

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

In the matter of an Appeal against an
Order of the High Court under Section
331 of the Code of Criminal Procedure
Act No.15 of 1979

C. A Appeal No: CA HCC 02/2008

HC Embilipitiya Case No.
HC 199/2006

1. H.D.Siripala alias Kiri
Mahaththaya
Reka Stores C/O,
Sudugalahena Pandura,
Panamura.

2. Henpita Gamage Shantha

Sisira Stores C/O,

Sudugalahena Pandura,

Panam ura

Accused- Appellants

VS.

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

Complainant- Respondent

BEFORE : **HON JUSTICE DEVIKA ABEYRATNE**
HON JUSTICE P. KUMARARATNAM

COUNSEL : Indica Mallawaratchy for the 1st Accused-
Appellant.
Neranjan Jayasinghe for the 2nd Accused-Appellant.
Sudarshana de Silva, DSG for the Respondent.

ARGUED & : **05.10.2021**

DECIDED ON

HON JUSTICE DEVIKA ABEYRATNE

The Accused- Appellants are connected via zoom platform by the Prison Authorities.

The argument on behalf of the Accused-Appellants was concluded yesterday. Today it is for the submissions on behalf of the State. After hearing the submissions of the Counsel for the Accused Appellants this Court inquired from the learned Deputy Solicitor General whether a shortcut can be considered in view of the evidence that had transpired in the main case, as well as the submissions of the appellants counsel that there is total contravention of section 110(4) of the Criminal Procedure Code as the learned Trial Judge has made reference to the police statement and inquest proceedings in her judgment.

Learned Deputy Solicitor General states as follows:-

Considering the infirmities highlighted by my learned friends in the judgment and also considering the facts that the offences are committed in 1997 and the Appellants

were convicted in 2008 the possibility of a re-trial is very remote at that stage. So, therefore the Prosecution has no objection at your ladyship and lordship considering the submissions of the two appellants to bring down the culpability.

We have carefully considered the submission of all the learned Counsel.

The Accused- Appellants with two others were indicted for offences under Sections 296, 315 and 369 of the Penal Code.

After trial the 3rd and the 4th Accused were acquitted and discharged of all charges and the 1st and the 2nd Accused (Appellants) were acquitted of the 3rd charge and convicted for the offence of murder and causing hurt under Section 315 of the Penal Code and sentenced to death.

The learned Counsel for the Accused- Appellants submit that as per the evidence, the unarmed Accused - Appellants have gone to the place of incident to meet one Appuhamy and not the deceased. The attack had erupted subsequent to an exchange of words between the deceased and the Appellants. It is argued that the learned Trial Judge should have considered the exception of grave and sudden provocation within the ambit of Section 294(1) of the Penal Code.

The learned Deputy Solicitor General concedes that the prosecution has no objection to this Court considering the submissions of the Counsel for the Appellants to bring down the culpability.

In view of the submissions made by the Counsel for both parties we are of the opinion that there was material before the learned High Court Judge to consider the exception of grave and sudden provocation.

Therefore, we set aside the conviction against the Accused-Appellants under Section 296 of the Penal Code and substitute it with a conviction of culpable homicide not amounting to murder.

Each Accused Appellant is imposed a 15 year term of imprisonment with a fine of Rs. 5000/- and a default sentence of 6 months rigorous imprisonment for the first count.

Each Accused Appellant is imposed a 2 year terms of imprisonment with a fine of Rs.5000/- and a default sentence of 6 months rigorous imprisonment for the 2nd count. The sentences to run concurrently from the date of conviction namely, 21.01.2008.

In the event the default term of imprisonment becomes operative with regard to the fines, that sentence to run consecutively to the sentence that has been imposed.

The Registrar is directed to send a copy of this order together with the original case record to the High Court of Embilipitiya.

JUDGE OF THE COURT OF APPEAL

P. KUMARARATNAM, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Lwm/-