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

Kottage Lalith Gunarathna

Thalgashandiya,

Govinna

Accused-Appellant

C.A.Appeal No.112/2005

H.C. Kalutara No.HC/93/01

Vs.

Attorney General

Attorney General's Department

Colombo 12.

Respondent

Before : M.M.A.Gaffor,J. &

K.K.Wickremasinghe, J.

Counsel : Saliya Peiris for the Accused-Appellant.
Rohantha Abeysuriya Senior DSG for Respondent.

Argued on : 28.05.2016

Written submissions filed on : 22.09.2016(Accused-Appellant)
07.02.2017(Respondent)

Decided on : 16.05.2017.

M.M.A.Gaffoor,J.

The Accused-appellant was indicted in the High Court of Kalutara for committing murder of One Keerthi Gunarathna which is an offence punishable under Section 296 of the Penal Code.

After trail the High Court Judge of Kalutara found the accused-appellant not guilty of the charge of Murder leveled against him but found him guilty of Culpable Homicide not Amounting to Murder resulting from a Sudden Fight and convicted and sentenced him for 8 years of Rigorous Imprisonment on 12th October 2005.

The accused-appellant had filed this appeal against the said conviction and sentence.

Accused - appellants the brother of the deceased. According to the wife of the decease, on the day of the incident accused had come home in the night and had asked whether Amarajeewa had come there. They had replied Asmarajeewa had not come.

After hearing the voice of his brother, deceased who had gone for a funeral to the front house had come home. All of them had been out the house when the accused was talking ill of Amarajeewa. Witness has seen the accused carrying a knife in his waist. According to the witness there had been no fight. But the deceased had verbally defended Amarajeewa.

At the trial no questions has been asked with regard to a fight by the defense. Defense had not marked any contradictions or omissions from the wife (Devika prosecution witness No.3) of the deceased or any other witness who had given evidence in this case.

According to the wife of the deceased after the incident accused-appellant has not allowed anybody to come to the deceased's house to take the deceased to the hospital. This shows the attitude of the accused-appellant.

Saman Kumara Ranasinghe who had come to the house immediately after incident has taken the deceased to the hospital. Doctor on admission had examined the deceased and pronounced him dead. After coming back to the scene, Ranasinghe along with other has arrested the accused-appellant and handed him over to the police.

Police had recorded statements and visited the scene and had made their observations.

The doctor who held the post-mortem had noted on stab injury on the chest of the deceased. The injury had damaged the right ventricle. Owing to this deceased has succumbed to this injury. According to the doctor said injury, is sufficient to cause death in the ordinary course of nature.

The accused-appellant had not denied the incident. In his dock statement he admits that he went to his brother's house. He further says when his brother tried to assault him he had held his hand with the knife and then he ran away home. He doesn't admit

the fact that the injured his brother. He doesn't speak of what happened after the incident.

The main contention advanced by counsel for the accused-Appellant in this appeal was that the death in issue was caused as a result of the accused-appellant exercising his right of private defense. But at the trial the accused-appellant has not taken up this defence. Therefore, in terms of Section 105 of the Evidence Ordinance the Appellant has failed to prove the existence of such circumstances. The learned Counsel for the appellant contended that the learned Judge has not considered the right of private defense and the fact that the accused didn't have any intention to kill his brother.

After analyzing the prosecution and the defense evidence Court held that the sole eye witness Devika (prosecution witness No.3) is a trustworthy witness. No material contradictions or omissions were marked at the trial.

In this regard I would like to cite following authorities.

In ***Sunil Vs Attorney General 1999 (Vol.3) S.L.R.191*** "The Court observed solitary witness can be acted upon, provided that he is wholly reliable.

Further ***Madkami Baia Vs. The State (1999) C.V.L. J 433 Law of Crimes P.M. Bakshi - Volume 2 page 57".*** It was held that the evidence of a solitary witness in a murder can be acted upon only if it was clear cogent trustworthy and above reproach.

The testimony of Devika states that the accused had stabbed deeased on his chest closer to the heart. Also the medical evidence and the postmortem report revealed that the stabbing took place to the heart of the deceased, causing a fatal injury to his right ventricle. Therefore, the testimony of Devika and the medical observation have proved the fact that the accused-appellant has stabbed the deceased when he was moving from deceased house.

Even though the accused claimed that his injury might have occurred while he was wagging the knife as self defence, the Court holds after observing the pattern of injury that such injury could not have taken place by mere wagging of a knife. According to the

medical evidence the injury on the chest is deep. Just wagging a knife can't cause such a deep injury. Further according to the medical evidence the injury which was caused by stabbing the chest has been identified as a deep injury, it is understood that a mere wagging of a knife cannot be a cause such a deep injury.

Thus it is clearly evident that the stabbing has taken place when the accused-appellant was moving away. The accused-appellant had stabbed the decease with a knife which stuck on a vulnerable part of deceased's body resulting his death. The Court holds that the accused stabbed the deceased but without any intention to kill him.

After considering the evidence of Devika, nature of the injury and the type of the weapon. Court holds that the accused acted without any intention of killing the deceased. When I consider all these matters I am of the opinion that the accused-appellant is not entitled to the benefit of right of self- defense.

Further, the Court holds that there is no sufficient evidence to prove that the victim or the father of the victim had caused sudden fight with the Accused-appellant. Therefore, the

act of the accused - appellant does not fall under the exception of sudden fight or self-defence.

The Learned Counsel for the appellant contended that the death of Keerthi Gunaratne had occurred due to a sudden fight. But at the trial stage the defence has not pointed out this position. The prosecution evidence revealed that at the time of the incident the deceased was unarmed and did not cause any injury to the appellant. The appellant had inflicted a fatal blow on the deceased. The sole witness Devika (prosecution witness No.3) and the medical evidence supported this position.

The sole eye witness's evidence and the medical evidence prove that the appellant had tabbed the unarmed deceased on the chest.

In the case of ***Ahmad Sherair A.I.R. 193 ,1936 L.A.H. 513*** where the deceased was unarmed and did not cause any injury to appellant, the appellant following a sudden quarrel had inflicted fatal blows to the deceased, it was held that exception sudden fight did not apply .

In the case of Amaranathsingh A.I.R. 1928 O U D 282 it was held if two men were fighting and one of them unarmed while the other use a deadly weapon, the one who use such a weapon must be held to have taken an undue advantage and not entitled to the benefit of this exception.

Other available evidence the only irresistible inference that one can draw is that the accused appellant didn't have any intention to kill the deceased.

Considering the fact that there was only one stab injury on the chest of the deceased and other available evidence, further it is observed, " A criminal trial is meant for doing justice to the accused, victim and the society so that law and order is maintained. Court minds that criminal trial is meant for doing justice to the accused, victim and the society so that law and order is maintained. In the case of State UP vs. Anil Singh, (AIR 1988 SC 1998) that it is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties

which the Judge has to perform. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is an important as the other. Both are public duties ". (***Ambika Prasad and Another V. State (Delhi Administration) 200 SC (Crl.522)***

In the aforesaid circumstances, this Court hold that the trial Judge has carefully and correctly evaluated the evidence and decision of finding the accused guilty of culpable homicide not amounting to murder . There is no reason to interfere with the trial judge's findings. We affirm the conviction and sentence imposed by the learned High Court Judge.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL.

K.K.Wickremasighe,J.

I agree.

JUDGE OF THE COURT OF APPEAL.