

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

C.A. No: 145-146/2011

H.C. Tangalle Case No.04/2003

Dharmadasa Wickrama
78/1, Thalamadiyara,
Abilipitiya

Appellant

Vs.

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

Respondent

C.A. No:145-146/2011

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H.C. Tangalle Case No.04/2003

BEFORE : VIJITH K. MALALGODA PC, J. (P/CA) &
H.C.J. MADAWALA, J.

COUNSEL : Dr. Ranjit Fernando with Samanthie Rajapakshe
for the 1st Accused-Appellant.

P.K. Prince Perera with Asanka Dissanayake
for the 2nd & 3rd Accused-Appellants.

Yasantha Kodagoda ASG for the A.G.

ARGUED &

DECIDED ON : 16.07.2015.

VIJITH K. MALALGODA PC, J. (P/CA)

Accused-appellants are present in Court produced by the Prison Authorities.

Heard Counsel for all three accused-appellants and also the learned Additional Solicitor General on this case. This case refers to a case of double murder which took place on 30.04.1990 at Danattawala a village in Tangalle High Court division. The two deceased are namely,

Sahabanduge Siripala and Siriwardane Arachchige Ajith were taking part at a religious ceremony followed by an arms giving on this particular day. The said arms giving was organised in memory of one Ariyadasa who has died three months ago. The two deceased referred to this indictment are relatives of Ariyadasa. There were two prosecution witnesses called by the prosecution at the High Court trial namely, Anura Kumara and Harishchandra who are cousins of the deceased Ariyadasa. According to them there was a pirith chanting at this house and after pirith chanting was over the witnesses had seen the 1st accused calling the two deceased and another person by the name Kalumalli outside the house. It was further evident that the 1st accused and his family members were actively taking part at this event. They were in the house of Ariyadasa more than a day helping the family members to organise this event. However, according to the witnesses once the two deceased were taken out, there was a commotion outside the house. In addition to the above two witnesses there was another witness by the name of Piyasena who was not summoned by the prosecution. It was submitted that Piyasena was in fact the first complainant in this case. Piyasena was called as a defence witness and even Piyasena in his evidence refers to a commotion outside the house of Ariyadasa. It appears from the entire evidence placed before the learned High Court Judge that none of the witnesses were able to exactly say what really took place. But instead they referred to a commotion outside the house with the involvement of several outsiders including the three accused. Witnesses Harishchandra and Anura

Kumara speak of the fact that the 1st accused taking the deceased outside the house and they also refers that they have identified the 1st, 2nd and 3rd accused among the crowd who attacked the two deceased. According to the prosecution witnesses due to fear they ran out of the house. But later found Ajith's body at the hospital mortuary on the following day morning and the deceased Siripala was in the hospital with serious injuries. The learned Counsel for all the three accused-appellants submitted before this Court that the learned trial Judge has failed to consider the evidence of all the witnesses who referred to a commotion outside the house of Ariyadasa. Even though the trial Judge had referred to this in his judgment on several places he has not given his mind whether there was a commotion or a sudden fight which resulted the death of two persons. The fact that the 1st accused and his family took part in this religious ceremony is supportive of the version of the defence. The learned trial Judge has failed to appreciate the above facts in his judgement. However, it was transpired from the evidence that the two deceased were taken out from the compound of Ariyadasa and they were in fact attacked at an abandoned land. The two deceased had received several injuries and according to the post-mortem report of Sahabanduge Siripala there were twelve injuries found on his body including eight cut injuries. Six on left scalp and face and two on right scalp. A depress fracture of the skull was observed on the body of the deceased Siriwardane Arachchige Ajith and according to the post-mortem report the brain substances have come out due to the said injury. It appears from the above two reports that

the two deceased were brutally killed by whoever is responsible for the killing of those two. However, what is important to this Court to consider at this point is, whether there was a commotion or a fight between the two deceased and for the reason that the 1st accused was actively taking part in the house of Ariyadasa without an iota of evidence to show that there was previous enmity between the two parties. The learned Additional Solicitor General too agreed that the learned trial Judge has failed to appreciate this aspect in his judgment but requested the Court be mindful of the brutal act which resulted the death of the two deceased in this case.

When considering all these matters placed before this Court we are of the view that this is a fit and proper case to convict the accused on culpable homicide not amounting to murder on the basis of sudden fight. But we also mindful the injuries caused to the accused during the so called brawl took place at the house of Ariyadasa. Considering all these issues we decide to set aside the conviction for murder imposed by the learned High Court Judge and convict the all three accused-appellants for culpable homicide not amounting to murder based on sudden fight and impose a jail term of 15 years rigorous imprisonment on counts 2, 3, 4 and 5 on all the three accused-appellants. We further made order to run the said sentences concurrently. We will not change the sentence already imposed on the 1st count which will run consecutively to the rest of the sentence. We

also considered the fact that the accused-appellants are in remand since the date of conviction, namely 14.12.2011 and make order to operate the said sentence with effect from the date of conviction.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. MADAWALA, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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