MURDER

Ref: 01/07/2002

Sections 295 and 32 of the Penal Code - Imputed intentions - Transferred common intentions, discussed.

Three accused were charged with murder on the basis of common intention. All three accused were seen armed with guns and several shots were fired, one of which struck the deceased. It was not apparent as to which of the accused fired the fatal shot, but was apparent that shots were fired at one Sugathadasa who was in the company of the deceased. A motive of animosity was established between the accused and Sugathadasa due to political rivalry. A question that arose in appeal was whether common intention will also be transferred or imputed just as the intention of a single individual doing a criminal act to cause the death of one person even when such act results in the unintended death of another.

Held, when a criminal act is done by several persons in furtherance of a common intention of all, such intention would by operation of Section 295 of the Penal Code be transferred or imputed to each of them even when such act results in the unintended death of another.

Held further, a misdirection or non-direction on the combined effect of Sections 295 and 32 of the Penal Code vitiates a conviction.

The Republic of Sri Lanka Vs. Gamage Empy and two others

SC/189-191/75
HC Matara 102/71

JUDGEMENT

Ref: 02/07/2002

Mode of delivery of Judgement - Legality of delivering judgement twice, discussed. - Circumstances under which appeal filed out of time could be entertained, examined.

Preliminary objections were taken by the Counsel for the Respondent to the hearing of the appeal on the ground that the judgement in the original court had been delivered on two separate occasions and hence the consequent steps in appeal were illegal and the appeal should be rejected. Their Lordships noted that if the Attorneys are present, delivery of judgement in their presence is the proper legal step to be taken. The law makes it very clear in Section 184 of the CPC that the Judgement should be delivered in the presence of the Attorneys or the Parties. It is settled law that Attorneys' presence would be sufficient when the statute says notice to Attorneys or the Parties. As the Parties had not been present on the first occasion of the delivery of judgement in the presence of their Attorneys the learned Trial Judge had mistakenly ordered the issuance of Notice to the Parties to be present to enable him to deliver the judgement the second time. Therefore the delivery of the judgement for the second time was not a step in terms of the law for the sake of preferring an appeal. Their Lordships taking into consideration the proviso to Section 320(1) of the AJL ruled that an appeal filed out of time would be admitted and entertained if the Court is satisfied that the appellant was prevented by causes not within control from complying with the provisions of the said Section 320(1).

Sellamah Vs Sundaralakshmi

CA/525/77
DC Jaffna 1049/P

MURDER

Ref: 03/07/2002

Circumstantial evidence, reliance -Principles on which circumstantial evidence should be weighed when accused fails to explain away incriminating evidence adduced by the prosecution, discussed.

The accused were indicted in the High Court of Chilaw on two counts of murder. The prosecution did not lead the evidence of any eyewitness who witnessed the murderous assault. The prosecution case rested entirely on circumstantial evidence. Justice Ninian Jayasuriya, in his cogent Judgement, relied on the principles of law laid down by Lord Ellenborough and Justice Abbott, in the treatment of circumstantial evidence and dismissed the appeal.

Gunadasa Vs. The Republic of Sri Lanka

CA/121/95
HC/Chilaw/71/95

JURISDICTION

Ref: 04/07/2002

Code of Intellectual Property Act - Jurisdictions of District Court and the High Court of the Western Province to entertain actions under the Intellectual Property Act , examined.

The Plaintiff filed action in the District Court of Colombo on alternative causes of action, one based on the contract of employment entered into in Colombo, and the other based on the infraction of the provisions of the Code of Intellectual Property Act. Having considerd all aspects of the case, their Lordships ruled that under the High Court (Special Provisions) Act, No.10 of 1996, it was the High Court of Colombo of the Western Province that had jurisdiction to hear and determine such actions.

Tropical Herbs (Pvt) Ltd. & two Others Vs. Lanka Natural Products (Pvt) Ltd.

CA/LA/151/2001
D.C.Colombo No.5859/Spl