

The Court of Appeal of the Democratic Socialist
Republic of Sri Lanka

CA Appeal No: 137/2011
High Court Kegalle Case No: HC 1816/2002

Democratic Socialist Republic of
Sri Lanka.

Complainant

Vs.

Kanathotha Liyanage Sirithunga alias
Chuti alias Booti.

Accused

And Now

Kanathotha Liyanage Sirithunga alias
Chuti alias Booti.

Accused-Appellant

Vs.

Hon Attorney General,
Attorney General's Department,
Colombo 12.

Respondent

C.A. 137/2011

H.C. Kegalle case No: 1816/02

Before : S. Devika de L. Tennekoon, J.
S. Thurairaja, PC. J.

Counsel : Amila Palliyage, Nihara Randeniya, Upul
Dissnayake and Miss Sandeepani Wijesiooriya for
the Accused-Appellant.
Thusith Mudalige DSG. for the A.G.

Argued &

Decided on : 29.08.2017

S. Thurairaja, PC. J.

This matter was taken up for argument previously and parties have filed written submissions. Due to the elevation of judges to the Supreme Court, this matter is re-argued before us. Both counsels submitted that they are content and confining with the written submissions that they have filed. Heard submissions of both counsels.

The Hon. Attorney General had preferred an indictment against the accused appellant Kanathota Liyanage Siritunga alias Chooty alias Booty for committing double murder on the 6th March 1999. After the trial, the learned High Court Judge found that there is no evidence against the accused for the murder of Rangallage Wimal Piyaratne alias Wasantha and

acquitted the accused appellant. The learned trial Judge after giving reasons convicted the accused appellant for the murder of Walimuni Devayalage Sena Ranasinghe Fernando and imposed death sentence.

When we consider the facts of the case with the available evidence led before the Court. It appears that both the deceased were in their early 20's attached to the Sri Lankan Army and serving at Paranthan, situated at Northern operational area. On the fateful day, they couldn't make the sea voyage to join their platoon in operation hence returned to their home. There, both of them had gone to see a coconut decoration (coconut pandol) on the way they were confronted by the accused-appellant, these two received several stab and incise wounds. The first deceased succumbed to his injuries at the General Hospital, Kegalle and the second died at National Hospital, Colombo on transfer of specialised treatment.

There is no eye witness to the incident. The available evidence including the dying depositions does not reveal a pre-planned murder, but it falls within the first exception to Section 294 of the Penal Code.

The counsel for the accused-appellant submits that the accused is not denying the allegation of causing injury but he had not possessed the murderous intention, therefore he prays that the accused appellant be acquitted from the conviction for murder and convict him for culpable homicide not amounting to murder.

The learned DSG, Mr. Thusith Mudalige, maintaining the highest tradition of the Attorney General Department and submits that he conceive

the fact that there is no evidence to support the conviction for murder, but the available evidence including the dying declaration points directly to the culpability of causing the death of the deceased by the accused appellant. He further submits that the accused appellant be convicted under Section 297 of the Penal Code for culpable homicide not amounting to murder on the basis of grave and sudden provocation.

Considering the oral and written submissions of the counsels and the available evidence before the High Court, we find that the evidence provided at the trial Court does not warrant a conviction for murder. Therefore we find the accused appellant guilty for culpable homicide not amounting to murder which is punishable under Section 297 of the Penal Code.

The deceased was a very young person attached to the Sri Lanka Army and involved in combat. His death cannot be condoned for any rhyme or reason. Considering the injuries as per the Medical Officer it appears that he had received 13 injuries out of which 4 were due to life saving surgical wounds. There is no evidence that the accused appellant had received any injuries. This shows the amount of power used on a youth who was a Army soldier. Considering all evidence and circumstances we impose 18 years Rigorous Imprisonment on the accused-appellant.

Further we impose a fine of Rs. 5000/- in default 3 months simple imprisonment. In addition to the above we also impose Rs. 100,000/- compensation to be paid to the parents of the deceased, Walimuni Devayalage Ranasinghe Fernando. (If both parents were living each will get

Rs. 50,000/-, if not, the living parent will get full Rs. 100,000/-). If the compensation is not paid the accused appellant will be serving 2 years Simple Imprisonment.

Considering the fact that the accused appellant was incarcerated from the date of conviction namely, 20th July 2011 the 18 years sentence will be operative from that date. If the fine and compensation are not paid the default sentence will be operative consecutively.

Appeal partly allowed.

JUDGE OF THE COURT OF APPEAL

S. Devika de L. Tennekoon,J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/