

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

H. Kumarasiri Perera alias Sarath

**ACCUSED-APPELLANT**

C.A 82/2013

H.C Gampaha 112/2007

Vs.

Hon. Attorney General

Attorney General's Department

Colombo 12.

**COMPLAINANT-RESPONDENT**

**BEFORE:** Anil Gooneratne J. &  
Malinie Gunaratne J.

**COUNSEL:** Amila Palliyage for the Accused-Appellant  
Rohantha Abeysuriya D.S.G. for the Complainant-Respondent

**ARGUED ON:** 13.06.2014

**DECIDED ON:** 08.08.2014

house (අයි අමිමේ කියා ගෙන ගො ආතුලන් වූ බවත්). Thereafter the Accused had uttered to the deceased “උඹ එත්ඛියෙක්ද and stabbed the deceased on his chest and also gave chase behind the deceased who ran towards the house of his brother. The deceased had been chased by the Accused with a knife in his hand. Witness saw the deceased holding the wall on the road. The deceased had been taken to hospital by the witness and she also had made a statement to the police. Witness No. (2) called by the prosecution also corroborated the incident of murder by stating in evidence that he heard the shouts එමක්ද, වුව වුව බේරගන්න. He saw the Accused chasing the deceased with a knife uttering මරනවා, මරනවා).

Learned counsel for the Accused-Appellant referred to the mental condition of his client who had been taking treatment on and off and emphasized the case of the Accused on the basis of a sudden fight. Learned counsel for the Accused invited court to consider a further reduction of the sentence already imposed by the High Court. The learned Deputy Solicitor General supported the Judgment of the learned High Court Judge, and stated that the post mortem report is consistent with the injuries as narrated by the main witness who said that the deceased had been stabbed on the chest. He

also mentioned about the Section 27 of Evidence Ordinance recovery of a knife and the scene of the crime with reference to police evidence.

The Accused-Appellant in this case had given evidence on oath. This court having considered the version of the Accused, cannot find any ruling of the trial Judge as regards the case of the Accused, except in the High Court Judge's findings on medical report X1 & X2 produced by the Accused, had been accepted by the trial Judge and given a concession to the Appellant based on same. Trial Judge does not state specifically whether the version of the Accused-Appellant creates any doubt in the prosecution case but had considered the medical report and arrived at a conclusion that the incident was as a result of a sudden fight. The explanation of the Accused may be somewhat acceptable to convict him for a lesser offence. I think this being the factual position, this court do not see a real basis to interfere in the findings of the trial Judge.

On the other hand the prosecution witness gave evidence on what they saw and what they heard. The defence had not been able to create any doubt in the prosecution case and they appear to be truthful witnesses. The report X1 and X2 no doubt explain in detail the several ailments that caused a severe recurrent depressive disorder. X2 which is the discharge summary gives

a clear clinical diagnosis and describes as a current episode severe with psychotic symptoms. X2 is dated 9.2.2001. The incident was on 13.9.2002. Considering X1 & X2 it is apparent that the illness is described in very specific terms as 'mood depressed with fleeting suicide ideas'. This seems to be a recurrent problem that the Accused-Appellant had to undergo in his life. As at the date of incident there is no material available to indicate that the Accused-Appellant had been cured completely. No doubt the trial Judge has imposed the maximum sentence.

In the above facts and circumstances we affirm the conviction but substitute a lesser sentence of 15 years simple imprisonment, and a fine of Rs. 5000/- which carries a default sentence of 6 months simple imprisonment, having considered the mental condition of the Accused-Appellant. The sentence to be back dated to the date of conviction. Subject to above, this appeal is dismissed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL