

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

Court of Appeal Case No : CA HC/204/2013

Neththasinghe Appuhamilage
Sarath
Aluthgama,
Nikadalupotha.

Petitioner

Vs.

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

Respondents

CA 204/2013

HC-Kurunegala-95/2006

Before : **S.Devika De L. Tennekoon, J. &
S. Thurairaja, P.C.J.**

Counsel : Indika Mallawarachchi for the Accused
Appellant
Rohantha Abeysuriya, SDSG for AG

Decided on : 12.12.2017

S. Thurairaja, P.C.J.

Heard submissions of both counsels. Counsel for the Accused Appellant submits that the incident had happened on 18.02.2004 and as per the evidence available, especially the eye witness, Somadasa speaks to the fact that there was a sudden fight between the accused and the deceased. During the scuffle, the accused has stabbed the deceased once on the stomach. And the deceased died as a result of the stab injury.

There is no evidence of a pre-plan. Further the evidence reveals that these two people are known each other for more than 25 years.

Considering the evidence available especially the single injury, it reveals that there is no pre-meditation or a preplan to murder the deceased by the accused.

The learned Senior Deputy Solicitor General who is appearing for the Attorney General, maintaining the highest tradition of the office of the Attorney General and concede to the fact that this is a case where the accused should have been convicted under Section 297 of the Penal Code.

Regarding the sentence, the counsel for the Accused Appellant submits that she was in remand from the date of conviction and to consider the period and impose a reasonable sentence. The Senior Deputy Solicitor General also submits that a reasonable custodial sentence be imposed on the Accused Appellant and a compensation may be considered to the wife and the children of the deceased.

We considered the available material before us and the submissions made by counsels. After carefully considering, we are of the view that this is a case of culpable homicide not amounting to murder punishable under section 297 of the Penal Code on the basis of a sudden fight.

Therefore, we vacate the conviction for murder and the sentence. We find the Accused Appellant guilty for culpable homicide not amounting to murder punishable under Section 297 of the Penal Code. We impose a sentence of 10 years Rigorous Imprisonment and a fine of Rs. 5000/- in default 3 months Simple Imprisonment. Further, we direct the Accused Appellant to pay compensation of Rs. 100,000/- to the wife of the deceased. If the wife is not available, the compensation to be paid equally among the children of the deceased.

If the compensation is not paid, a default sentence of 2 years Rigorous Imprisonment will be imposed.

Considering the fact that the Accused Appellant was in remand from the date of conviction, we direct the prison Authorities to implement the sentence from the date of conviction namely 28.11.2013.

Registrar is directed to transmit the case record to Registrar of Kurunegala forthwith.

Appeal partially allowed.

JUDGE OF THE COURT OF APPEAL

S.Devika de L. Tennekoon, J.

I agree.

JUDGE OF THE COURT OF APPEAL

LA/-