

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

W.D.Weerarathe alias

Kande Lamaya

Appellant.

C.A.No.104/2011

H.C.Kegalle No.2196/05

Vs.

The Attorney-General

Respondent.

C.A.No.104/2011

H.C. Kegalle No.2196/05

Before

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

Counsel

: Tenny Fernando for the Accused –
Apellant
Dilan Rathnayake SSC for the A.G.

Argued and

Decided on : 07.03.2014

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 Somarathe and was sentenced to death. Being aggrieved by the said conviction and the sentence he has appealed to this Court. Facts of this case may be briefly summarised as follows:

On the day of the incident when the accused-appellant was going on the road using filthy language, the deceased person came to the road and addressed him in the following language.

“ There are children do not use filthy language”. Thereafter there was an exchange of words between the two. Then the accused-

appellant came up to the deceased person and inflicted one stab injury on his chest. This was witnessed by Indika Rajapakshe. Indika Rajapakshe says that both the deceased person and the accused were under the influence of liquor. When we consider these matters we feel that the accused-appellant should have been convicted of the offence of culpable homicide not amounting to murder on the basis of sudden fight. Learned Trial Judge has failed to consider this aspect. Learned Senior State Counsel admits that the accused – appellant should have been convicted of the offence of culpable homicide not amounting to murder on the basis of sudden fight. Considering these matters we set aside the conviction and the death sentence of the accused-appellant and substitute a verdict of culpable homicide not amounting to murder on basis of sudden fight which is an offence punishable under Section 297 of the Penal Code. The accused-appellant in his dock statement stated that he has been on remand for the offence for 09 years. When we examine the Magistrate's Court record, we find that the accused-appellant has been on remand from 2003 onwards. Learned counsel for the accused-appellant submits that the accused-appellant has been on remand from the date of arrest pertaining to this offence. Learned Senior State

Counsel does not dispute the above submission. Considering all these matters we sentence the accused-appellant to a term of 10 years rigorous imprisonment and to pay a fine of Rs.2,500/= carrying a default sentence of 3 months simple imprisonment. We direct the prison Authorities to implement the sentence from the date of sentencing by the learned Trial Judge (19/7/2011).

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

Verdict altered.

PRESIDENT OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL

WC/-