

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

C.A. 98/2009

H.C. Bataloa Case No: 2347/05

Kanagasundaram Sivanandan

Sundaram puvitharan

Petitioners

Vs.

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

Respondent

C.A. 98/2009

H.C. Batticaloa Case No: 2347/05

Before

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

H.C.J. Madawala, J.

Counsel

: G. Jeya Kumar for the Accused-Appellant.

Sudharshana De Silva SSC. for the respondent.

Argued &

Decided on

: 08.06.2015

Vijith K Malalgoda, J. (P/CA)

The Accused-Appellant along with another person had been indicted before the High Court of Batticaloa on a count of murder. At the conclusion of the trial, learned High Court Judge had convicted him for culpable homicide not amounting to murder on the basis of grave and sudden provocation and imposed a sentence of four years Rigorous Imprisonment. The second Accused was acquitted after trial. Learned counsel admits that the High Court Judge was very fair in imposing the said sentence and infact the High Court Judge had considered the evidence of the wife of the deceased who gave evidence at the trial demonstrating as to how this incident had taken place. The position taken up by the witness, was that the accused and the deceased had taken some liquor together, and thereafter due to some misunderstanding, they have started fighting each other and the Accused had dealt a blow using a club on the Deceased. The learned Senior State Counsel appearing for the Attorney

General submits that the learned trial Judge was sympathetic towards the accused since he had imposed only 4 years Rigorous Imprisonment. Therefore he submits that he cannot agree for any reduction of the sentence. This court is not in a position to agree with the submissions of the counsel for the Accused-Appellant, that a non custodial sentence, warrants in this case. We are of the view that the learned trial Judge had imposed a lenient sentence on the Accused. Therefore we are not agreeable to reduce the sentence any further.

We see no reason to interfere with the conviction and the sentence imposed by the learned High Court Judge and therefore we dismiss this appeal.

Registrar is directed to return the brief to the High Court of Batticaloa in order to communicate this order to the Accused-Appellant. Appeal is accordingly dismissed.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala,J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/-