

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

*In the matter of an Appeal under Section
154(P) of the Constitution read with
Section 331 of the Criminal Procedure
Act No. 15 of 1979.*

The Hon. Attorney – General,
Attorney – General’s Department,
Colombo 12.

COMPLAINANT

**C.A. 123/2015
High Court of Anuradhapura
HC 70/2009**

VS.

Punchiralage Ariyadasa,
New Bogambara Prison,
Pallekele, Kundasale.

ACCUSED

AND NOW

Punchiralage Ariyadasa,
New Bogambara Prison,
Pallekele, Kundasale.

ACCUSED – APPELLANT

The Hon. Attorney – General,
Attorney – General’s Department,
Colombo 12.

COMPLAINANT – RESPONDENT

Before : P.R. Walgama, J

: K.K. Wickremasinghe, J

Counsel : Neranjan Jayasinghe for the Accused – Appellant.

: Lakmali Karunanayake SSC, for AG.

Argued on : 22.03.2017

Decided on : 14.06.2017

P.R. Walgama, J

The Accused – Appellant fell to be sentenced by the by the Learned High Court Judge of Anuradhapura, for the offence of serious violence, of committing the murder of one Pushpa Kumara Premaratne which is punishable under Section 296 of the Penal Code.

At the conclusion of the trial the Learned High Court Judge handed down a conviction for murder and sentenced the Accused – Appellant to death. It is against the said conviction and sentence the Accused – Appellant lodged the instant appeal to have the said conviction set aside and give effect to an acquittal from the charge stated above.

When this matter was taken up for argument counsel for both parties, pursuant to their submissions, the counsel for the Accused – Appellant submitted to court that he will not challenge the conviction but urged to have the sentence reduced from murder to culpable homicide not amounting to murder on the facts stated here under.

It is pertinent to mention that the Counsel appearing for the AG conceded to the above as the facts stems from this case warrants such reduction of the sentence of murder to culpable homicide not amounting murder.

Admittedly the Accused – Appellant and another two, who were Grama Arakshaka were drunk that fateful night, as it was their pay day. The deceased who was a higher officer having seen the condition of the Accused – Appellant who was sleeping outside the guard room has reprimanded the Accused – Appellant for being drunk while on duty.

Being agitated of the said warning by the deceased, the Accused – Appellant has shot the deceased, behind the guard room.

It is contended by the counsel for the Accused – Appellant that there was no previous enmity between the Accused – Appellant and the deceased. Hence it is established that the homicidal death was caused or occurred due to a sudden fight, and without premeditation.

It is also salient to note that the Judicial Medical officer has expressed his opinion as to the possibility of

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: the death of the deceased due to the injuries sustained as a result of the gun shot received. In that it was opined that the injuries received by the deceased was not necessary fatal and could be categorised as that one was fatal in the ordinary course of nature. There fore it is apparent had the deceased was given medical attention his life would have been saved.

Therefore in the above setting this court is of the view that it merits a variation of the sentence imposed, by commuting the sentence to culpable homicide not amounting to murder.

Accordingly the appeal is allowed in part in view of the above, and impose a jail term of 10 years of Rigorous Imprisonment and a fine of Rs. 10,000/ with a default of 6 months Simple Imprisonment.

Subject to the above variation appeal is dismissed accordingly.

JUDGE OF THE COURT OF APPEAL

K.K.Wickremasinghe, J

I agree.

JUDGE OF THE COURT OF APPEAL