

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

**CA 100/2004**

HC Ratnapura Case No: 105/2001

Dambuluwana Balikiyanlage Ajith Namal

Dambuluwana Balikiyanlage Ajith Gunendra

**Defendant Appellants**

**Vs.**

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

**Respondent**

C.A. 100/2004

H.C. Ratnapura Case No: 105/2001

Before : Sisira de Abrew, J. &  
P.W.D.C. Jayathilaka, J.

Counsel : Dr. Ranjit Fernando for the Accused-  
Appellant.  
Dileepa Peiris SSC. For the Respondent.

Argued &  
Decided on : 11.02.2013

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Sisira de Abrew, J.

Heard both counsel in support of their respective cases. The two Accused-Appellants in this case were convicted of the murder of a man named Dambuluwana Balikiyannalage Peter and were sentenced to death. Being aggrieved by the said conviction and the sentence, they have appealed to this Court. Facts of this case may be briefly summarized as follows:

The deceased person who was living in the neighbourhood of the Accused-Appellant was suspected to

have given some information to the Excise Department with regard to the illicit liquor of the Accused-Appellant. The two accused suspected the deceased person as the one who gave the said information. According to the evidence this information has been given prior to the date of incident.

On 25.03.1999 when the deceased person and his wife were going on the road, the 2<sup>nd</sup> Accused who was digging the road with a mamoty, in an aggressive manner, asked them whether they were going to Ratnapura that day also. There was an exchange of words over this questioning and thereafter the 2<sup>nd</sup> accused chased after the deceased and attacked him with the mamoty that he had. The deceased person who fell on the ground due to this blow got up and ran away. Thereafter he climbed a tree. The 1<sup>st</sup> and 2<sup>nd</sup> Accused at this stage went near the tree and started pelting stones at the deceased who was on the tree. After the deceased got down from the tree, both accused attacked the deceased. According to the evidence of Chandrawathie, the wife of the deceased person, the 1<sup>st</sup> accused attacked the deceased with

an iron rod and the 2<sup>nd</sup> accused attacked the deceased with a mamoty. The incident was witnessed by Chandrawathie. The digging of the road spoken to by Chandrawathie was corroborated by the Police Officer's evidence. According to the Police Officer there were marks on the trunk of the tree indicating that stones had been hurled. Police Officer further stated that there were stains of blood near the tree. The learned counsel appearing for the Accused-Appellants submitted the following grounds.

- 1) The learned trial Judge should have, on the evidence led at the trial, convicted the Accused-Appellant of the offence of culpable homicide not amounting to murder on the basis that they did not have murderous intention.
- 2) The learned trial judge erred by passing the sentence of death notwithstanding the provisions set out in Children and Young Persons Ordinance, Youthful Offenders Ordinance, Section 53 of the Penal Code and Section 281 of the Criminal Procedure Code.

The Learned counsel for the Accused-Appellants however agreed that the said legal provisions would be applicable only at the time of conviction. The learned counsel made an application under Section 351 of the Criminal Procedure Code to admit fresh evidence to prove that the Accused-Appellants were, at the time of the incident, below 16 years of age. The contention of the learned counsel for the Accused-Appellant was that they were under 16 years of age at the time of the incident. But we note that no such evidence has been led at the trial. The 1<sup>st</sup> Accused-Appellant who made a dock statement did not even state his age. The 2<sup>nd</sup> Accused did not make a dock statement. If they were under 16 years of age at the time of the incident there were enough opportunities for them to produce the said material at the trial. Learned counsel who appeared for the Accused-Appellants did not, even at the beginning of the trial, bring to the notice of court about the age of the Accused-Appellant. When the Police Officer gave evidence, learned Defence Counsel who appeared for the Accused at the trial did not even question the Police Officer on the age of the Accused-Appellant. When we consider

all these matters, we are unable to permit the application made by the learned counsel for the Accused-Appellant under Section 351 of the Criminal Procedure Code. We have gone through the evidence and are of the opinion that there is no evidence to conclude that the Accused-Appellant was, at the time of the incident, under 16 years of age. When we consider the above matters, we hold that there is no merit in ground No 2 urged by learned counsel for the Accused-Appellant.

The learned counsel submitted that contradictions marked V2, V3 and V5 are vital. According to V2, V3 and V5 Chandrawathie when giving evidence at the inquest has implicated the mother of the Accused-Appellant. Mother of the accused is not an accused person in this case. We have considered the contradictions marked V2,V3 and V5 and are of opinion that the said contradictions do not create a reasonable doubt in the prosecution case.

The learned counsel for the accused-Appellant submitted that the Accused at the time of committing the Offence did not entertain murderous intention. When deciding

whether an accused person had murderous intention or not the Court can consider various factors. Some of them may be set out as follows. The weapons used by them. Number of injuries caused by the accused-appellant. The place of injury. The force used by the assailant to cause the injury.

These are some of the factors that court should consider when deciding whether the assailant had murderous intention or not. In this case, the 2<sup>nd</sup> accused had used a mamoty and the 1<sup>st</sup> Accused had used an iron rod. Deceased had sustained injuries on the head and on the face. According to the Medical Evidence the skull has been fractured and this fracture has extended to the base of the skull. The deceased had sustained other injuries on the face. After the 1<sup>st</sup> attack on the deceased person, he ran away from the scene. The Accused-Appellant chased after the deceased who climbed a tree. The Accused-Appellant did not stop at that stage and pelted stones at the deceased person. When the deceased person got down from the tree, the accused-appellants attacked the deceased person. All these matters

indicate that the both accused-appellants had murderous intention at the time of the incident. When we consider all these matters, we hold that there is no merit in the 1<sup>st</sup> ground urged by the Accused-Appellant.

We have gone through the evidence led at the trial and are of the opinion that the prosecution has proved the case beyond reasonable doubt. We hold that there is no merit in this appeal. For the reasons stated above we affirm the convictions and the sentences of both accused-appellants and dismiss the appeal.

*Appeal dismissed.*

JUDGE OF THE COURT OF APPEAL

P.W.D.C. Jayathilake, J.

I agree.

JUDGE OF THE COURT OF APEPAL

Jmr/-