

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

C.A. No. 198/2010

HC. Badulla Case No. 156/2005

Herath Mudiyansele Wimalaratne
52/1, Tannapita, Aluthwela North,
Diyatalawa.

Accused Appellants

Vs.

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

Respondent

C.A. 198/2010

H.C. Badulla Case No: 156/2005

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

Counsel : Neranjan Jayasinghe with Saumya Perera
for the Appellant.
H.I. Pieris SSC. for the State.

Argued &

Decided on : 09.06.2015

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

Counsel for the appellant submits that he will not be challenging the conviction in this case but will only be canvassing the sentence. In this case the deceased was 3 ½ year old child who had died of electrocution . The prosecution version was that the

child who had died due to electrocution had been living in the adjoining land of the Accused-Appellant. The Accused-Appellant has permitted the deceased family to use their well in order to obtain water. To help them the accused-Appellant had opened the fence for them to come to their land. On the day in question the deceased child who was only 3 ½ years old had followed the father to this land. The father had gone to the boutique but the child remained in this land and subsequently his body was found. The live wire which was used for electrocution was found inside the well. The Post Mortem Report of the child confirms that he had died of electrocution. Counsel for the Petitioner submits that the accused never wanted to kill this boy by electrocution. He had in fact permitted the deceased family to use their well. Therefore, learned counsel submits that this is a fit and proper case to act leniently on the Accused. However we are mindful of the fact that the Accused-Appellant had laid a live wire even inside his premises with a view either to protect his land from animals or for some other purpose. We find that this act itself is a rash act which goes well beyond mere matter of compensation. The Accused had contested this case in the High Court and at the conclusion of the trial, the

learned trial Judge had imposed a custodial sentence of 3 years Rigorous Imprisonment. However considering the submissions made by the learned counsel and also considering the fact that the Accused had permitted the deceased family to come into their land with good intention to draw water from their well since the deceased well was polluted, we are of the view, that it is not fair to impose a custodial sentence to the Accused-Appellant. The incident had taken place in the year 2002. Considering all these issues we decide to reduce the sentence imposed on the Accused-Appellant to period of two years Rigorous Imprisonment . The said term of two years Rigorous Imprisonment will be suspended for a period of 10 years. The fine of Rs: 5000/- will be cancelled and instead we order the Accused to pay compensation of Rs: 50,000/- to the deceased family. If the Accused-Appellant fails to pay the said Rs: 50,000/- we order that he be imposed a simple imprisonment of six months. Subject to the above variation, the appeal is dismissed. The sentence imposed on the Accused will operative from today. He is imposed two years Rigorous Imprisonment suspended for 10 years with compensation of Rs: 50,000/- to be paid to the deceased family with a default term of 6 months simple imprisonment.

Registrar is directed to return the record to the High Court of
Badulla in order to implement this order.

Appeal partly allowed.

PRESIDENT OF THE COURT OF APPEAL

H C J Madawala, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/-