

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

C.A. Appeal No. 174-175/2010

H.C. Badulla No. 36/2002

01. Karupaiya Wasalamuni
02. Wasalamani Muththukumar
03. Wasalamani Malathi

All are

No:09,
Tikiri watta place,
Elbat Watta,
Passara.

Appellants

Vs.

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

Respondent

C.A. Appeal No. 174-175/2010 - H.C. Badulla No. 36/2002

Before : **ROHINI MARASINGHE, J. &**

H.N.J. PERERA, J.

Counsel : Dr. Rajith Fernando for the 1st Accused-Appellant

Indika Mallawaarchchi for the 2nd Accused-Appellant

C. Hettige S.S.C. for the Attorney General.

Argued &

Decided on : 15.10.2012

Rohini Marasinghe, J

The 1st and 2nd the Appellants are present in court brought in custody.

The 3rd appellant is present in court on bail.

Heard counsel in support their respective cases.

The 1st and the 2nd appellants have been convicted for murder of one Maradamuttu Sinaiah on 15th January 2001 and sentenced to death. The 3rd appellant had been convicted for simple hurt and sentenced to one year imprisonment and for a fine of rupees 5000/- and in default a 3 months imprisonment.

The appellants are the members of the same family. The 1st appellant was the father and the 2nd and the 3rd appellants were the children, viz the 2nd appellant was the brother and the 3rd was the sister. According to the evidence led at the trial on the day before the incident there had been a fight between the victims' family and the appellant's family. As a result of that fight the appellant's mother had been hospitalized. The victims and the appellants live in 'line rooms' close to each other. The learned counsel for the State had rightly accepted that the evidence led at the trial was insufficient for a conviction for murder. But there was sufficient evidence to convict the 1st and 2nd appellants for an offence under section 297 of the Penal Code. Therefore, I convict the 1st and 2nd appellants for the offence of culpable homicide not amounting for murder. It was argued by the counsel for the appellants that the isolated event was the only offence these appellants had ever committed in their entire lives. The counsels further argued that these appellants who were poor estate labourers were not a danger to the society to be incarcerated for a long time. The State did not challenge the submissions made by counsels for the appellants for the purpose of having the sentence reduced.

Therefore, taking into consideration all the facts mentioned by the State as well as the appellants I am of the view that it is fully justified imposing a sentence of 10 years imprisonment to take effect from the date of imposition of the sentence, on behalf of the 1st and 2nd appellants. The sentence had been imposed on 17th September 2010. I am also of the view that it is fully justified to suspend the sentence already imposed on the 3rd appellant for a period of 5 years. The fine and the default term imposed on the 3rd appellant would remain unchanged. Subject to this variation the appeal is dismissed.

JUDGE OF THE COURT OF APPEAL.

H.N.J. Perera. J.

I agree.

JUDGE OF ~~THE~~ COURT OF APPEAL.

/mds