

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

1. Kehelmala Ralalage Asanka Premakumara
2. Kehelmala Ralalage Gayan Wickremasinghe
3. Kehelmala Ralalage Sumith Priyadharshana
Alias Bandara.

All of Oththapitiya, Nelumdeniya.

ACCUSED-APPELLANTS

C.A 10/2013
H.C. Kegalle 2953/2010

Vs.

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

RESPONDENT

BEFORE: Anil Gooneratne J. &
Malinie Gunaratne J.

COUNSEL: Amila Palliyage for the Accused-Appellant
Sarath Jayamanne A.S.G. for the Respondent

ARGUED ON: 02.06.2014

DECIDED ON: 25.06.2014

GOONERATNE J.

The three Accused-Appellants were indicted in the High Court of Kegalle on two counts. The 1st count was on a charge of murder of one Senarath Arachchilage Nonahamy. The other count (2) was an attempted murder charge which was withdrawn by the prosecution subsequently. All three Accused-Appellants were convicted and found guilty of culpable homicide not amounting to murder (Section 297) and sentenced to six years rigorous imprisonment on 26.2.2013. At the hearing of this appeal learned Addl. Solicitor General who appeared for the Respondent indicated to court that he would agree for a further reduction of sentence to a lesser offence and sentence since the deceased had intervened to stop an altercation between the Accused party and the injured party, and also having regard to the nature of injuries inflicted on the deceased.

Prosecution version is that there were four incidents between the Accused party and others, which commenced with an exchange of words

between them. In the course of the commotion/altercation the deceased person had come in between to stop the fight and had received a blow which had been aimed and dealt at witness No. 1 and she fell. Medical evidence reveal three injuries caused by a blunt weapon, which injuries are described as abrasions/or bruises. The Doctor who gave evidence suggest that the three injuries could have resulted from just one blow or may be by several other blows. On an internal examination of the body the Doctor testifies that three arteries were blocked (pg. 87). The Doctor further testifies that the deceased who had a heart condition as stated above, with the injuries caused to her as above would have resulted in a sudden heart attack and caused her death.

The items of evidence that surfaced at the trial does not indicate any murderous intention of the Accused party, nor can this court arrive at a conclusion that the act done was done so with the knowledge that it is likely to cause death or to cause such bodily injury likely to cause death. The blow given by the Accused was in fact dealt at witness No. 1 but had struck the deceased causing injuries.

In the above circumstances in the absence of a murderous intention and the required knowledge to cause death, the act of assault on the deceased is a case of voluntarily causing hurt. Therefore this court set aside the

conviction and sentence and impose a conviction of voluntarily causing hurt and sentence the all three Accused for one year Rigorous Imprisonment and a fine of Rs. 1000/-. In default of payment of fine. 6 months R.I. is also imposed. Subject to above the appeal is dismissed. Sentence of imprisonment to be implemented from the date of judgment delivered by this court.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL