

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

**In the matter of an appeal under
and in terms of Section 331 of the
Criminal Procedure Code Act No.
15 of 1979.**

The Attorney General of the Democratic
Socialist Republic of Sri Lanka.

Complainant

**Court of Appeal
Case No. CA 95/2012**

Vs,

D.M. Dasanayake

Accused

And Now Between

D.M. Dasanayake

Accused-Appellant

**High Court of Nuwara Eliya
Case No. HC/NE/36/2010**

Vs,

The Attorney General of the Democratic
Socialist Republic of Sri Lanka

Complainant-Respondent

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

**Counsel : Indika Mallawarachchi for the Accused-Appellant
Dilan Ratnayke DSG for the Complainant-Respondent**

Judgment on : 15th November 2017

Judgment

S. Thurairaja PC J

The accused appellant D.M. Dasanayake was originally indicted under Section 296 of the Penal Code for committing the murder of Don. Padmasiri Samarajeewa. After the completion of the trial, the learned High Court Judge found him not guilty for murder and found him guilty for culpable homicide not amounting to murder punishable under Section 297 of Penal Code and sentenced to 12 years Rigorous Imprisonment and imposed a fine of Rs. 10000 in default 6 months simple imprisonment.

The accused appellant being aggrieved with term of the sentence preferred an appeal to this Court.

Both Counsel for the appellant and Deputy Solicitor General filed written submissions and made oral submissions too.

As per the Prosecution witnesses, the accused, deceased and witnesses were living at Meepilimana village in the same vicinity. On the night around 9.30 pm on 17th October 2002, stones were pelted on the house of prosecution witness T.M. Gamini Tennakoon. The family members of the witness raised cries and neighbours gathered and searched around. They thought it was a thief and having heard noise of dried leaves at the jungle, which was in extent of an acre, the people tried to enter the forest. The deceased had approached the accused who was in the jungle. It was at this situation when the accused had stabbed the deceased on his chest with a knife he possessed. Eye witnesses were available to the incident. After stabbing the deceased, the accused had come out of the jungle and threatened others with death and prevented being apprehended. There was no contradiction or omission marked at the trial, further there is no contradiction per se or inter se. After the prosecution

case was closed the learned High Court Judge called for the defence of the accused who exercised his rights by remaining silent.

The learned trial Judge after giving reasons found the accused guilty for a lesser offence namely culpable homicide not amounting to murder. Both counsels made submissions, considering those mitigating factors the Trial Judge imposed 12 years rigorous imprisonment and a fine of Rs.10,000/= in default six month simple imprisonment.

The Counsel for the accused-appellant submits that the sentence imposed is excessive and term be reduced. Further he filed an affidavit from the daughter of the appellant that she had followed a degree in Bachelor of Ayurveda Medicine Survey (BAMS) at Ayurveda institute of University of Kelaniya. Therefore, she wishes to have her father for her convocation which was to be held after one year of internship.

The DSG who is representing the AG is vehemently objects to giving any concession. He further submits that considering the nature of the injury namely deep stabbing injuries on to chest which resulted an instantaneous death clearly shows the intention of the accused. Further he had not submitted any mitigating circumstances to reduce a charge from murder to culpable homicide not amounting to murder. The DSG further submits that the AG preferred an appeal regarding the conviction but it was dismissed on technical ground. The Counsel for the appellant confirms that fact.

The deceased was 40 years old and was un armed at the time of the death. He had not gone in search of a quarrel. When the villagers were going in search of the thief/person who pelted stones the deceased also joined them and confronted the accused who was hiding in the jungle.

Further this Court takes serious note that the accused was armed with a knife which is not a tool of his trade. There is no evidence that the accused suffered any injury. The deceased had five injuries one of which is the stab wound on the

chest. The death was due to the stab injury. Further the deceased was found dead upon admission to the hospital.

After carefully considering all factors placed before the trial Judge, including the fact that the daughter of the accused was studying at the university, he had imposed the sentence above mentioned on the accused-appellant. We see no reason to interfere with the said sentence. In fact considering the evidence, the accused appellant is fortunate to get such a lenient sentence. Accordingly we dismiss the appeal and affirm the conviction and sentence.

Since the accused appellant has been incarcerated from the date of conviction, we order the Prison Authority to implement the sentence from the date of conviction namely, 05/07/2012.

Appeal Dismissed.

JUDGE OF THE COURT OF APPEAL

S. Devika de L. Tennekoon, J
I agree,

JUDGE OF THE COURT OF APPEAL