

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

K. W. Thilak Kumara

ACCUSED-APPELLANT

C.A. No. 262/2010

H.C. Galle 2374

Vs.

Hon. Attorney General

Attorney General's Department

Colombo 12.

COMPLAINANT-RESPONDENT

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

COUNSEL: Tenny Fernando for the Accused-Appellant
S. Thurairajah D.S.G. for the Complainant-Respondent

ARGUED ON: 12.11.2014

DECIDED ON: 19.11.2014

GOONERATNE J.

When this appeal was taken up for hearing, learned counsel for the 1st Accused-Appellant, submitted to court that he has instruction from his client not to canvass the conviction, but to mitigate the sentence imposed by the learned High Court Judge on 08.12.2011, only as regards count No. (1). Learned counsel also indicated that he would only canvass the sentence of 15 years rigorous imprisonment imposed on the said count for culpable homicide not amounting to murder on the basis of grave and sudden provocation, and a fine of Rs. 25,000/- which carries a default sentence of 12 months simple imprisonment.

In view of above this court only need to consider whether in view the circumstances of this case the sentence and fine imposed on the Appellant as regards count No. (1) of the indictment could be varied. On the indictment presented to the High court, three Accused were charged for the offence of murder (count No. (1)) and attempted murder (count No. (2)). The 2nd and 3rd Accused were acquitted after trial on the charge of murder. The 3rd Accused was acquitted on both counts but the 2nd Accused was only convicted on the 2nd count in the indictment.

The material submitted to this court by either counsel suggest that the 1st Accused-Appellant had been interested in the daughter of the deceased's sister living elsewhere from the scene of the crime. It was also suggested that the main witness the son of the deceased who was the victim on the 2nd count of the indictment and who was also an injured person had been staying in the deceased sister's house to give some protection to the sister's daughter in whom the 1st Accused had been interested and was attempting to approach the girl at various stages. Submissions were also made by learned counsel on either side that prior to the date of incident the girl's house had been stoned or pelted with stones, which resulted the witness giving some protection to the sister of the deceased and her daughter.

On the day of the incident the deceased who was a Grama Sevaka and his son (Witness No. (1)) left home at about 7.30 a.m on a motor cycle. On the way they saw the Accused-appellant and the deceased stopped the motor cycle and walked up to the Accused-Appellant and told the Accused-Appellant not to interfere and cause any trouble to the daughter of the deceased's sister. This has resulted in an exchange of words and the two parties had a fight. In the process the deceased had been stabbed by the Accused-Appellant and the learned Deputy Solicitor General indicated that there were several injuries

caused to the deceased as a result of stabbing. The Medico Legal Report shows one grievous injury and five non grievous injuries. Injury No. (3) and (6) caused by a blunt weapon and injury Nos. (1), (2), (4) & (5) by a sharp cutting weapon.

In the above facts and circumstances this court observes that there was some form of provocation to cause death to the deceased by the Accused-Appellant. I would refer to Premalal Vs. Attorney General 2000(2) SLR Pg. 403 a case where cumulative and continuous provocation was considered.

Held: Per Kulatilaka 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 behaviour 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 this self control at the time of stabbing.

We have considered the relevant facts of this case, but we are not in a position to make any drastic variations to the sentence. However having taken into account the plea of provocation and the resulting sudden fight between the Accused-Appellant and the deceased party we would vary the sentence and impose a sentence of 12 years rigorous imprisonment. This court is not inclined to alter the fine imposed by the learned High Court Judge and its default sentence. Subject to above variation of the term of imprisonment, this appeal is dismissed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

P. R. Walgama J.

I agree.

JUDGE OF THE COURT OF APPEAL