

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

CA Appeal No. 246/2010

H.C. Hambantota No. 06/2006

Dissanayaka Mudiyansele Siripala alias Nilame
03 Kanuwa,
Raja Mawatha,
Kadasuridugama,
Katharagama.

Appellant

Vs.

Hon. Attorney General
Attorney General's Department
Colombo 12

Respondent

C.A. Appeal No. 246/2010 - H.C. Hambantota No. 06/2006

Before : **ROHINI MARASINGHE, J. &**
H.N.J. PERERA, J.

Counsel : Niranjan Jayasinghe for the Accused-Appellant
Ayesha Jinasena S.S.C. for the Attorney General.

Argued &
Decided on : 09.10.2012.

Rohini Marasinghe, J

Accused-Appellant is present in court brought in custody.

Heard both counsel in support of their respective cases.

The appellant had pleaded guilty for the offence of culpable homicide not amounting to murder under Section 297 of the Penal code. The appellant had been sentenced to fourteen years imprisonment and a fine of rupees 5000/- and a default sentence of 5 months. The offence was committed on 31st August 1994 around 2.00 p.m.

The learned counsel for the appellant contended that taking into consideration the facts and the circumstances under which the offence had been committed the sentence was excessive. In this case there was evidence that the victim and the appellant were close friends. On this day the appellant was making a block for a “බෙහෙත් කොටන තුවක්කුව” . The appellant and the deceased were making this at the house of the witness named Jayasundera. Around 2.00 in the afternoon the witness had heard a noise. Then the witness saw the appellant running towards him carrying an axe which was stained with blood and the appellant also had blood on his clothes. At that time the appellant had said that he has solved his problem. As disclosed in evidence the appellant’s wife and the deceased had an illicit love affair which was known to all the villagers. The witness said that he had earlier advised the deceased as well as the wife of the appellant against this affair.

The appellant had surrendered to the police on the same day viz. 31-08-1994, at 14.40 hours. He had handed over the axe to the police. The police officer had observed that the axe had stains of blood what appeared to be human blood with strands of hair. Pursuant to the statement of the appellant a diary belonging to the wife of the appellant was recovered and marked in evidence as P3. In the diary

there were references to the affair between the deceased and the wife of the appellant. The appellant in his evidence which was made by way of a dock statement had said that when he went home during the noon time he had discovered this diary of the wife in the almairah in the house of the appellant. He had confronted the wife who was at that time gone to the hospital with a son of the appellant. The wife on being questioned had denied the affair. The appellant had then come back to where the deceased was and confronted the deceased. At that time the appellant said the deceased had attempted to attack the appellant with a knife. At that point the appellant said that he had no alternative but to strike the appellant with the axe which was lying on a step. The defence of the appellant that the deceased had attacked the appellant with the knife had not been suggested to the witnesses for the prosecution. The burden of proof which lies upon the accused could be discharged by the cross examination of the witnesses for the prosecution as well as by the evidence for the defence. However, as the accused had pleaded guilty, I do not intend to elaborate any further on this point.

I have borrowed the above facts from the evidence led at the trial and from the impugned judgment. Against this background the

court had to decide whether the sentence of 14 years imprisonment was manifestly excessive. Although the counsel for the appellant contended that the court must take note of the fact the appellant had pleaded guilty to the charge and surrendered to the police immediately after the offence was committed. But, I observe that he had no option but to do so, as the evidence against him was so overwhelming and the discount for his plea could only be marginal. Notwithstanding that, I have considered the reason and the circumstances under which the offence was committed. The reason was the love affair of the deceased with the wife of the appellant. And, on this day the appellant had discovered the diary of the wife. The diary contained details of the love affair. The offence was committed against this background. In that sense the victim had contribute to the offence by provoking the offender. It appears to me that the relationship between the parties indicates that they were both to blame for what happened. Therefore, I am of the view that reducing the terms of imprisonment by four years is justified in this case. Additionally, this term of imprisonment should take effect from the date it was imposed in the trial court. The default sentence imposed in lieu of time are also directed to run concurrently with the terms of imprisonment. By this judgment the appellant is now sentenced to a total of ten years imprisonment, taking effect from

22nd November 2010. Subject to this variation the appeal is dismissed.

JUDGE OF THE COUR OF APPEAL.

H.N.J. Perera. J.

I agree.

JUDGE OF THE COURT OF APPEAL.

/mds