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

Yogarajah Rajarathan
(Presently in Bogambara Remand Prison)

ACCUSED-APPELLANT

C.A. 151/2011
H.C. Kalmunai 63/2008

Vs.

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

COMPLAINANT-RESPONDENT

BEFORE: Anil Gooneratne J. &
P. R. Walgama J.

COUNSEL: Dr. Ranjit Fernando for the Accused-Appellant

W. Bandara A.S.G. for the Complainant-Respondent

ARGUED ON: 23.10.2014

DECIDED ON: 30.10.2014

GOONERATNE J.

There were two Accused indicted in the High Court of Kalmunai on a charge of murder of one S. Kanapathipillai on or about 09.04.2005. The 1st Accused and the 2nd Accused was the son and father of one family. The deceased was the brother of the 2nd Accused the father of the 1st Accused. During the pendency of the trial the father the 2nd Accused expired. The learned High Court Judge convicted the 1st Accused-Appellant and sentenced him to death on 09.12.2011.

We have heard the learned counsel for the Accused-Appellant and learned Additional Solicitor General. The incident is not denied by the Accused-Appellant who had attacked the deceased with a cricket bat on the head of the deceased, on the day of the incident. At the time of the incident the Accused-Appellant was about 14 years old. The Accused party and the deceased had been residing in a tsunami refugee camp. Both parties being very close relatives were in fact staying in the camp, in adjoining tents. Evidence of the prosecution witness No. (1) reveal that the 1st Accused attacked the deceased with a bat at about 7.30 p.m. Evidence of witness No.

(1) also indicate that previously the deceased party and the 2nd Accused had constant exchange of words, in the morning of the incident. There is also evidence to suggest that a dispute arose between the deceased and the 'deceased' 2nd Accused over a sale of a cow, some time ago (folio 74). This seems to be the dispute which had surfaced from time to time between the deceased party and the Accused party. Other than a reference to the above, there is also evidence by the mother of the Accused (wife of deceased 2nd Accused) that the deceased and his brother (2nd Accused) were getting on quite well and both had even been consuming liquor together on and off. Learned counsel for the Appellant also submitted that there is also evidence to the effect that the Accused-Appellant was having his dinner on the day of the incident, heard an exchange of words between the Appellant's sister and the deceased. The Accused-Appellant having heard this commotion left his partly taken meals and ran to the place of the crime and attacked the deceased as described above.

The material placed before the trial court does not indicate that this was a preplanned incident with a motive, and that the Appellant entertained the required murderous intention to commit the act of murder. It is evident that over a period of time there had been disputes between parties and at the

time and period of the offence they were compelled to take refuge in a tsunami camp. This is also indicative of the fact that there normal way of life had been disturbed due to natural causes. The Accused-Appellant was a young man when he committed this act. It is obvious and natural for a young man of 14 years of age to have accumulated continued feelings against the deceased who had been quarrelling with his father. By a gradual process the evidence suggest that the Accused-Appellant would have found it difficult to control his emotions and inner feelings.

We are of the view that this is a fit case of culpable homicide not amounting to murder on the basis of the Appellant, whilst deprived of power of self control by grave and sudden provocation caused the death of the person named in the indictment. The evidence transpired in the trial court no doubt fall within exception No. (1) to Section 294 of the Penal Code. The attended circumstances suggests of culpable homicide not amounting to murder on the basis of continuing and cumulative provocation. I would before concluding this Judgment refer to the case of *Premalal Vs. A.G 2000(2) SLR pgs. 403/404 held per Kulathilleke J.*

"our Judgments interpreted the phrase "sudden provocation" to mean that provocation should consist of a single act which occurred immediately before the killing so that there was no time for the anger to cool and the act must have been such that it would have made a reasonable man to react in the manner as the accused did".

"Of late we observe a development in other jurisdictions where courts have taken a more pragmatic view of the mitigatory plea of provocation ... in a series of cases Court took into consideration the prior course of relationship between the accused and his victim".

(i) The act of stabbing cannot be taken in isolation. The Accused Appellant's ambition of becoming a Lecturer was shattered. He could not face the Campus community because he and M had been seen as confirmed lovers in that community. His only consolation had been M. He was losing her. The unusual behavior reflects the mental agony and the strain that the accused was undergoing because of the haunting thought that he was going to lose her.

(ii) It could be inferred that he had lost all self control at the point of time he stabbed her. The brutal manner in which he attacked the girl who was so precious to him, and the attempted suicide are indicative of the fact that he in fact had lost his self control at the time of stabbing.

In all the above circumstances, and having regard to the age of the Accused-Appellant and other attendant circumstances we set aside the finding and conviction of murder and the sentence of death and substitute a conviction for culpable homicide not amounting to murder on the basis of knowledge that the act committed by the Accused-Appellant is likely to cause

death or cause such bodily injury as is likely to cause death. As such we impose a term of 10 years rigorous imprisonment. (sentence to run from the date of conviction in the High Court). The appeal is partly allowed.

Sentence altered to culpable homicide not amounting to murder.

JUDGE OF THE COURT OF APPEAL

P. R. Walgama J.

I agree.

JUDGE OF THE COURT OF APPEAL