

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

In the matter of an appeal under and in terms of section 331 of the Code of Criminal Procedure Act No. 15 of 1979 (as amended) read with Article 138 of the constitution of the Democratic Socialist Republic of Sri Lanka.

CA No: CA/HCC/ 83/2018
HC: Kuliypitiya: HC 64/2016

The Democratic Socialist Republic of
Sri Lanka

Complainant

Vs.

Jayasinghe Arachchilage Lal Premathilake

Accused

And now between

Jayasinghe Arachchilage Lal Premathilake

Accused- Appellant

Vs.

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

Complainant-Respondent

Before: **N. Bandula Karunaratna J.**

&

R. Gurusinghe J.

Counsel: K. Kugaraja AAL for the Accused-Appellant

Anoopa de Silva, SSC for the Complainant-Respondent

Written Submissions: By the Accused-Appellant on 26.02.2019

By the Complainant-Respondent 18.03.2021

Argued on : 01.02.2022

Decided on : **07.03.2022.**

N. Bandula Karunarithna J.

This appeal is from the judgment, delivered by the learned Judge of the High Court of Kuliypitiya, dated 31.05.2018, by which, the accused-appellant, who is before this Court, was convicted and sentenced to 20 years' rigorous imprisonment and One Million compensation for having committed the culpable homicide not amounting to murder of Marasinghe Arachchilage Manoj Priyankara (the deceased).

Altogether there were 2 charges in the indictment. They are as follows;

(a) Count 1

On or about 30.06.2012 in Welipennagahamula within the jurisdiction of the High Court of Kuliypitiya the accused committed the offence of Murder of Marasinghe Arachchilage Manoj Priyankara an offence punishable under section 296 of the Penal Code.

(b) Count 2

On the said date, place and in the course of the same transaction the accused committed the offence of hurt on Sangarajage Dinesh Madusanka which is punishable under section 314 of the Penal Code.

The accused-appellant pleaded not guilty on 22.11.2017 to the indictment and opted for a non-jury trial.

The trial commenced with the evidence of Sangarajage Dinesh Madusanka (PW5) who was injured in this case. Whilst testifying he stated that on the night in question, he and the deceased consumed a bottle of beer and came near a coir mill in which their friend Ajith is working. The time had been around 7.30 in the night. The two had started consuming another bottle of beer with Ajith who has also joined them. At this time the accused-appellant had come and had shouted at them uttering the words "Beelane Inne Yamalla".

The witness stated that a physical fight ensued with the accused-appellant. He also stated that he was intoxicated and therefore he engaged in the fight. At one point the deceased had jumped onto the appellant's body and the appellant had stabbed him with a knife that he had. Witness also stated that he too suffered a stab injury during the brawl.

It is pertinent to note that this witness clearly stated that the incident took place as a result of a sudden fight.

Consequent to this revelation the state had agreed to accept a plea under section 297 of the penal code for the offence of culpable homicide not amounting to murder. The Accused-appellant pleaded guilty to lesser culpability and was sentenced in the following manner;

Count 1 - 20 years' rigorous imprisonment and a fine of Rs. 25,000/- carrying a default term of 6 months' simple imprisonment and compensation of Rs. 1,000,000/- carrying a default term of 2 years' simple imprisonment.

Count 2 - 06 months' rigorous imprisonment and a fine of Rs. 1,000/- carrying a default term of 3 months' simple imprisonment and compensation of Rs. 5,000/- carrying a default term of 3 months' simple imprisonment.

The appellant has filed this appeal claiming that this sentence is excessive. The Learned Counsel for the accused-appellant informs Court on the date this matter was taken up for argument that he is not challenging the conviction as the accused-appellant has pleaded guilty. The learned counsel requested to consider the following mitigating factors to reduce the sentence.

- (i) It was the evidence of the (PW5) that the deceased was the one who started assaulting the Appellant.
- (ii) The Appellant and the deceased did not know each other when the incident had taken place and there was no dispute whatsoever between them.
- (iii) No motive, pre-plan or premeditation.
- (iv) No inhuman activity.
- (v) The Appellant does not have any previous convictions.
- (vi) The learned trial Judge failed to consider the nature of the crime when imposing the sentence.
- (vii) The range of sentence is 0-20 years but the maximum sentence is given with compensation of Rupees 1 million.

The learned counsel for the respondent argued that the reasons submitted to reduce the sentence on behalf of the accused-appellant are baseless.

As per the post mortem report, the appellant had inflicted six injuries on the deceased. Two of which had proved to be necessarily fatal. In the same transaction, the appellant had caused a stab injury to Sangarajage Dinesh Madusanka (PW5). It was further argued by the learned counsel for the appellant that the evidence suggests that the incident had taken place on the spur of the moment without premeditation, the appellant seems to have acted in an overly cruel manner.

It is evident that Sangarajage Dinesh Madhushanka (PW5) was a friend of the deceased. He was testified to the effect that on the day in question he consumed beer with the deceased in the evening and bought another bottle of beer and had gone with the deceased to meet their friend Ajith. They consumed the beer at the coir mill where Ajith had been working.

Witness (PW5) has further testified that one Anni who was looking after the mill had asked them to leave the place as they were making a loud noise after having drinks. Thereafter, they left the mill and had gone to Ajith's house which is situated 50 meters away from the said mill.

While they were chatting outside the house the deceased had come and asked them to leave the place as they were drunk.

At that time the deceased had started assaulting the appellant and each other grabbed and the appellant had stabbed the deceased with a knife. Witness (PW5) has categorically stated that they did not know the appellant when the incident had taken place and there was no enmity whatsoever between them and that the incident had taken place due to a sudden fight.

The learned counsel for the accused-appellant informed the court that the accused-appellant was not having any previous convictions and he is a father of 3 children. Therefore, requested the court to reduce the sentence as he has pleaded guilty for all 2 counts and save the valuable time of the High Court.

The learned SSC appearing on behalf of the respondent informs the court that she is objecting to the application of the accused-appellant as the said act was a grave offence. She has further indicated that the future of the deceased person and his family has been destroyed.

The accused-appellant was having a child and we can understand that the wife and the child will suffer due to the behaviour of their father. It is important to consider that the accused-appellant save the valuable time of the Court by pleading guilty for all 2 charges at the very beginning of the trial. Since he is not having any previous convictions, we believe that the accused-appellant should be given some relief by this court.

Considering the circumstances of the case we decide to impose 10 years' rigorous imprisonment instead of 20 years, for the 1st count and the other sentences to remain the same. Also, we decide that all sentences to run concurrently with effect from 31.05.2018.

Appeal dismissed subject to the above alteration.

The registrar of this court is directed to inform the prison authorities as well as the High Court of Kuliypitiya, about this judgement forthwith.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree.

Judge of the Court of Appeal