

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

Court of Appeal Case No : CA HC/144/2012

Karuppaiya Murugesu

Petitioner

Vs.

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

Respondents

C.A 144/2012**High Court of Rathnapura 215/05**

BEFORE : Deepali Wijesundera J. &
L.U. Jayasuriya, J.

COUNSEL : Amila Palliyage for the Accused-Appellant.
Priyantha Nawana ASG P.C. for the State.

Argued &

Decided on : 12.01.2018.

DEEPALI WIJESUNDERA, J.

The accused appellant in this case was indicted in the High Court of Rathnapura under Section 296 of the Penal Code for the murder of Murugesu Dharmaraj and for the murder of Murugesu Devarani under Section 296 of the Penal Code. He was also indicted under Section 315 of the Penal Code for causing hurt to Komaran Saraswathi. After trial the accused was convicted for murder on the 1st charge and imposed death sentence. The 2nd charge was brought down to Section 300 and a term of 15 years rigorous imprisonment was imposed and he was acquitted on the 3rd count.

Counsel for the Accused –appellant informs court that he has been assigned by this court and he has very carefully perused the evidence and the dock statement made by the accused and also the judgment of the learned trial Judge dated 31.07.2012 in order to ascertain whether there are any infirmities or procedural illegalities in the instant case. He also informs, upon the perusal of the entirety of the case record he is of the view that there are no compelling grounds to challenge the conviction and the sentence in this case.

The learned ASG informs court that the prosecution led the evidence of witness No: 1 Komaran Saraswathi who was the mother of the two deceased who were 1 ½ years and 3 ½ years of age at the time of the incident. The witness herself was first stabbed by the accused according to the testimony of witness Komaran Saraswathi. The medical evidence led at the trial to support the direct testimony of the witness.

The evidence of witness Saraswathi was not found to have had any contradictions or omissions. Therefore the testimonial creditworthiness of the witness was not the matter before the learned trial judge at the trial. When the accused was called upon for his defence at the close of the prosecution case the accused made a statement from the dock. He admitted his presence inside the house where the incident took place on

the date of the incident but he sought to impute liability on an unknown intruder. However this position was not taken up in the close of the cross examination of the accused at the trial. The evidence adduced in the close of the cross examination was in fact to the contrary admitting the presence of the accused armed with a knife.

The learned High Court Judge having considered this evidence had been very considerate on each and every item of evidence, and he accordingly found the accused guilty of Count No.1. He found the accused guilty for lesser offence of attempted murder under Section 300 of the Penal Code in respect of count No: 2. The learned High Court Judge proceeded to acquit the accused of count No:3 which pertain to section 315 of the Penal Code.

In opposing of appeal learned DSG submits that the evidence was overwhelming to support the conviction by the learned trial Judge where does not appear to be any reason by the legal or factual to reverse the findings of the learned trial Judge. In the circumstances with regard to the evidence of this case and conclusion of the learned trial judge, to affirm the conviction and uphold the sentence imposed on the accused appellant.

After perusal of the evidence and considering the submissions made by both parties we decide to affirm the judgment dated 31.07.2012 by the learned High Court Judge of Rathnapura.

Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

L.U. JAYASURIYA, J.

I agree.

JUDGE OF THE COUR OF APPEAL.

Vkg/-