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

In the matter of an appeal under and in Terms of the Section 331 of the Code of Criminal Procedure Act.

The Attorney General of the Democratic Socialist Republic of Sri Lanka

Vs.

High Court of Hambantota
Case No. 130/2006

Dayasiri Edirisuriya

ACCUSED

And Now Between

Court of Appeal
Case No. CA/232/2014

Dayasiri Edirisuriya

APPELLANT

Vs.

The Attorney General of the Democratic Socialist Republic of Sri Lanka

RESPONDENT

Before : P.R. Walgama, J

: S. Devika de L. Tennekoon, J

Council : Sharon Senasinghe for the Accused – Appellant.

: Dileepa Peiris, SSC for A.G.

Argued on : 27.06.2016

Decided on : 18.11.2016

CASE NO- CA- 232/2014 - JUDGMENT- 18. 11. 2016

P.R. Walgama, J

The Accused – Appellant was indicted for causing death of one Jayawardena Kankanamlage Pathmasiri ,on or about 26th October 2003 at Pallemalala in the jurisdiction of Hambantota.

The trial proceeded without a jury and at the end of the trial the Learned Trial Judge found the Accused – Appellant guilty of murder and sentenced him to death. It is against the said conviction and sentence the

Accused – Appellant has appealed to this Court, for a lesser culpability on the ground of sudden provocation.

The only eye witness to the above incident was the daughter of the Accused – Appellant. Although the wife of the Accused – Appellant was present at the scene, she was not a compellable witness, as the husband stood trial for having committed murder one Pathmasiri.

The eye witness Ishara in her testimony at the trial has testified to the following;

That on the day in question she and her mother and the brother was at home. The Accused- Appellant came home at or about 7 p.m being drunk. The mother has warned about the father's behaviour as he was drunk. Just before the alleged incident the brother (Prabath) was at their grandmother's house. But this witness had gone to the grandmother's house to call the brother and according to her the deceased who was a friend of her brother had followed him. Thereafter while the deceased was seated outside, the Accused had stabbed once on his chest.

According the evidence of the JMO there had been only one external injury caused by stabbing. In addition to the afore said injury there had been internal injuries too.

In the cross examination too she was categorical about the incident, and said, that the incident took place due

to the abject drunkenness of the Accused – Appellant. There is no evidence to the effect of a sudden provocation.

There were no infirmities in the evidence of the one and only eye witness, therefore her evidence remained unscathed and unassailable.

It is contended by the Counsel for the Accused – Appellant that as there was only one stab injury there was no murderous intention but only knowledge as to result of such injury. Hence it is urged that Accused – Appellant could be convicted for a lesser culpability, and impose a sentence for culpable homicide not amounting to murder.

It is salient to note that the counsel for the Accused-Appellant urges for a lesser culpability on two grounds;

That the alleged incident occurred due to a sudden provocation

AND

That there was only one stab injury which is an indication that the Accused –Appellant did not have the murderous intention but only the knowledge of the consequence of the said act.

The counsel for the Accused- Appellant had buttressed the above position by adverting this court, to the legal

pronouncement in the cases of WEERAPPAN .VS. QUEEN- 71 NLR. 109, which held thus;

" although only one stab injury was inflicted on Ramalingam, the Learned Commissioner did not advise the jury that these circumstances might indicate the absence of the murderous intention. If the jury had been properly directed, a verdict of culpable homicide not amounting to murder may well have been returned.

For these reasons we set aside the verdict and sentence of death, and substitute a conviction for culpable homicide not amounting to murder." (emphasis added)

The same proposition was observed in the case of ILLANDARI DEVAGE SOMARATNE .VS. AG. DECIDED ON 25/01/1999

It is also relevant that the incident was a consequent of a sudden chance meeting and therefore no pre-meditation or preparation for the act could have been imputed under the circumstances.

The medical evidence is also indicative of the fact that only one fatal stab wound had been dealt and that the other injuries were superficial injuries

In these circumstances enumerated above it is impossible to allow the verdict to stand. We therefore

quash the conviction and set aside the death sentence...."(emphasis added)

The counsel for the Accused- Appellant thrust mainly on the issue of one injury caused, and that amounts to the knowledge of the consequence but not the murderous intention of the perpetrator.

It was the position of the counsel for the Accused – Appellant that mere presence of the deceased had provoked the accused. It is abundantly clear that the accused had lost control of him self as he was drunk. But nevertheless did not have any murderous intention to cause the death of the deceased.

It is also pertinent to note that the evidence surfaced in this case do not reveal any verbal or act of the deceased which provoked the accused.

For the sake of convenience and brevity the section applicable to the above is reproduce herein below;

Section 294 (Exception 4)

Culpable homicide not amounting to murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation- It is immaterial in such cases which party offers the provocation or commits the first assault.

In the case of BANDARA .VS. AG 2011 SLR-55 the Supreme Court has held thus;

That,

The offence of murder in terms of Section 294 of the Penal Code is reduced to culpable homicide not amounting to murder under Section 293 of the Penal Code if any of the five exception to Section 294 could be shown to apply.

The Exception 4 to Section 294, the plea of sudden fight indicates that the basis for investigation is purely dependant on the facts that the murder that has taken place in a sudden fight, which has occurred in the heat of passion upon a sudden quarrel. An important ingredient which is necessary in such instance would be that there was no malice or vindictiveness.

Further it was observed in the above case that in order to come within the exception 4 of Section 294 of the Penal Code, it is necessary to satisfy the specific requests referred to in Section 294 of the Penal Code,

Viz,

That it was a sudden fight, that there was no premeditation, the act was committed in heat of passion, and the accused had not taken undue advantage or acted in a cruel manner.

Therefore in the said back drop we are of the view that the murder alleged to have taken place due to a sudden provocation, and the Accused -Appellant did not have any animosity towards the deceased, or the said act of stabbing was not premeditated.

We therefore quash the conviction and set aside the death sentence. We direct that a conviction for culpable homicide not amounting to under be entered. We also substitute for death sentence, a sentence of 7 years Rigorous Imprisonment. The sentence is to run from the date of this judgment.

Registrar is here by directed to inform the Prison Authority and to the relevant High Court.

JUDGE OF THE COURT OF APPEAL

S. Devika de L. Tennekoon, J

I agree.

JUDGE OF THE COURT OF APPEAL