

**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.

Case No: CA 80/2010

HC Vavuniya

Case No: HC 2002/08

Vs

Mendis Thilakaraj

Accused

and now between

Mendis Thilakaraj

Accused Appellant

Vs.

Hon. Attorney General,
Attorney General Department

Respondent

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

Counsel : Ranjit Fernando A.A.L. for the Accused-Appellant.
S. Thurairaja A.S.G for the Attorney-General.

Argued on : 17th June 2016

Written Submissions by both parties filed on: 01st of July 2016

Judgment on: 14th September 2016

K.K. WICKREMASINGHE, J.

The accused-appellant Mendis Thilakaraj (hereinafter referred to as the appellant) and two others were indicted in the High court of Vavuniya. The accused appellant for committing murder by causing the death of one Letchumanan Bhawani alias vasanthi punishable under section 296 of the penal code. The second accused was charged under sec 198 of the Penal Code. The third was charged under section 394 of the Penal Code.

All three accused had made voluntary confessions before the learned Magistrate of Vavunia and the confessions were submitted as evidence in the case against the accused under section 24 of the Evidence Ordinance and under section 127(3) of the Criminal Procedure Code. The second and the third Accused pleaded guilty to their respective charges and accordingly convicted by the learned High Court Judge.

The trial of the appellant proceeded before the High court Judge without a jury.

At the conclusion of the trial on the 11th of March 2010, the learned trial judge found the appellant guilty of Murder punishable under section 296 of the Penal Code.

Facts of the case are as follows:-

The appellant, 32 year old married labourer had been acquainted with the deceased who later fallen in love with him. According to the confession it was revealed that, on the day of the incident the deceased asked the appellant to marry her and an argument ensued as the appellant had refused to leave his wife and child. Thereafter, the deceased had spoken against the accused appellant and his mother in a degrading manner upon which the appellant was provoked and hence reacted by strangling her neck until her body became lifeless.

When the appellant realized that Bhawani was dead, he had placed a coir rope around her neck and dragged the body and dumped it in the septic pit. Appellant removed the jewelry she was wearing which were a chain of ½ sovereign in weight, a pendant with the word "om", a ring and a pair of gypsy earrings and hid it.

According to the evidence given by sub-inspector of police Jayaratne, the appellant Mendis Thilakaraj was arrested on 23.08.2004 and his statement was recorded on the same day. Appellant stated in his statement that "the

dead body dumped by him in the septic pit can now be seen there; he could show same" The body of the deceased was discovered on the direction of the appellant and was taken out in the presence of the magistrate.

The body was identified by Letchumanan Neelawathi who was the mother of the deceased by the clothes found with the body. She had further stated that 3 1/2 sovereign of jewelry which she was wearing were missing. The body was also identified by the father of the deceased.

The skeleton remains were examined by Professor Niriellage Chandrasiri who passed away before giving evidence and therefore senior lecturer of forensic medicine, Muditha Vidana Pathirana had testified on his behalf. He confirmed that the death was caused by strangling the neck using coir rope. It was also revealed that the body was of a woman of 5'2" height and 18-20 years of age.

On careful consideration of the above evidence, we are of the view that the intention to kill the deceased girl was not pre meditated. It is observed that the prosecution was unable to prove the murderous intention beyond reasonable doubt. Therefore, the conviction for murder cannot stand. However, it is evident that the death of the deceased was due to strangulation and it has been caused by the accused appellant. Learned ASG who appeared for the Attorney General conceded that the act committed by

the accused appellant was due to grave and sudden provocation not amounting to murder.

Therefore we convict the accused appellant for culpable homicide not amounting to murder under grave and sudden provocation which is punishable under section 297 of the Penal Code. We impose a sentence of 20 years rigorous imprisonment and a fine of Rupees 10 000 with a default sentence of 6 months rigorous imprisonment and in addition, compensation of Rupees 100,000 payable to the victims (parents of the deceased) with a default sentence of 2 years rigorous imprisonment. All sentences to run consecutively. After considering the submissions made on behalf of the accused-appellant we also direct that the sentence be implemented from the date of conviction namely 11.03.2010.

Subject to the above mentioned variation, the appeal is hereby dismissed.

JUDGE OF THE COURT OF APPEAL

M.M.A. GAFFOOR, J.

I agree.

JUDGE OF THE COURT OF APPEAL