

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

CA Appeal No. 219/2009

HC Balapitiya No. HCB 107/92

Thomme Hakuru Vimaladasa alias Sakura
Siri Viduhal Mawatha,
Halgahawella,
Uragasman Handiya.

Appellant

Vs.

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

Respondent

C.A. Appeal No. 219/2009 - H.C. Balapitiya No. HCB 107/92

Before : **RANJITH SILVA, J. &**

H.N.J. PERERA, J.

Counsel : Amila Palliyage for the Accused-
Appellant.

Kapila Waidayaratne D.S.G for the A.G.

Argued &
Decided on : 02.07.2012

Ranjith Silva, J.

Heard Counsel for and against this appeal
respectively.

The accused was charged on a count of murder
under 296 of the Penal Code in the High Court of Balapitiya
without a jury, he was found guilty convicted and sentenced to
death. This is an appeal against that conviction and sentence.

The person died is a child of 6 years. According to
the facts and circumstances, there had been no provocation given
by this child and the child had never been involved in a sudden
fight. Even if there had been any provocation given by a 3rd

party that cannot be ventilated against a child (to retaliate against a 3rd party.) In this case we find no reason whatsoever, that militates against the culpability of the accused. The child had received three cut injuries on his neck that were necessarily fatal and there could be no doubt with regard to the murderous intention of the appellant.

If a person with the intension of murdering another person by his act kills a different person, he is guilty of murder on the doctrine of transferred malice . Therefore I find that there is no merit in this appeal and there is no justification in interfering with the judgment or the sentence of the learned High Court Judge and accordingly I dismiss this appeal and affirm the conviction and sentence.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL.

H.N.J. Perera, J.

I agree.

JUDGE OF THE COURT OF APPEAL

/mds