

**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.*

Court of Appeal No:

Democratic Socialist Republic of Sri Lanka

CA/HCC/0218/17

COMPLAINANT

Vs.

High Court of Kegalle

Manuwel Peirislage Nishantha Kithsiri Peiris

Case No: HC/2531/2006

alias Manuwel Peirislage Jayantha Kithsiri

Peiris

ACCUSED

AND NOW BETWEEN

Manuwel Peirislage Nishantha Kithsiri Peiris

alias Manuwel Peirislage Jayantha Kithsiri

Peiris

ACCUSED-APPELLANT

Vs.

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

RESPONDENT

Before : Sampath B. Abayakoon, J.
: P. Kumararatnam, J.

Counsel : Indica Mallawarachchi for the Accused-Appellant
: Chethiya Goonasekara, ASG, P.C. for the Respondent

Argued on : 07-02-2023

Written Submissions : 16-05-2018 (By the Accused-Appellant)
: 15-10-2018 (By the Respondent)

Decided on : 27-03-2023

Sampath B. Abayakoon, J.

The accused appellant (hereinafter referred to as the appellant) was indicted before the High Court of Kegalle for causing the death of one Walpola Widanalage Anulawathi on 11th March 2006, and thereby committing the offence of murder, punishable in term of section 296 of the Penal Code.

After trial, he was found guilty by the learned High Court Judge of Kegalle of his judgement dated 27th July 2017 and accordingly, he was sentenced to death.

Being aggrieved by the said conviction and the sentence, the appellant preferred this appeal. At the hearing of this appeal, the learned Counsel for the appellant conceded that she has no material to challenge the evidence presented by the prosecution in relation to the incident that led to the death of the deceased.

This Court would like to express the Court's appreciation towards the learned Counsel for saving the valuable time of the Court and for the assistance tendered as an officer of the Court towards dispensing justice by openly admitting the strength of the appeal preferred by the appellant.

Under the circumstances, the learned Counsel for the appellant formulated the following ground of appeal for the consideration of the Court.

1. Whether the medical evidence presented in this action warrants a conviction of the appellant for a lesser culpability.

It was the submission of the learned Counsel that medical evidence establishes the fact that the deceased had passed away eight days after she was admitted to the hospital. It was pointed out that she has been admitted to an intensive care unit two days after her admission to the hospital, hence it was submitted that her life would have been saved if proper medical care was given. It was the view of the learned Counsel that the fact the deceased passed away eight days after the incident shows that the appellant had no murderous intention in him when this incident took place.

It was her contention that the Court should have looked at convicting the appellant for a lesser offence as the evidence establishes that the appellant had no intention of causing the death.

The learned Additional Solicitor General submitted that the Judicial Medical Officer's evidence does not suggest any facts that would fall the incident under culpable homicide not amounting to murder. It was his view that the JMO has well explained that the deceased has been injected with a poisonous substance that has the chemical Organophosphate, and has well explained as to how a person injected with such a poisonous substance would encounter a slow death as happened in this instance. It was his view that the appeal should be dismissed for devoid of merit.

This is a matter where the appellant had forcibly injected a poisonous substance to the hand of the deceased. The deceased had been carrying out an illicit affair with the appellant and had four children with him out of that illicit wedlock. The appellant also has two children born out of his legally married wife with whom he was living at the time of this incident. Both the families had been living close to each other.

It appears that the appellant had been maintaining the deceased and her children up to a certain extent. However, there had been constant quarrels between the deceased and the appellant, which has resulted in him coming in the night on the day of the incident, forcibly injecting a poisonous substance to her right hand, and leaving.

The evidence establishes that the deceased has initially been admitted to Kegalle hospital and she has been transferred to Matale hospital later. According to the JMO's evidence, the transfer of the deceased to Matale hospital may have been due to the reason of unavailability of ICU beds in Kegalle hospital. The JMO has given clear evidence that despite the efforts of the medical officers, how a person injected with such a poisonous substance can succumb as a result of the injuries that would cause to the nervous system of such a person. The JMO has clearly expressed his opinion that the death was inevitable.

In terms of section 293 of the Penal Code, 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.

Culpable homicide is murder if it falls within the 4 definitions of section 294 of the Penal Code, which reads as follows.

294. Except in the cases hereinafter exempted, culpable homicide is murder –

***Firstly* – If the act by which the death 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 the death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.**

The evidence led in this action has clearly established that this was a preplanned attack by the appellant to the deceased. He has used a poisonous chemical substance knowing very well that his action would cause the death of the deceased.

I am of the view that the prosecution has proven beyond reasonable doubt, the intention and the knowledge of the appellant that his action would cause the death.

If the appellant's action to fall within the exceptions to the definition of murder, there must be evidence to suggest that it falls under exception 01 or either exception 04 of section 294 of the Penal Code. I find no basis whatsoever to come to such a conclusion having considered the evidence placed before the Trial Court.

For the reasons as considered above, I find no merit in the urged ground of appeal.

The appeal therefore is dismissed as it is devoid of any merit. The conviction and the sentence affirmed.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal