

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

In the matter of an appeal made in terms  
of Section 331 of the Code of Criminal  
Procedure Code Act No: 15 of 1979.

The Democratic Socialist Republic of Sri  
Lanka.

HC Panadura

Vs

Case No:1737/2003

CA Appeal No: CA 232/2010

1. Nammuni Kankanamge Nirantha Silva,
2. Mahadurage Catherin Nona.
3. Nammuni Kankanamge Titus Silva,  
Accused.

And

Nammuni Kankanamge Nirantha Silva,  
Thudugala Road,  
Karaduruwa.

Dodamgoda.

1<sup>st</sup> Accused-Appellant.

Vs.

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

Respondent.

Before : M.M.A Gaffoor, J &  
K.K. Wickremasinghe, J.

Counsel : Anuja Premaratne with Ironie Jayarathne and  
Nayana Dissanayake for the Accused-Appellant.  
Chethiya Goonesekara D.S.G for the Attorney-General.

Agued on : 29 th March 2016

Written Submissions by the Appellant filed on: 9<sup>th</sup> May 2016

Judgment on: 23<sup>rd</sup> June 2016

The Accused Appellant together with two others were indicted for committing Murder of one K. Upul Nishantha de Silva on the 3<sup>rd</sup> May 1996.

After trial the 2<sup>nd</sup> and the 3<sup>rd</sup> Accused who were father and mother of the 1<sup>st</sup> Accused were acquitted. The Accused Appellant in this case was convicted for Culpable Homicide not amounting to murder and sentenced for a term of 4 years Rigorous Imprisonment and a Fine of Rupees 10,000 carrying default sentence of 6 months Simple Imprisonment. Thereafter the Accused Appellant was enlarged on Bail pending Appeal.

When this appeal was taken up for argument, it was contended by the Counsel for the accused appellant that the sentence imposed on the Accused Appellant was excessive. It was further submitted that a suspended sentence would be more appropriate, having considered the evidence in the case and the circumstances relevant to the accused appellant. Learned Deputy Solicitor General conceded to the application made by the Counsel for the accused appellant.

*The case for the prosecution was that the incident took place on the 3<sup>rd</sup> May 1996, which was fallen on the Vesak Full Moon Poya Day. The eye witness (PW2) Karunamuni Jayaseeli had testified that there had been an incident sometime prior to this incident where the accused appellant and the deceased had a fight. Therefor the deceased had gone to the accused appellant's house to confront the accused appellant with regard to that incident. According to the said witness, the accused appellant was making Vesak Lanterns. When the deceased came there, the accused appellant had brought a 'polpiththa' and threw a blow to the deceased. .*

The Medical evidence confirms this position and establishes that there was only one injury on the head of the deceased which could have been caused by 'polpiththa'. *It is evident that the act of the Accused appellant was not a premeditated one caused with a murderous intention. The defence had marked 11 contradictions in the evidence of the sole eye witness.*

PW7 had seen the deceased fallen.

The counsel for the appellant contended that he would confine his arguments only with regard to bring down the sentence. He further submitted that the accused appellant was only 21yrs.of age at the time of offence and he was waiting to begin his higher studies at the University of Visual and Performing Arts. Thereafter he ended up as a driver and after the conviction; he has lost his job and his pension. Presently it is 20 years after the incident and the accused appellant is said to have been a father of four children bellow the age of 17 years.

According to the indictment this offence was committed on the 3rd March 1996. Therefor 20 years have lapsed after committing the offence.

In the case of Kamaradath De Soysa Siriwardena Vs the Attorney General CA 217/2003, the case K.R.Karunaratne Vs The State SC 29/72-DC (Crim) Negambo 4687/14942 78 NLR 413 was followed.

It was held that "*offence committed ten years ago- considerations applicable in suspending sentence*"

Therefor considering above circumstances of the case we reduce the sentence to 2 years Rigorous Imprisonment suspended for 10 years. We also make order to pay Rs. 50, 000 as compensation to the victim of Crime (wife of the deceased). In the event the wife is no longer living the legal heirs of the wife of the deceased would be entitled to above. In default of compensation as above, a default sentence of 1 year rigorous imprisonment is imposed.

Subject to above variation of the sentence, this appeal stands dismissed.

Judge of the Court of Appeal

M.M.A. Gaffoor J

I agree

Judge of the Court of Appeal