

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

CA (PHC) APN. 71/12

H.C. Kegalle 2184/2005

Anura Nishantha Samarasinghe

Petitioner

Vs.

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

Respondent

C.A. (PHC) APN No. 71/12 - H.C. Kegalle 2184/2005

Before : **A.W.A SALAM, J. &**
SUNIL RAJAPAKSHE, J.

Counsel : Dr. Ranjit Fernando with Samathi Rajapaksa
for the Accused-Petitioner.
Anoopa de Silva S.S.C. for the Respondents

Argued &
Decided on : 10.05.2013.

A.W.A. Salam, J

Heard Counsel in support of this application.

Learned State Counsel has no objection to the application and states that she would abide by whatever order court makes with regard to the revision application.

This is a revision application made by the accused-petitioner challenging the sentence imposed on him consequent upon his pleading guilty to a charge of culpable homicide not amounting to murder based on knowledge. The accused-petitioner was indicted in

the High Court of Kegalle for causing the death of his mother-in-law one Somawathie. Admittedly, at the time of the incident the wife of the accused was beyond seas and the 4 year child of the accused-petitioner and his wife had been looked after by the deceased. The unfortunate incident had taken place when the accused-petitioner visited the mother -in-law to observe that the child was bleeding from the mouth. At this movement of time there had been a heated argument when the accused-petitioner blamed the mother-in-law for being negligent in looking after the child. When the argument over this matter reached its peak, the accused-petitioner had held the deceased by her neck and attacked her on the head with the coconut scraper. Thereafter the accused-petitioner in a state of anger had pushed the deceased that resulted in the deceased coming in contact with the hard object.

The subsequent conduct of the accused-petitioner immediately after the incident obviously negates any murderous intention and it fact it points to the fact that the accused was regretting over the unfortunate incident. For example the accused-petitioner had attempted to give water to the mother-in-law and at that time the deceased was in the lap of the accused.

The learned High Court Judge probably by inadvertence had not adverted to the exact manner in which the incident had taken place. The fact that the accused had no previous conviction and that he was in the prime of his life also have not been considered in sentencing the accused.

Though it is not strictly relevant, our attention was drawn to the fact that the wife of the accused namely the daughter of the deceased is present in court to support the cause of the accused. Upon being questioned by court, the wife of the accused stated in no unambiguous language that she came to court see that her husband gets relief in the revision application.

Above all, we are concerned about the fact that the learned High Court Judge has accepted the plea of guilt for culpable homicide not amounting to murder based on knowledge and therefore the accused had every legitimate expectation that the maximum sentence that could be imposed on him was ten years and no more. This clearly shows that the learned High Court Judge has not taken into consideration the mitigatory circumstances as she had apparently imposed the maximum sentence on the accused. The very fact that the accused was willing to plead from the beginning to the charge and

that he had made a confessional statement shows his mental state which point to the fact of repentance over the incident.

Taking all these matters into consideration, we are of the view that the sentence of five years rigorous imprisonment would be justifiable and therefore we affirm the conviction of the learned High Court Judge subject to the variation that the term of imprisonment imposed on him should be reduced to five years from the date of imposition of the sentence by the learned High Court Judge namely from 14th March 2012. The sentence of fine imposed on him and the default sentence stands unchanged.

Subject to the above variation the conviction stands affirmed.

JUDGE OF THE COURT OF APPEAL.

Sunil Rajapkshe, J.

I agree.

JUDGE OF THE COURT OF APPEAL

/mds