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

C.A. No. 97/08
HC. Ratnapura No. 55/98

Abeywickrama Arachchige Basil
Pa Botuwa Handiya,
Pa Botuwa,
Niwitagala.

Accused Appellant

Vs.

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

Respondents

C.A. 97/2008 : H.C. Ratnapura Case No. 55/98

Before : Vijith K. Malalgoda,PC.J.(P/CA) &

H.C.J. Madawala.J.

Counsel : Indika Mallawarachchi for the Accused-Appellant

Thusith Mudalige, S.S.C. for the A.G.

Argued &

Decided on : 19.05.2015

Vijith K. Malalgoda,PC..J.(P/CA)

The accused-appellant in this case was indicted before the High Court of Ratnapura along with six others for the murder of Pareigalage Wimaladasa on or before 01.03.19990. At the time the case was taken up for trial, the 2nd and 3rd accused were reported dead. At the trial the prosecution had relied on the evidence of Dayawathi, Siriyawathi and the depositions of Premawathi and Somawathi whose evidence was led under Section 33 of the Evidence Ordinance since those two witnesses were dead at the time of the trial. According to the evidence of Dayawathi, the accused-appellant who had come to the house had said "කෙරුමා කෝ, අද මරනවා". Few minutes thereafter the deceased had come to their house and at that time the 1st accused had stabbed him once. However,

under cross examination she had admitted that in her evidence at the Magistrate's Court she spoke of a fight. When confronted with her evidence at the Magistrate's Court she admitted, that she said so at the Magistrate's Court. According to the evidence of Siriyawathi, the 1st accused had come to their house and pointing a knife said " කෙරුමා මේකෙන් තමයි අද ඉවර කරන්නේ". According to the evidence of all these witnesses, 2nd to the 7th accused had come to the scene of crime after stabbing took place. At the conclusion of the prosecution case, the learned High Court Judge acting under Section 200 of the Criminal Procedure Code decided to acquit the 4th to the 7th accused-appellants. The accused-appellant whilst making a dock statement before the learned High Court Judge had said that this incident happened at a time when he went to consume liquor and the deceased who had come there, had attacked him with the torch and thereafter he was pushed down and he managed to take a knife which was on a table and stabbed the deceased once.

Counsel for the accused-appellant further submitted that this cannot be considered as a case of murder but a case of culpable homicide not amounting to murder based on a sudden fight.

In support of the above position she submits that even though the witnesses Dayawathi and Siriyawathi had referred to the fact that the accused had made certain utterances prior to the deceased's arrival, witness, Dayawathi had admitted that she said in the Magistrate's Court that there was a fight between the accused and the deceased. According to the police witnesses, a torch had been recovered from the scene of crime which corroborates for certain extent the version given by the accused-appellant. It appears to this Court that the place where the incident had taken place, was a place where illicit arrack was sold to the people.

We also observe that this is a chance meeting. One cannot expect the deceased to be present at the scene of crime just after the accused made certain utterances against him. Both witnesses, Dayawathi and Siriyawathi admitted in their evidence that the deceased and the accused were good friends.

Learned Senior State Counsel concedes the above position. He submits that there are favourable factors to the accused in this case specially when considering the evidence of Dayawathi at the High Court trial. We are also mindful of the fact that the deceased had received only one stabbed injury. If the accused was waiting for the deceased to come, as referred by Dayawathi he had

the opportunity of giving more than one blow at the deceased, since he had come unarmed to the scene of crime.

Considering all those factors, we feel that this is a fit case to convict the accused-appellant for culpable homicide not amounting to murder based on exception four, i.e. sudden fight. We therefore, decide to set aside the conviction for murder imposed on the accused-appellant and convict him for culpable homicide not amounting to murder an offence punishable under Section 297 of the Penal Code on the basis of a sudden fight and impose a jail term of 20 years rigorous imprisonment with a fine of Rs. 5,000/- in default, simple imprisonment of 2 years.

At this stage counsel for the accused-appellant makes an application to implement the sentence from the date of conviction considering the age of the accused. She submits that the accused-appellant is now 68 years of age.

We make order to implement the said conviction of 20 years rigorous imprisonment from the date of conviction i.e. from 02.06.2008. Appeal is partly allowed.

Registrar is directed to send this record back to the High Court of Ratnapura to implement this order and issue a fresh committal.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala,J.

I agree

JUDGE OF THE COURT OF APPEAL

Cr/-