

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

C.A. No. 32/2011

H.C.Kandy No. 256/2013

M.G.L. Samantha Gamage alias
Ranmahattaya
No: 113,
Udaluoya.

Appellant

Vs.

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

Respondent

C.A. No. 32/2011

H.C.Kandy No. 256/2013

Before : Sisira J de Abrew,J. (Acting P/CA) and
P.W.D.C. Jayathilaka,J.

Counsel : Niranjan Jayasinghe for the accused-
Appellant.
Dilipa Peiris SSC for the Respondent.

Argued and

Decided on : 28.11.2013.

Sisira J. de Abrew,J. (Acting P/CA)

Accused – appellant is present in Court produced by the Prison Authorities.

Heard both counsel in support of their respective cases.

The accused –appellant in this case was convicted of the murder of man named Balage Chandrarathne and was sentenced to death. Being aggrieved by the said conviction and the sentence the accused-appellant has appealed to this Court. The facts of this case may be briefly summarised as follows:-

The accused-appellant and the deceased person were friends. Some days prior to the incident in this case, the deceased person purchased a vehicle from the accused-appellant. The deceased person who was not satisfied with the condition of the vehicle later handed over the vehicle to the accused-appellant and certain amount of money was due to the deceased person over the transaction. On 09.01.2000 the deceased person who was a fish seller was at a Sunday fair in Pundaluoya engaging in selling fish. In the evening around 5 O' clock Antony Perera who was also a fish seller heard somebody pleading to rescue him (the person who was pleading) . On hearing the said shouts, he looked in to the direction where the pleading emanated and then saw one Gunasekera pulling the accused -
2 appellant in order to prevent him from proceeding towards a place ^m the Sunday fair where the deceased person was lying fallen. According to Gunasekera, he prevented the accused appellant from proceeding towards the place where the deceased person was lying fallen. Gunasekera had held the hands of the accused-appellant. At this time the deceased person was lying fallen with bleeding injuries. Police Constable Jayasundara who was on duty at the Sunday fair, on seeing a group of people proceeding inside the Sunday fair was vigilant over what was happening at the Sunday fair. Then he saw the accused-appellant coming from the Sunday fair saying he was assaulted. According to Jayasundrara accused-appellant did not mention the name of the person who assaulted him. He later saw the accused- appellant throwing some object towards the roof of the cooperative shop. Jayasundara says that the deceased person at this time was lying fallen with bleeding injuries. From the above evidence it can be concluded

that it was the appellant who inflicted injuries to the deceased person. In order to arrive at the conclusion that the accused-appellant inflicted injuries to the deceased person, it is not necessary to consider the alleged dying declaration made by the deceased person. Learned Counsel appearing for the accused-appellant submits that the accused-appellant admits the liability of the offence of culpable homicide not amounting to murder on the basis of sudden fight . The question that must be considered is whether the accused-appellant should be convicted of the offence of murder or of the offence of culpable homicide not amounting to murder . The weapon used by the accused-appellant in this case was a table knife. He has inflicted eight cut injuries and one stab injury. According to the evidence of police constable Jayasundara soon after the incident the accused-appellant was going away from the place of the incident where the deceased person was lying fallen saying that he "was assaulted" . This behaviour of the accused-appellant suggests that there had been a fight between the accused-appellant and the deceased person. This important fact, it appears from the Judgment, has escaped the attention of the learned trial Judge.

Considering all these matters, we are of the opinion that the proper conviction should have been the conviction of the offence of culpable homicide not amounting to murder on the basis of sudden fight. For the above reasons we set aside the conviction of murder and the death sentence and substitute a conviction for culpable homicide not amounting to murder on the basis of sudden fight which is an offence punishable under section

297 of the Penal Code. We sentence the accused-appellant to a term of 15 years rigorous imprisonment and to pay a fine of Rs.10,000/- carrying default sentence of 06 months rigorous imprisonment and to pay a sum of Rs.75,000/- to the wife of the deceased person carrying a default of sentence of 18 months imprisonment.

We direct the Prison Authorities to implement the sentence of the date of conviction (31/3/2011).

Subject to the above variation of the verdict and the sentence, the appeal of the appellant is dismissed.

Appeal dismissed.

ACTING PRESIDENT OF THE COURT OF APPEAL

P.W.D.C.Jayathilaka,J.

I agree.

JUDGE OF THE COURT OF APPEAL

WC/-