

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

Walpitagamage Gunathilaka,
Munamalgahawatta, Meegoda,
Wanchawala.

CA No. 124/2008

Accused-Appellant

- Vs -

HC Galle Case No. 2377

The Attorney General,

Respondent

BEFORE : Sisira J. de Abrew, J (P/CA) &
P.W.D.C. Jayathilaka, J.

COUNSEL : Niranjan Jayasinghe for the Accused-appellant.
Yasantha Kodagoda DSG for the Respondent.

DECIDED ON : 11.03.2014

SISIRA J. DE ABREW, J (P/CA)

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

Heard both counsel in support of their respective cases.

The accused-appellant in this case was convicted of the murder of a man named Somapala and was sentenced to death. He was also convicted for causing grievous hurt to Kusuma Gamage who is the wife of the deceased person. He was, on the said count, sentenced to a term of 02 years rigorous imprisonment and to pay a fine of Rs. 1500/= carrying a default sentence of 06 months simple imprisonment. Being aggrieved by the said conviction and sentence he appealed to this Court.

Facts of this case may be briefly summarized as follows;

On the day of the incident around 8.00 p.m. the accused-appellant and one Karunadasa came to the house of the deceased. The deceased was, at this time, sleeping on a mat in his house. The accused-appellant invited the deceased person to come along with them to go to the road. The deceased person refused this invitation. The wife of the accused-appellant Kusuma Gamage also advised the deceased person not to go. The accused-appellant at this stage started assaulting the deceased person with his hands and legs. Wife of the deceased person at this stage took a club which was used to lock the door (the door bar). But she did not assault anybody. It appears that she has apparently taken up this club in order to prevent the attack on her husband. The accused-appellant at this stage grabbed the said club from the hands of the wife of the deceased person and started assaulting the deceased person who was sleeping. Wife of the deceased person, Kusuma Gamage says that the accused-appellant gave about 25 blows. The accused-appellant thereafter went and met Ruwan Thushara who was living in the neighborhood of the deceased person and told him that he got provoked and gave about 25 blows to the deceased person. There were

several injuries on the face of the deceased person. Learned counsel appearing for the accused-appellant submits that he is making submissions in order to get the culpability of the accused-appellant reduced. The accused-appellant, in his dock statement, stated that he did not assault the deceased person but it was Karunadasa who assaulted the deceased person. There was no evidence to reject the evidence of Ruwan Thusara to whom the accused-appellant admitted that he assaulted the deceased person about 25 times. When we consider the evidence led at the trial, we are unable to accept the position taken up by the accused-appellant in his dock statement. In our view it does not create a reasonable doubt in the prosecution case. When we consider the evidence led at the trial, there are no grounds to reduce the culpability of accused-appellant. We have considered whether the accused-appellant could be convicted of the offence of culpable homicide not amounting to murder on the basis of grave and sudden provocation. But we note at that time of the attack the deceased person was sleeping on a mat. The accused-appellant has attacked the deceased person who was sleeping. When we consider all these facts, we feel that there are no reasons to interfere with the decision of the learned Trial Judge. For the above reasons, we affirm the conviction and the sentence and dismiss the appeal.

On the second count Kusuma Gamage has stated in her evidence that the accused-appellant assaulted her too. There is no reason to interfere with the conviction on the 02nd count. For the above reasons, we affirm both convictions and the sentences and dismiss the appeal.

Appeal dismissed.

PRESIDENT OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL

KRL/-