

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

In the matter of an appeal in terms of Section 331(1) of the Code of Criminal Procedure Act, No. 15 of 1979 read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The Democratic Socialist Republic of Sri Lanka.

Complainant

CA. No. 219/2018

Vs.

High Court of

Rathnayake Geeganage Sugath

Galle

Accused

Case No. 3434/2010

And Now Between

Rathnayake Geeganage Sugath

Accused-Appellant

Vs.

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

Complainant-Respondent

BEFORE : N. Bandula Karunarathna, J.
: R. Gurusinghe, J.

COUNSEL : Palitha Fernando PC., with Neranjan Jayasinghe
for the Accused-Appellant.
Sanjeewa Dissanayake DSG., for the
Respondent.

ARGUED ON : 31.03.2021

DECIDED ON : 02.11.2021

R. Gurusinghe, J.

The Accused-appellant was indicted under Section 296 of the Penal Code before the High Court of Galle for committing the murder of one Kodagoda Mahesh Amarakeerthi on 22nd of February 2005.

After trial, the appellant was convicted and sentenced to death by the learned High Court Judge.

At the trial, the appellant had taken up the defence of alibi. However, when the appeal was taken up for hearing, counsel for the appellant argued that the appellant could not be found guilty to the charge of murder but culpable homicide not amounting to murder.

The facts of this case briefly are as follows:

The appellant and the deceased were well known to each other and said to have been friends. The incident of stabbing had happened on the 22nd of February 2005 at around 7.00 p.m. A person had informed the mother of the deceased PW1 that her son was lying fallen with a stab injury. PW1 had rushed to her son within two or three minutes and inquired what had happened. The deceased referring to the appellant

told his mother that “සුගන් මට පිහියෙන් ඇත්තා”. The deceased was then taken to Imaduwa hospital and from there he was transferred to Karapitiya Teaching Hospital. He succumbed to the injury after admission to Karapitiya Hospital. As per the evidence of PW1, the deceased was conscious and able to speak till he was brought to Karapitiya Hospital.

According to the post-mortem report and the evidence of the doctor, only one stab injury was found in the body of the deceased. The death of the deceased did not occur immediately or soon after he received the injury. The exact time of the incident is not clear. Around 7.00 and 7.30 p.m. somebody had informed PW1 that her son was lying injured. PW1 says that it was after 7.00 and before 7.30 p.m. The stab injury penetrated through the lower ribs and has damaged the left side of the liver. The heart and the lungs were not damaged. The cause of death is hemorrhagic shock due to damage caused to the liver by the stab injury. The doctor was of the opinion that the injury was sufficient to cause death in the ordinary course of nature.

Section 293 of the Penal Code is as follows:

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Section 294 of the Penal Code is as follows:

294. *Except in the cases hereinafter excepted, culpable homicide is murder-*

Firstly—If the act by which the death is caused is done with the intention of causing death; or

Secondly—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or

Thirdly—If it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

Fourthly—If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Culpable homicide is of two kinds—culpable homicide amounting to murder and culpable homicide not amounting to murder. After the special characteristics of murder have been taken away from culpable homicide what is left out of culpable homicide is culpable homicide not amounting to murder. In the case of doubt, culpability must be construed in favour of the accused.

The argument advanced for the appellant is that the appellant did not have the requisite intent or knowledge of causing the death of the deceased, and as such, his act was not amounting to murder. The contention is that the appellant cannot be held guilty of murder under Section 296 of the Penal Code but must have had at most been guilty of culpable homicide not amounting to murder.

In this case, there are no eyewitnesses to the incident. The case for the prosecution is based on circumstantial evidence. The deceased had told his mother (PW1) that the appellant had stabbed him.

PW5 had seen the appellant and the deceased together at about 6.30 p.m. on that day. At that time, both the deceased and the appellant were drunk. The appellant had stopped PW5 and asked him “උඹ මිදිගම ගෙදර තේද?” and stabbed him, that injured his hand. PW5 was 16 years at that time. PW5 had run away from the scene.

Circumstances under which the stabbing took place were not revealed by the evidence. Counsel for the respondent conceded that the accused might not have had the intention to kill the deceased. However, he knew that his actions would likely cause the death of the deceased.

The evidence does not prove that the appellant had intended to kill the deceased or caused such injury that is sufficient in the ordinary course of nature to kill the deceased. Whether the appellant had intended to kill the deceased or caused a bodily injury likely to cause death or cause bodily injury to the deceased sufficient in the ordinary course of nature to cause death must be gathered from the facts and the circumstances of the case. Since there were no eyewitnesses to the incident, the intention or knowledge of the appellant should be construed from the circumstantial evidence. If the accused-appellant intended the death of the deceased, he could have inflicted more injuries to the deceased. In this case, there was no prior enmity between the appellant and the deceased. The appellant had inflicted only one stab injury. Both the appellant and the deceased were seen drunk and arm in arm about half an hour before the incident. The injury was not necessarily fatal.

The evidence is insufficient to attribute murderous intention on the appellant.

In the circumstances, I set aside the conviction and the sentence of the appellant for the murder of the deceased. I convict the accused-appellant of culpable homicide not amounting to murder. I impose the accused-appellant to eight years rigorous imprisonment. I direct that the sentence is deemed to have been served from the date of the conviction, namely 09/08/2018.

Appeal allowed.

Judge of the Court of Appeal

N. Bandula Karunarithna, J.

I agree.

Judge of the Court of Appeal