on this matter must be given to the prisoner concerned – 47 N. L. R. at p 375 ; (d) the Jury must be warned to be careful not to confuse " Common intention " ; (e) that the inference of common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case – A. I. R. 1945 P. C. 118 ; (f) the Jury should be told that in order justify the inference that a particular prisoner was actuated by a common intention with the doer of the act, there must be evidence, direct or circumstantial, either of pre-arrangement, or a pre-arranged plan, or a declaration showing common intention, or some other significant fact at the time of the commission of the offence, to enable them to say that a co-accused had a common intention with the doer of the act, and not merely a same or similar intention entertained independently of each other – 47 N. L. R. at 375, 48 N. L. R. 295 ; (g) the Jury should also be directed that if there is o evidence of any common intention actuating the co-accused or any particular co-accused, or if there is any reasonable doubt on that point, then the charge cannot lie against anyone other than the actual doer of the criminal act – 44 N. L. R. 370, 46 N. L. R. 135, 473, 475 ; (h) in such a case such co-accused would be liable only for such criminal acts which they themselves committed ; (i) the Jury should also be directed that the mere fact the co-accused were present when the doer did the criminal act does not per se constitute common intention, unless there is other evidence which justifies them in so holding – 45 N. L. R. 510 ; and (j) the

Judge should endeavor to assist the Jury by examining the case against each of the co-accused in the light of these principles. "

33. In the case of ***Mapalagama Arachchige Ariyarathne*** **V. Attorney General [1993] BLJR Vol V.Part 1 (SC No. 31/92)**, it was held that;

"(a) the inference of a common intention must be not merely a possible inference but a necessary inference.

(b) It is a strict rule that the presence of an accused at the scene alone cannot suffice to establish a common intention."

34. In the instant case I am of the considered view that it is unreasonable for the Court to conclude that the 2nd to 5th appellants shared the common intention with the 1st appellant to shoot at the crowd or the victims. The 1st appellant after being pushed inside the lorry had suddenly come out with the weapon and had fired. There is no evidence that the other appellants had any opportunity to even converse with the 1st appellant at that point in time.

35. Hence, I find that the 2nd, 3rd, 4th and 5th appellants cannot be found to be vicariously liable for the shooting done by the 1st appellant, and the learned High Court Judge has erred in concluding so. Therefore, the remaining grounds of appeal preferred by the 4th accused appellant need not be considered further.

36. As I have stated before in paragraph 29, the learned High Court Judge had rightly rejected the position taken by the 1st appellant that he was not at the crime scene when the shooting incident took place. There is credible evidence of PW15 that the 1st appellant came in the lorry, and also that he was the first to shoot using the T56 weapon after the 1st appellant was pushed inside the lorry by him. A T56 weapon had been recovered from the 1st appellant. It was also evident that the 1st appellant had gone to the *Bibile* police station with others and had threatened the crime OIC. The then crime OIC of *Bibile* police station *Mohommed Jausi* (PW22) testified to

that fact. Hence, the learned High Court Judge was correct in rejecting his dock statement that he was elsewhere.

37. The learned High Court Judge in his judgment has carefully and adequately discussed as to how he came to the conclusion that it was the shooting by the 1st appellant that caused the injuries to the deceased and the injured in count No.7 *Gunapala.* Sixteen empty cartridges were found scattered near the lorry where the 1st appellant fired the weapon. The investigating officer PW3 had clearly observed the damage on the concrete lamp post. The damaged caused to the lamp post by a bullet had been towards the direction of *Bibile*. PW 15 testified that the 1st appellant fired from the direction of *Bibile* towards *Badulla*. Victim *Gunapala* who was clearly an independent witness had said that the shooting was done from the direction of *Bibile*. Shooting by the security guards of PW1 in retaliation had been from the direction of the stage towards the lorry which was parked towards the direction of *Bibile*. Hence, in the circumstances, it is proved beyond reasonable doubt that the injuries caused to the deceased and the victim *Gunapala* were caused by the 1st appellant by shooting, and by no one else. It is an inescapable inference that can be drawn by the proved circumstances.

38. The learned Presidents Counsel for the 1st appellant submitted that there is a possibility that the 1st appellant had no option but to shoot in retaliation, when the aggressive crowd started pelting stones at them. The 1st appellant had been intoxicated. The learned Presidents Counsel urged the court to consider lesser culpability on the 1st appellant.

39. It was evident that the appellants were from the opposing political party of the people who organized the meeting. When the lorry that the appellants came was stopped, the appellants on their own had tried to go towards the stage. It was evident that they had been under the influence of alcohol and ravaged. PW15 had in fact tried to prevent them. Under these circumstances it had been the appellants being from the opposing political party who had provoked the crowd. They should

have expected the crowd to get agitated. It was also evident that the 1st appellant fired the shots first, and the body guards of PW1 had only retaliated thereafter.

40. Although there was evidence that the appellants were under the influence of alcohol, there had been no evidence to show that the 1st appellant was so intoxicated that he was incapable of knowing the nature of the act he was committing by reason of such intoxication. Further, there was no evidence to show that the alcohol was administered to him without his knowledge or against his will. Hence, the first appellant was not entitled to get the benefit of the defence of intoxication in terms of Section 78 of the Penal Code.

41. For the aforesaid reasons the conviction of the 1st appellant on Counts No. 5 and 7 are affirmed. Sentences imposed on the 1st appellant on Counts 5 and 7 are also affirmed. First appellant is acquitted of the rest of the counts.

42. Appellants 2, 3, 4 and 5 are acquitted on all counts.

43. Appeals of the appellants are allowed to the above extent.

JUDGE OF THE COURT OF APPEAL

ACHALA WENGAPPULI, J

I agree.

JUDGE OF THE COURT OF APPEAL