

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRILANKA**

**In the matter of an Appeal in terms of
Section 331 of the Criminal Procedure Act
No. 15 of 1979.**

**The Democratic Socialist Republic of Sri
Lanka.**

COMPLAINANT

Vs,

**Sirisena Senadheera,
Dhunkalavewa Gedara,
Helambagaswala,
Thissamaharamaya.**

ACCUSED

CA/ 187/2009

And,

H.C Hambantota -02/2001

**Sirisena Senadheera,
Dhunkalavewa Gedara,
Helambagaswala,
Thissamaharamaya.**

ACCUSED-APPELLANT

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

RESPONDENT

Before**: Vijith K. Malalgoda PC J (P/CA) &****H.C.J. Madawala J****Counsel****: W. Dayaratne with Subash Gunathilaka****For the Accused-Applicant****Shanil Kularatne SSC for the Respondent****Argued On : 10.02.2015****Written Submission On: 13.03.2015****Decided On: 28.05.2015****Order****Vijith K. Malalgoda PC J (P/CA)**

Accused Sirisena Sendeera was indicated before the High Court of Hambantota on three Counts, namely; one Count under section 298 of the Penal Code for causing the death of one Thilakacharige Somadasa by rash and negligent act to wit. Connecting live Wires to a fence and two Counts of causing injuries to Thilakacharige Ariyasena and Thilakacharige Theodoris offences punishable under section 328 of the Penal Code during the same transaction.

The alledged incident had taken place on 7th March 1985 which is almost 30 years ago. At the High Court trial four lay witnesses namely, Thilakacharige Ariyasena, Thilakacharige Theodoris, Sundarabandarage Sapeena and Thilakacharige Somasiri and few other official withnesses had given evidence.

Deceased is the son of the injured Theodoris and witness Sapeena. Other injured Ariyasena is the brother of the Deceased and son of the other two witnesses.

According to the witnesses, the incident had taken place inside of an adjoining coconut Estate and all witnesses had gone near the fence after hearing cries of the deceased during the night. According to witness Ariyasena, after seeing his brother fallen inside the Estate he tried to help him through the fence and he too got electrocuted. This witness had taken different positions

during his evidence and the trial Judge had disbelieved him and rejected his evidence with regard to the incident.

Witness Theodoris had taken up the position that when he tried to help the deceased he too got electrocuted. None of these witness speaks as to the person who is responsible for this and as to how the deceased got electrocuted during the night.

According to the evidence of Sapeena she had seen the deceased son fallen inside the Land belonging to one Ariyawansa and as she observed some light is moving in the body, she suspected that her son was electrocuted and rushed to the "Dunkala Gedara" and requested the accused who was there to switch off the electricity. The suspect went behind the house and when she returned she noticed the people who gathered at the scene had taken the injured out of the Estate up to a bunt, in order to dispatch him to the hospital.

Witness Somasiri too had gone near "Dunkala Gedara" with his mother and requested the accused who was working there to switch off the Electricity.

Both these witnesses confirmed that the only person they saw at "Dunkala Gedara" on that day was the Accused. According to them the Land Lord Ariyawansa was not seen on that day.

The Appellants position before us was, that it is unsafe to conclude that it is the accused who is responsible for connecting the live wire to the fence even though it is a clear act of rash and negligent.

At the trial the Accused has made a dock statement. In the dock statement he had said that "he along with 4-5 others worked in this estate and the owner had gone to Kurunegala a week before entrusting him to look after the house. People called him and said someone has got electrocuted but, he is unaware of anything. Accused is silent on the fact whether he switched off the electricity or not.

Learned Senior State Counsel brought to the notice of this court the evidence of the investigation officer, with regard to the recovery of some wires from the scene of crime. (at page 140 of the brief)

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උ :- හින් කමිබියක්. ඉන් එක් කෙරවලක් වත්තේ පහලට වත්තේ මායිමට වන්නට වූ නෙරළු වැලකට ගැටගසා ඇත. මෙම ස්ථානයේ සිට නෙරළු වැලට මීටර් 67ක් දිගය. එක් කෙරවලක් ඔස්සේ ගිය විට නිවස දෙසට දිව යයි. මෙම හින් කමිබිය මීටර් 63.7ක් පමණ ගිය විට එය කටු කමිබියකට යා කර එම කටු කමිබිය මීටර් 39ක් දුර ගිය විට නැවත හින් කමිබියකට යා කර එම හින් කමිබිය මීටර් 23ක් දුර ගොස් යකඩ කමිබියකට නැවත එම යකඩ කමිබිය මීටර් 36ක් ගිය විට නැවත අළු පාට

පී.වී.සී. සිත්ගල් 18 හිත් කමිඳියකට යාකර එම හිත් කමිඳිය මීටර් 59.2ක් දුර ගිය විට එම කමිඳිය නැවත මීටර් 90ක් දුර ගිය විට සුදු පාට පැක්සිකල් වයර් 2ක් යාකර එම වයර් කෙළවර ආයකටුවකට සම්බන්ධ කර නිවස පිටුපස ඇති බල්බයක හෝල්ඩරයක ඇති ජීව කමිඳියකට සම්බන්ධ කර ඇති බව පෙනේ.

Learned Senior State Counsel further submitted that without the knowledge of the suspect such a thing cannot be carried out when the master of the house is away from the house nearly for one week as admitted by the accused in his dock statement. The evidence of Sapeena and Somasiri establishes the fact that it is the accused who switched off the connection when they made a request from him.

According to the evidence of ASP Eardly Fernando who was the investigating officer, the electricity connection obtained from a holder was connected to various types of wires including barbwire, had gone interior to the estate nearly 400 meters. It is understood from the above circumstances, the person who had masterminded the said operation, would have done it to protect the estate from thieves.

Even though right to protect property is guaranteed under our Law, the Law does not approw an act of this nature to protect somebodies property. The above act goes well beyond mere matter of compensation and shows disregard for the life and safety of the others which amounts to a crime against the state. As held in the case of Andrew Vs. DPP (1937) 2 All ER 556 "In order to establish Criminal Liability the facts must be such that, in the opinion of jury, the negligence of the accused went beyond a mere matter of compensation between subjects and showed such **disregard for the life and safety of others as to amount to a crime** against the state and conduct deserving punishment. (emphasis added)

When considering the evidence of Sapeena, Somasiri and Eardly Fernando I see no reason to interfere with the decision of the learned High Court Judge to convict the accused. The learned High Court Judge has imposed a sentence of 4 years Rigorous Imprisonment on count 1 and 6 months Rigorous Imprisonment on each counts 2 and 3.

As pointed out by the counsel for the Accused Appellant the offence had been committed in the year 1985, 30 years ago. The charges had been hanging over him for well over 24 years. The accused was only 32 years old when he committed the offence and now he is 62 years old.

Taking all these matters into consideration this court is of the view that the appellant should not be incarcerated for an offence committed 30 years ago. Ends of Justice will be met by substituting a term of 2 years rigorous imprisonment and suspend it for a period of five years from today. In addition a fine Rs. 15,000/- is ordered with a default term of six months simple imprisonment.

Sentence imposed on counts 2 and 3 will remain unchanged and will run concurrent to the sentence on the 1st count and that too will be suspended for 5 years. Subject to the above variations, the appeal is dismissed.

Registrar is directed to return this Record to the High Court of Hambantota for the implementation of the above order.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala

I agree,

JUDGE OF THE CUORT OF APPEAL