

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

In the matter of a petition of appeal in terms of section 331 (1) of the Code of Criminal Procedure Act No 15 of 1979 in the Democratic Socialist Republic of Sri Lanka.

High Court (Kandy)

Case No: H.C. 74/10

C.A. Case No: 149/2013

Democratic Socialist Republic of Sri Lanka.

Complainant

Vs.

Karupaiya Loganadhan,

Uggala Watte, Koswatte lime,

Ankubura.

Accused

Karupaiya Loganadhan,

Uggala Watte, Koswatte lime,

Ankubura.

Accused Appellant

Vs.

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Complainant Respondent

BEFORE

: H.N.J. PERERA, J

P.W.D.C. JAYATHILAKE, J

COUNSEL

: Amila Palliyage for the Accused

Appellant.

H.I. Peiris SSC for the Respondent.

ARGUED ON

: 20.11.2014 & 02.12.2014

DECIDED ON

: 28.05.2015

P.W.D.C. Jayathilake, J

Sinnaiya Karupaiya was living together with Velayudan Lechchami both of whom had previous marriages and children thereof. Sinnaiya and Lechchami were living in Lechchami's house. Sinnaiya was 75 and Lechchami 59 by 14.06.2009. Both, having finished their day's work on the estate, came home and Sinnaiya went to a party in neighborhood leaving Lechchami at home. Yoganathan is a son of Sinnaiya's previous marriage who is married and had children. He came to Lechchami's house at about 6.30 p.m and asked where

his "papa" was Lechchami had offered him tea and a chew of betel. Then, Yoganathan had waited for Sinnaiya to come. Since Sinnaiya was late, Lechchami had gone away with a torch in search of Sinnaiya. On her way, she had met Sinnaiya coming with Kanakapullai. Then, the three of them had come home. When they came home, Yoganathan had demanded Rs.50,000/= from Sinnaiya. Sinnaiya had asked whether he was to pick money from trees. Then, Yoganathan had threatened that he would kill Sinnaiya, if Sinnaiya didn't give him the money. Since the quarrel was turning serious, Lechchami had gone away to bring the watcher. At that time, Yoganathan had taken away a photograph which was on the wall and dashed it on the floor. After that he had been going to attack Sinnaiya with an axe. When Kanakapullai tried to prevent it, he had got ready to attack Kanakapullai also. When Lechchami, the watcher and one Kirunanathan had come there, Sinnaiya was lying at the entrance to the house with injuries.

According to the postmortem report Sinaiya had died at 9.30 p.m on that day.

Cranio cerebral injury is the cause of death. The Judicial Medical Officer had

observed two injuries on the body. Injury No.1 was contusion placed over the right Knee and No.2 was depressed compound fracture placed over the right side of the head. It had extended up to left parietal bone. The judicial Medical officer has expressed his opinion that the injury No.2 was necessarily fatal and it could result in a sudden death. The injury No.2 could be caused by a heavy blow given with a blunt, heavy weapon. He has accepted the fact that the injury No.2 could be caused by the axe marked as PZ 1 which had been produced by the prosecution. He has added that the attack may have been made with the blunt edge of the weapon using great force.

Karupaiya Yoganathan, the Accused Appellant had been indicted for committing the murder of Sinnaiya Karupaiya on 14 June 2009 at Delpan Oya Estate in Meda Mahanuwara. He has been convicted after trial and sentenced to death in the trial court. Being dissatisfied with the said conviction and the sentence, the Accused Appellant has preferred this Appeal.

The counsel for the Accused Appellant did not challenge the factual aspect of the prosecution case. Instead, he invited attention of the court to the dock

statement of the Accused Appellant. The Accused Appellant, in his dock statement, has stated the following.

“My father married for the 3rd time also. His wife of the 3rd marriage has 3 children. He provided her with all facilities without paying maintenance to his 1st and 2nd wives. It is true that I went. It is also true that I went to the children of my 1st mother to ask for money. When I went to my 3rd mother, the stepmother, she scolded me. I asked her where my father was. Then she said that he had gone out and will return in a short while. I did this not intentionally. I was very drunk. I was not aware of what happened and whether I shouted. I couldn't even think of what I did. People said if I surrendered to the police, they would assault me. Later, I went for some work in Kekirawa. What I pray to court is (to) pardon (me) and imposing a lenient sentence on me does not matter”.

Accordingly, the counsel for the Accused Appellant contended that at the time of the incident as the Accused Appellant was in a state of inebriation he had

been insensible of the repercussions of his acts. Therefore, it is not proper that criminal liability being imposed on the Accused Appellant.

The learned senior state counsel who appeared for the Attorney General submitted that though he felt for the Accused Appellant, there is no room in law, under the prevailing circumstances, for a lesser culpability.

Even though the Accused Appellant states that he was heavily drunk at the time of the incident, it is contrary to Lechchami's evidence as she states that she gave a cup of tea and a chew of betel to the Accused Appellant while he was waiting for his father.

The learned State Counsel who has conducted the prosecution in the trial court has suggested that the Accused Appellant may have acted on cumulative provocation even though, there is no evidence of sudden provocation. But the learned trial judge has rejected the said suggestion that a father marrying several times could cause cumulative provocation in a son. However, the ultimate reason for murdering the father by the Accused Appellant had been not receiving the money he demanded from his father.

The Accused Appellant had not maintained exculpatory or mitigatory exception on the ground of intoxication in the trial court. And on the other hand no evidence that the Accused Appellant was under the influence of liquor other than the expression made in his dock statement. Therefore, this court is also in agreement with the learned trial judge that the culpable homicide committed by the Accused Appellant does not come within any of the exceptions in Sec. 294 of the Penal Code. As such, the offence committed by the Accused Appellant is nothing but murder. We, therefore, affirm the conviction and the imposed sentence by the learned trial judge 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