

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

R. M. Malinie Rathnayake

ACCUSED-APPELLANT

C.A 74/2011

H.C. Badulla 260/2003

Vs.

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

COMPLAINANT-RESPONDENT

BEFORE: Anil Gooneratne J.
Malinie Gunaratne J.

COUNSEL: Dr. Ranjit Fernando for the Accused-Appellant
Sarath Jayamanne D.S.G. for Complainant-Respondent


ARGUED ON: 11.07.2014

DECIDED ON: 25.08.2014

GOONERATNE J.

Two Accused-Appellants were indicted in the High Court of Badulla, for the murder of one Wijepala on or about 26.5.2000, along with the deceased 2nd Accused. Since the 2nd Accused was dead by the time indictment was forwarded, trial proceeded against the 1st and 3rd Accused-Appellants. The 1st Accused is the wife of the deceased and the 3rd Accused is the son-in-law. Appellant was convicted and sentenced to death. The 3rd Accused was acquitted after trial.

The prosecution version is that, witness No. 1 the brother of the deceased testified that on the day of the incident he had gone to the paddy field at about 10/11 a.m. and the 1st Accused had met him near an ella and told him that the deceased did not come home the previous night. Thereafter the witness and another brother of the deceased had gone in search of the deceased. They found the deceased lying face down dead in another paddy field in the area. That seems to be the gist of that witness's evidence. The other witness Chellvam (witness No. 2) provided all necessary details. He was a

servant of the deceased family for some time and he had been assisting the deceased in plucking tea leaves, and had associated with the family very closely. On the day in question he had been with the deceased and had even consumed liquor with the deceased. It is in evidence that between the two, half a bottle of liquor had been consumed. Having consumed liquor the deceased went to install live wires to prevent pigs and other animals entering the deceased plantation and this seem to be a routine thing done every day. Witness went home and the 1st, 2nd & 3rd Accused and daughter of the 1st Accused were at home at that time. He went to sleep in another room with the deceased 2nd Accused. There is evidence to suggest that the 1st Accused and the 3rd Accused were together suggesting intimate relationship and at that time of the night both were together. After some time the witness heard the deceased quarrelling with the 1st Accused-Appellant and there had been a commotion . The deceased abused the 1st Accused-Appellant in bad language. The 2nd Accused at that moment itself took a club from the kitchen and attacked the deceased on the head area and the blows struck the deceased ears and head. The deceased fell and the witness said he died. Witness also testified that the 1st Accused who was present uttered the words “)

ගියාදෙන කනක් ඇතිලා ඉන්ඩ පුලුවන් කිව්වා” After about 15 minutes the deceased regained consciousness and asked for water. The 1st Accused-Appellant has taken a tumbler and poured water and mixed it with ‘Kurator’ (pesticide) and made the deceased drink it. Half an hour later the deceased died and it was said so by the 3rd Accused-Appellant. Thereafter the Accused party on the instructions of the 1st Accused-appellant dumped the deceased in the paddy field on the live wires.

There is also evidence that the 1st Accused-Appellant threatened the witness not to divulge the incident. Witness also provides details of the Accused party taking the body to the paddy field and gives details of injuries, near the ear cord and forehead.

The position of the Accused

The learned counsel for the Accused-Appellant referred to the dock statement of the Accused-Appellant. However he did not specifically deny the fact that 1st and 3rd Accused had an intimate relationship with each other. Learned counsel for the Accused-Appellant attempted to demonstrate the dissensions between husband and wife. The deceased had been constantly

quarrelling with the Accused-Appellant. On the day in question the deceased abused and provoked the Accused party and invited court to consider a lesser offence, and also mentioned about the medical evidence.

The learned Deputy Solicitor General supported the prosecution case and the judgment of the learned High Court Judge. He drew the attention of this court to the fact of making the deceased drink poisonous substance by the Accused-Appellant very well knowing that it would take the life of the deceased. However he left the matter in the hands of court.

When I consider the judgment of the learned High Court Judge and the evidence led at the trial, there is no doubt that this is another brutal crime to pour poison into deceased's mouth after a terrible attack with a club gives the impression of the murderous intention of the Accused without any doubt. However I find that there is an aspect of mitigation of the crime which the High Court Judge has not considered. There is some evidence which has surfaced of intimate relationship between the Accused-Appellant and the 3rd Accused who had been acquitted. Even on the day of the incident the main witness for the prosecution testify that the 1st and 3rd Accused were together prior to the arrival of the deceased who came home drunk. Learned High Court Judge merely state they were together but does not elaborate any further

views on that aspect. The main prosecution witness is a truthful witness who gives correct details of the incident although some contradictions were marked which does not appear to harm the prosecution case or cast doubts in the prosecution case. Medical evidence supports poisoning. The 3rd Accused arrived at the house of the Accused and the deceased after a period, since he may be living elsewhere, with the daughter of the deceased. The question of intimate relationship was fortified by the defence suggesting or asking questions repeatedly. There had been an exchange of words using bad language between the deceased and the Accused-Appellant immediately before the attack. Further the deceased was drunk, at that time. It is reasonable to infer that the illicit relationship resulted in a quarrel, which led to the death of the party. Killing was not murder but reduced at least to culpable homicide by reason of provocation to which the Accused had been exposed, together with an illicit relationship projected at the given moment. There is evidence that this sort of conduct between the parties had prevailed for some time prior to the incident.

In all the above circumstances we would substitute a verdict of culpable homicide not amounting to murder and impose a sentence of 15

years rigorous imprisonment with a fine of Rs. 2500/- which carries a default sentence of one year rigorous imprisonment. Subject to above, Appeal dismissed.

Sentence varied.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL