

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

B. Kumarasiri Fernando
(Presently at the Welikada Proson)

ACCUSED-APPELLANT

C.A. 143/2012
H.C. Panadura 2339/2007

Vs.

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

RESPONDENT

BEFORE: Anil Gooneratne J. &
Sunil Rajapaksa J.

COUNSEL: Dr. Ranjith Fernando for the Accused-Appellant
Dileepa Peiris S.S.C. for the Respondent

ARGUED ON: 03.04.2014

DECIDED ON: 13.05.2014

GOONERATNE J.

The Accused-Appellant was convicted of culpable homicide not amount to murder and was sentenced to 12 years rigorous imprisonment and a fine of Rs. 15,000/-, which carries a default sentence of 6 months simple imprisonment. To set down the facts of this case briefly, are as follows:

The Accused and the deceased namely Wijeyahewage Anusha de Silve had been having a love affair for some time. Case of the prosecution is based only on circumstantial evidence. The main witness for the prosecution was a security guard of a housing complex, where the deceased was residing. The housing complex comprises of about 24 houses and only about 12 were occupied. It is situated within an area of 18 acres. This witness was on guard duty at a shed within the complex which was about 50/60 meters away from the house of the deceased, which distance where one could easily see the house of the deceased. The deceased had been living all alone in the house for about 7 to 8 months. This house had been visited by the deceased parents and others. The Accused also used to visit the house and the witness could identify

the Accused who is called 'Kumara'. Witness was able to identify the Accused as above and also had made a dock identification. The Accused used to come to the house of the deceased in a van described as described in evidence.

It was the position of the witness that on the day of the incident the Accused-Appellant had visited the deceased on 3 or 4 times and he came lastly to the house between 9.30 or 10.00 p.m. He heard the voice of the deceased and the Accused and there had been a quarrel and exchange of words which he describes, as in bad language which utterances were made by both of them. The witness specifically states that he heard the deceased saying 'මම මරණයට' . Thereafter he learnt that the body of the deceased was found in a nearby cemetery.

The witness also testified that when he went near the deceased house he saw blood stains, pieces of hair and as such informed the police.

The learned counsel for the Accused-Appellant drew the attention of this court to the trial Judge's reasoning and observation at pgs. 319/320 of the brief and emphasized that the trial Judge has examined the case and arrived at a conclusion that the accused did not have the intention to cause death and the evidence led by the prosecution is that the Accused committed the offence

without premeditation in a sudden fight in the heat of passion upon a sudden quarrel. (akin to exception 4). This would reduce the offence from murder to culpable homicide not amounting to murder, which falls within the 2nd limb of Section 297 of the Penal Code. On this account it was the position of the learned counsel for the Appellant that he would not contest or canvas the conviction but would plead in mitigation of the sentence. As such on the basis of knowledge the maximum sentence that could be imposed was imprisonment for 10 year of either description and a fine.

The learned Senior State Counsel however drew the attention of this court to the item of evidence where the body was found at a cemetery, and that the weapon which was a knife had been recovered on a section 27 statement of the Evidence Ordinance. He also emphasized on the several injuries found on the body of the deceased which are of a severe nature. However learned Senior State Counsel indicated that he would leave the question of sentence in the hand of court.

We have examined the evidence led by the prosecution and the trial judge's views on which she reduce the offence from murder to culpable homicide not amounting to murder. It is evident that both the deceased and the Accused were at a certain stage were in very intimate terms and had

continued an illicit affair which was no secret in the manner evidence was led at the trial. On the day in question evidence led suggest that it was a sudden fight in the heat of passion upon a quarrel. The words uttered by the two of them in bad language amply demonstrate that the offence that was committed or the act was done with the knowledge that it was likely to cause death but with an absence of intention to cause death. The utterance made by the deceased as stated above along with other items of evidence give rise to the fact that the Accused would have had entertained suspicious feelings of the deceased associating others, which ultimately led to a quarrel between them. The record also does not bear the fact that the Accused had previous convictions. He was a married person with children.

In all the above facts and circumstance of this case we would intervene and vary the sentence of imprisonment from 12 years to 10 years rigorous imprisonment to bring it within the 2nd limb of Section 297 of the Penal Code. The fine and default sentence imposed by the trial judge remains unaltered. As such, we direct the Prison Authorities to implement the sentence from the date of the sentencing the Accused by the learned High Court Judge. We also direct the learned High Court Judge of Chilaw to issue fresh committal

indicating the sentence imposed by this court. Subject to above variation of sentence of imprisonment the appeal of the Appellant is dismissed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

N.S. Rajapaksa J

I agree.

JUDGE OF THE COURT OF APPEAL