

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

Kimnasamy Navasivam Thever  
Galabada Estate, Gallella,  
Ratnapura.

**ACCUSED-APPELLANT**

C.A 170/2009  
H.C. Ratnapura 55/2005

Vs.

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

**RESPONDENT**

**BEFORE:** Anil Gooneratne J. &  
Sunil Rajapaksa J.

**COUNSEL:** Saliya Peiris with Gayan Maduwage  
For the Accused-Appellant

Wasantha Nawaratne Bandara A.S.G., for the Respondent

**ARGUED ON:** 28.04.2014

**DECIDED ON:** 26.06.2014

**GOONERATNE J.**

The Accused-Appellant was indicted in the High Court of Ratnapura for committing the murder of one Muththuraman on 4.9.2000 at Galabada Estate, Gallella, and sentenced to death. In brief the prosecution case is as follows:

The main witness who gave evidence was the deceased's son. It is stated that witness, his deceased father, and sister was in the house and after dinner all of them went to sleep. At about 1.00 a.m on the day of the incident somebody tapped at the door. Witness opened the door and saw the Accused. He was able to identify the Accused with the light of the lamp and sufficient moon light as the Accused was known to the family for some years. Accused called the deceased who was asleep. When the deceased came forward the Accused held the deceased by his shirt and pushed him. All this happened near the door step. Accused demanded money from the deceased, and went away and returned with a sword and attacked the deceased with a sword which hit the head of the

deceased, who fell, and as such the witness had shouted. Accused also attempted to attack the witness. Distance between the Accused's house and the deceased house was about 30 feet. Witness ran and hid near flower bushes near the house and watched as to what the Accused was doing at that moment. Thereafter the Accused came with a spear (ଉତ୍ତଳେ ଘର) and attacked the deceased on the chest area/legs forehead and all over the body of the deceased. Then some other witness intervened to stop the attack.

The deceased was thereafter taken to hospital and he died on 14.9.2000 (About 10 days after the incident). The learned counsel for the Accused-Appellant mainly focused his argument based on medical evidence. He emphasized and submitted to court that in the light of the medical evidence the chain of causation of this death has not been established by the prosecution and as such the Accused should not have been convicted of murder. The learned counsel submitted that the conviction should be set aside and a conviction for a lesser offence and a lesser sentence may be imposed or in the alternative to set aside the conviction and order a re-trial. He also submitted that a reasonable doubt arose based on medical evidence learned counsel inter alia submitted that the Accused's dock statement had been devalued by the trial Judge and the alibi not considered. The trial Court had also misdirected itself on the burden of proof.

Medical evidence suggests only one grievous injury and several other contusions. What impact does it have on the liver of the deceased to connect the Accused for murder of the deceased?

The learned Addl. Solicitor General whilst supporting the prosecution case referred to the evidence of witness No. 1 the son of the deceased to be consistent and that the omissions suggested in cross-examinations are not material to the prosecution case, and that there were no material contradictions marked. Learned Additional Solicitor General also commented on the medical evidence and emphasized that the cause of pneumonia was due to the particular injuries caused to the deceased by the Accused. There were 22 injuries, which could have been caused by the weapon that was used for the commission of the offence (pg. 87). The cause of death due to multiple injuries from a sharp and blunt weapon, including a fracture of the bones and that complications associated with the liver disease. (Pg. 88) He emphasized on the evidence recorded at pgs. 89, 93 and 99 of the brief. These items of evidence would clearly show that the death was due to the injuries that were caused, by the Accused. Learned Addl. Solicitor General relied on the case reported in CA 34/2002; H.C. Ratnapura 119/93 decided on 19/7/2007.

The medical evidence led in this case would take the court to accept or reject the position of convicting, the Accused for a lesser offence? I find that initially the Medical Officer suggested bare medical facts to make court realize that the injuries inflicted was sufficient to cause the death of the deceased. However the medical officer whilst being probed and cross-examined provided more and more details of the deceased person. The illness that was prevailing as at the date of examination of the deceased and the illness that prevailed and the resulting consequences are fairly dealt in the evidence of the medical officer. The Doctor testified to some 22 injuries. Some of the injuries are described as 'healed' and some as 'healing' and injuries below the skin. Report suggest a variety of injuries. The type of weapon used had been divulged by the Doctor as an opinion. It is also stated that a sharp cutting weapon or a blunt weapon could have caused the injuries and fracture of bones and injuries/fracture would cause death. Further the deceased had a condition of a damaged liver. If the liver condition was neglected death could have occurred. The fracture of the bones of the legs could also have caused the death.

Medical Officer has also expressed the view that with the fracture of the bone of the leg there would be a loss of blood and pneumonia likely to occur. The spreading of the liver deceased would also have an impact.

I note the following from the evidence of the Medical Officer. The death could have occurred as follows:

- (a) Pneumonia is a lung disease which weakens the system and death could follow due to difficulty in breathing
- (b) Mainly due to pneumonia.
- (c) Pneumonia entered the body due to fracture of bones.
- (d) Being bed ridden for some time would accelerate death due to pneumonia.
- (e) Damaged liver due to consumption of liquor.
- (f) Damaged liver would also have an impact on the deceased.
- (g) Health condition that prevailed earlier would also contribute to his death.

In the above circumstances more particularly looking at (e), (f) & (g), I would draw the conclusions as referred to in the following case laws, since court need to be guided in instances where medical opinion suggest several views which could cause the death of the deceased.

*Mendis vs. The Queen 54 NLR 177*

Held: that as the injured man's death was not immediately referable to the injury actually inflicted but was traced to some condition which arose as a supervening link in the chain of causation, it was essential in such cases that the prosecution should, in presenting a charge of murder, be in a position to place evidence before the Court to establish that "in the

ordinary course of nature” there was a very great probability (as opposed to a mere likelihood) (a) of the supervening condition arising as a consequence of the injury inflicted, and also (b) of such supervening condition resulting in death.

“it is essential in such cases that the prosecution should, in presenting a charge of murder, be in a position to place evidence before the Court to establish that “in the ordinary course of nature”, there was a very great antecedent probability (as opposed to a mere likelihood) (a) of the supervening condition arising as a consequence of the injury inflicted, and also (b) of such supervening condition resulting in death. Applying this test to the present case, we think that Dr. de Saram’s evidence does not go far enough to establish the first of these requirements beyond reasonable doubt. (P-180)”

C. Abeysondera, Appellant, and The Queen the Court held that:

“Although in examination-in-chief the Doctor expressed the view that, considering her age and the injuries, the broncho-pneumonia was a natural and probable consequence of the treatment that ensued upon the injuries, in cross-examination he stated that as a result of surgical treatment the injuries were healing and it was unfortunate that she had contracted broncho-pneumonia. His final assessment of the position was that broncho-pneumonia was a possibility and not a probability. The medical evidence therefore at least created a reasonable doubt whether the death of the deceased nearly two weeks later was as a result of the injuries inflicted by the appellant” (P-170)

I do agree with the learned defence counsel that it cannot be said with certainty that pneumonia was the inevitable cause of the injuries inflicted on the deceased person. Medical evidence create a reasonable doubt of the death which occurred 10 days later was as a result of inflicted injuries. In the

submissions before this court by learned counsel for defence as well as in the written submissions that if the court arrives at a conclusion as above Appellant need not pursue the other grounds.

In view of the position and submissions made by learned counsel for the Accused-Appellant this court is convinced that the Accused could be convicted for the offence of culpable homicide not amounting to murder. In the case in hand although there is direct evidence of injuries being caused to the deceased by the Accused, difficulties attach to the case itself in view of the medical evidence and more particularly for the reason that the injured man's death cannot be made immediately referable to the injuries actually inflicted but to prevailing health condition of the deceased. i.e liver infection and or a lung infection resulting in pneumonia which by the infliction of injuries aggravated the situation. As such conviction of murder would not be justified in the circumstances and in the context of the case in hand Evidence transpired in court from the medical officer establish that there was probability in a lesser degree of death ensuing from the act committed, the finding should be and the conviction based on culpable homicide not amounting to murder. The case cited by learned Addl. Solicitor General (CA



34/2002) cannot be made directly applicable to the case in hand. In CA 34/2002 the deceased was not detected with the prevailing illness.

In all the above circumstances we therefore quash the conviction for murder and substitute in the case of the Appellant a conviction for culpable homicide not amounting to murder. We sentence the Accused-Appellant to undergo a terms of 15 years rigorous imprisonment and a fine of Rs. 15,000/- which carries a default sentence of 1 years simple imprisonment.

Conviction altered as above. Sentence to run from the date of delivery of this judgment.

JUDGE OF THE COURT OF APPEAL

N.S. Rajapaksa J.

I agree.

JUDGE OF THE COURT OF APPEAL