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 Article138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The Democratic Socialist Republic of Sri Lanka.

Complainant

CA - HCC 0337/2017

High Court of Monaragala

Case No: HC 90/2016

Vs.

1) Abeykoonge Seneviratne *alias* Heen Mahathaya *alias* Middeniye Mama

Accused

And Now Between

1) Abeykoonge Seneviratne *alias* Heen Mahathaya *alias* Middeniye Mama

Accused-Appellant

Vs.

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

Complainant-Respondent

BEFORE : N. Bandula Karunarathna, J.

: R. Gurusinghe, J.

COUNSEL : Neranjan Jayasinghe

For the Accused-Appellant

Wasantha Perera, DSG

for the Respondent

ARGUED ON : 09/09/2022

DECIDED ON : 21/09/2022

R. Gurusinghe, J.

The accused-appellant (the appellant) was indicted in the High Court of Monaragala for having committed the murder of Karavila Kandage Gunadasa at Uva Kudaoya on the 29th of September 2007.

After trial, the accused was found guilty and sentenced to death.

Being aggrieved by the said conviction and the sentence, the appellant appealed to this court.

When this matter was taken up for hearing, the Learned Deputy Solicitor General for the respondent submitted that under the circumstances of this case, he agreed that the appellant should not have been convicted for the

murder but for culpable homicide not amounting to murder, an offence punishable under section 297 of the Penal Code.

In this case, there were no eyewitnesses to the murder. The facts of this case are briefly as follows:

The deceased and the appellant obtained about half an acre of land from PW2 on an informal agreement to cultivate capsicum. Initially, the deceased and the appellant jointly cultivated capsicum on that half an acre of land. Subsequently, both of them had grown capsicum separately. PW2 was also growing capsicum in this land separately, but adjoining the cultivation land of the deceased and the appellant. According to PW2, on the day of the incident, around 6.00 in the morning, he had gone to the land. PW2 had seen the appellant was on the land removing weeds. The appellant told PW2 that yesterday also, the deceased had quarreled with him. The deceased told him thus; "හීන් මහත්තයා" (the appellant) කිව්වා මාත් එක්ක ගුණදාස (the deceased) ඊයෙත් රණ්ඩු වුනා. ඒනිසා මේ මනුෂ්‍යයා ගෙන් මට බේරීමක් නැහැ. හදිස්සියේ අදත් රණ්ඩු වුනොත් මම මේ මනුෂ්‍යයාව ඉතුරු කරන්නෙ නැහැ කියලා කිව්වා.

The evidence shows that there had been constant quarrels between the deceased and the appellant. PW2 warned the appellant not to quarrel with the deceased because he (as the land owner) is answerable to the police if something like that happens. PW2 had gone home, and after about an hour, he came to the land to water his plants. At that time, he had seen the deceased person lying on the ground. He then alerted the deceased person's family about the incident. By that time, the appellant was not in the vicinity. The appellant had been taken into custody on the 4th of October by the Thanamalwila police station.

The wife of the deceased PW1 had made a complaint to the police. In her complaint, she stated that the appellant was the only person who had

problems with the deceased. The evidence revealed that there was a dispute between the deceased and the appellant regarding a money transaction. The police had recovered a කැති (scythe or sickle) consequent to a statement of the appellant. The injuries on the dead body of the deceased were compatible with that caused by the scythe (කැති.)

Those were the circumstantial evidences which led to the conviction of the appellant. The evidence also reveals that the deceased person drinks alcohol frequently and was short-tempered, and was inclined to fight with others.

The main item of circumstantial evidence is what the appellant had told about the deceased to PW2. That is; "හදිස්සියේ අදත් රණ්ඩු වුනොත් මම මේ මනුෂ්‍යයාව ඉතුරු කරන්නෙ නැහැ."

This portion of the evidence was considered against the appellant. When this statement was taken as evidence, it should also have been taken into account what is favourable to the appellant. As per the evidence, the appellant had said, "if he comes to quarrel with me today as well, I will finish him." So, this should be taken as, if the deceased had not come to fight with the appellant, there would not have been any incident. There were no eyewitnesses to the incident. As per the evidence, it was probable that there was a sudden fight between the deceased and the appellant.

In those circumstances, convicting the appellant for the offence of murder is not safe. We, therefore, set aside the conviction and the sentence imposed on the appellant by the learned High Court Judge. We convict the appellant of the offence of culpable homicide not amounting to murder on the basis that there was a sudden fight between them.

I impose a term of 10 years Rigorous Imprisonment on him, to take effect from the date of conviction, namely, 30thNovember 2017.

The appeal is partially allowed.

Judge of the Court of Appeal

N. Bandula Karunarathna, J.

I agree.

Judge of the Court of Appeal