

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

In the matter of an appeal in terms of Article 138(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 331 of Criminal Procedure Code and Section 19(B) of the High Courts of Provinces (Special Provisions) Act No. 19 of 1990.

**Court of Appeal**  
**Case No. 109-110/2015**

The Democratic Socialist Republic of Sri Lanka

**Complainant**

-Vs-

1. Jeyinudeen Mohammed Ismail Ismith
2. Jayeel Abdeen Aamir Rool Nasir alias  
"Naja"
3. Thuwan Kichil Mohammed Thajudeen

**Accused**

-And Now Between-

1. Jeyinudeen Mohammed Ismail Ismith
2. Jayeel Abdeen Aamir Rool Nasir alias  
"Naja"

**Accused-Appellant**

**High Court of Colombo**

**Case No. 1276/03**

-Vs-

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

**Respondent**

**Before :** M.M.A. Gaffoor, J

**&**

**A.L. Shiran Gooneratne J.**

**Counsel :** Dr. Ranjith Fernando for the 1<sup>st</sup> Accused-Appellant

Jayantha Weerasinghe, PC for the 2<sup>nd</sup> Accused-Appellant

Shanaka Wijesinghe, DSG for the Respondent.

**Written Submission of the Accused-Appellants filed on:** 09/03/2017

**Written Submissions of the Respondent filed on:** 06/12/2017

**Argument on:** 11/09/2018

**Judgment on :** 14<sup>th</sup> September 2018

**A.L. Shiran Gooneratne J.**

The 1<sup>st</sup> and the 2<sup>nd</sup> Accused-Appellants, (hereinafter sometimes referred to as the appellants) along with the 3<sup>rd</sup> Accused, (deceased) were indicted before the High Court of Colombo for the murder of Sikandar Bawa Sevi Ashroff Ali and

thereby committing an offence punishable under Section 296 read with Section 32 of the Penal Code. By Judgment dated 16<sup>th</sup> January 2015, the Appellants were found guilty, as charged.

The prosecution has relied on two witnesses, who stated that on the date of the incident the appellant came in search of the deceased late at night, armed with a knife and took away the deceased by force, down the staircase of the flat the deceased was living, into a three-wheeler, which was parked outside. When the deceased had attempted to runaway, the appellants had given chase to the deceased and brought him back to the three-wheeler where he had sustained injuries.

According to the post mortem report, marked P1, there were 10 stab injuries located below the waist of the deceased. Except for injury No. 2 and 5, the rest of the injuries were classified as simple/ non grievous injuries with no corresponding injuries to any internal organ. Injury No. 2 and 5 are located on the thigh and the buttocks of the deceased and according to medical evidence, injury No. 2 is a rupture of a main artery which could have caused death in the ordinary course of nature.

A knife has been produced marked P2, which has been recovered in terms of Section 27(1) of the Evidence Ordinance, on a statement given by the 1<sup>st</sup> Accused-Appellant. The knife recovered is a pen knife which has been admittedly, concealed in the purse carried by the 1<sup>st</sup> Accused-Appellant.

The Counsel appearing for the Appellants, state that they are not challenging the conviction dated 16/01/2015.

In the circumstances, the only ground of appeal that has been urged before this Court is that;

Whether, the High Court Judge addressed items of evidence in the correct perspective which would militate against the entering of any murderous intention by the Accused-Appellants.

Therefore, the Counsel for the appellants urge that the Court consider the above circumstances and the evidence and to sentence the appellants for a lesser culpability, under Section 297 of the Penal Code, on the basis of knowledge.

The DSG, appearing for the Respondent objects to the said proposition on the basis that the Appellants had a clear intention of committing the death of the deceased when they entered the flat late in the night, armed with a knife. It is further, submitted that inflicting injuries on the thigh and the buttocks of the deceased does not negate a murderous intention.

It is observed that the murder weapon used by the Appellant is a pen knife, which was concealed in a purse in the possession of the appellant. Eight out of the ten stab injuries inflicted to the legs and buttocks of the deceased are termed as non grievous injuries. It is observed that the fatal injury which was located on the thigh of the deceased could not have been intentionally caused, due to the fact that

the majority of the injuries were located on the thigh. It is noted that prior to the incident, there has been no utterances implying causing the death of the deceased or the appellants in possession of heavy weapons.

As stated earlier, all the injuries to the deceased are located on the legs and buttocks, which were caused by the use of a pen knife. If used in an unsafe part of the human body, a pen knife cannot be undermined. However, the Appellants have caused the said injuries on the thigh and the buttocks of the deceased.

In the circumstances, we are of the view that at the time of inflicting the said injuries the appellants could not have entertained a murderous intention to course the death of the deceased.

Therefore, we are in agreement with the submissions made by the Counsel for the appellants that the facts and circumstances of this case points to an inference that the appellants did not entertain any murderous intention to cause the death of the deceased. Therefore, the conviction and sentence is set aside and we convict the Accused-Appellants for the offence of culpable homicide, not amounting to murder in terms of Section 297 of the Penal Code on the basis of knowledge.

Therefore, we sentence the Accused-Appellants for 10 years Rigorous Imprisonment and a fine of Rs. 25,000/- in default six months imprisonment. In addition we impose Rs. 100,000/- as compensation to be paid to the next of kin by each of the Accused-Appellants, in default 2 years Rigorous Imprisonment. We

also direct that the sentence be implemented from the date of conviction namely, 16/01/2015.

The Registrar is directed to send the case record to the registrar of the Colombo High Court to implement the sentence.

Appeal partly allowed.

**JUDGE OF THE COURT OF APPEAL**

**M.M.A. Gaffoor, J**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**