

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

In the matter of an application  
under Article 139(1) of the  
Constitution of Sri Lanka.

Court of Appeal Case No.14/2012

Attorney General,  
Attorney Generals Department,  
Colombo 12.

**Complainant**

Vs

Liyanage Rathnapala

**Accused**

And

Liyanage Rathnapala,  
112, Samagipura, Angamuwa,  
Padukka.

**Accused Appellant**

Vs

Attorney General,

Attorney General's Department,

Colombo 12.

**Complainant Respondent**

**BEFORE**

: H.N.J. PERERA, J

P.W.D.C. JAYATHILAKE, J

**COUNSEL**

: Dharmasiri Karunaratne for the

Accused Appellant

Shavindra Fernando PC Additional

Solicitor General for the

Respondent

**ARGUED ON**

: 01.09.2014

**DECIDED ON**

: 26.09.2014

**P.W.D.C. Jayathilake**

Liyanage Rathnapala, the Accused Appellant was a member of a family with ten brothers and sisters. He has not studied in a school even though the others have done up to some standard. Rathnapala was married and had a child. He was residing opposite side of his parents' house situated by the side of the public road. One evening in unusual manner Rathnapala came home drunken after day's work. He started abusing his parents and also threatened them saying that he would kill both of them before the following morning. Rohitha Pushpakumara, the deceased who was the youngest brother of Rathnapala came to see his parents as usual after work and was sitting on a bar of the stile as Rathnapala was still abusing the parents. It has been revealed that the reason for Rathnapala's unusual behavior was that he had been made aware by the villages of the fact that he was an adopted child of Sumathipala. At about 7.00- 7.30 p.m. Sumathipala, the father came out of the house to go to the nearby boutique to buy a chew of betel and as he was jumping over the stile, Rathnapala placed the knife on the neck of the father. At this stage, Rohitha intervened and asked Rathnapala, " It is father's neck on which you kept the knife, isn't it? ". Then, Rathnapala stabbed Rohitha and Rohitha died of stab injuries.

Rathnapala was indicted for committing the murder of Rohitha Pushpakumara under Sec. 296 of the Penal Code. He was convicted for culpable homicide not amounting to murder under Sec. 297 of the Penal Code by the trial judge on the ground of sudden provocation and was sentenced to six years' rigorous imprisonment. This is an appeal against the said conviction and sentence.

The main contention of the counsel for the Accused Appellant with regard to the trial proceedings was about an order made by learned trial judge over an objection raised by the State Counsel when the Defense Counsel was cross examining the Judicial Medical Officer. This objection has been raised by the State Counsel when the Defense Counsel questioned the J.M.O. about the short history given by the wife of the Accused Appellant with regard to the injuries caused to her in the same evening. The State Counsel has raised the said objection under sec. 120 of the evidence ordinance. The learned State Counsel may have been of the opinion that the short history given by the wife of the Accused Appellant to the J.M.O. would be an item of evidence which falls into the category of inadmissible evidence under sec.120 (2) of the evidence ordinance provided that it was an item of evidence supporting the prosecution case. The position taken up by the learned Counsel for the Accused Appellant is that the trial judge has shut out the evidence of the wife of the Accused Appellant which would have been in favour of the Accused to prove his

innocence. This court is of the view that there is no way to be in an agreement with the said argument as the Accused Appellant has not made any attempt to call his wife as a defense witness at the trial.

The other point raised by the Counsel was based on contradictions per say and inter say and omissions of the prosecution witnesses. The contradiction marked as V (1) is about the time of the incident. It is obvious that when evidence of the prosecution case is considered as a whole, the Accused Appellant had been at the scene of the crime for about 2-3 hours until the incident took place. The other contradiction is about specific place of the neck of the father where the Accused Appellant kept the knife immediately before the stabbing incident. Once it has been stated that this particular place was the back of the neck and again it was the front part of the neck which is the throat. Even though the counsel argues that those contradictions are vital and go to the root of the case, I am of the opinion that having a full an exact view of an incident that takes place in a moment is usually difficult and that one's naked eye can only get a glimpse of such an incident is very usual. Therefore, such lapses and mishaps are anticipatory in human beings. Exactly describing such an incident is still more difficult.

Therefore, I conclude that those two contradictions are of not substantial validity to refute the evidence of Sumathipala.

The learned counsel for the Accused Appellant, in his written submissions has submitted his personal opinion as to how this incident had taken place. He had gone to the extent of stating that the Accused Appellant had stabbed the deceased in exercising private defense.

This opinion extended by of the learned Counsel for the Accused Appellant is entirely different from the position taken up by the Defense Counsel at the trial.

The learned Additional Solicitor General submitted that the state supports the conviction and the sentence although the learned trial judge has convicted the Accused Appellant for the culpable homicide not amounting to murder on the basis that there is a doubt whether the Accused Appellant entertained a murderous intension. He pointed out that “the intention” is no necessary factor where there is knowledge about the end result of the act. However, the trial judge has considered the element of a grave and sudden provocation for committing the crime. There again the learned Judge has ignored the fact that it was the Accused Appellant who had initiated the series of acts which led to the provocation.

For the above reasons, this court has no necessity to interfere with the conclusion of the learned trial judge unless this court decides to examine the matter whether convicting for a lesser offence was appropriate under the

circumstances. As the state has decided to support the decision of the trial judge this court will not go for such an examination in this case. As such this court affirms the conviction.

The learned trial judge has imposed six years' rigorous imprisonment and a fine of Rs: 10000/= carrying a default sentence of six months' imprisonment. Though this sentence is lenient one the learned Counsel for the Accused Appellant pleads for a relief over the said sentence. He has even made a suggestion to reduce the sentence to three years rigorous imprisonment effective from the date of conviction. He has cited a decision of the Supreme Court namely Kumara vs the Attorney General 2003 (1) SLR 139 where the sentence of seven years' rigorous imprisonment for culpable homicide not amounting to murder was reduced to two years rigorous imprisonment and was suspended for five years. In that case the deceased has intervened to resolve a dispute which arose between the accused and a third person and the deceased had received stabbed injuries when he attempted to intervene resolve the fight. I am of the opinion that the facts and the circumstances relating to the instant case don't resemble the said case. In the instant case, the Accused Appellant has directly aimed the attack at the deceased who was his own brother. Therefore, I don't see any reason to interfere with the sentence imposed by the trial judge.

For the above reasons, I affirm the conviction and the sentence and dismiss the appeal.

*Appeal dismissed.*

**JUDGE OF THE COURT OF APPEAL**

**H.N.J. PERERA J**

I agree

**JUDGE OF THE COURT OF APPEAL**