

**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 CPC read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No:  
**CA HCC 311 / 17**

High Court of Chilaw Case No:  
**HC 51/2010**

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

**Complainant**

Vs.

Joseph Camillus Rodrigo

**Accused**

**AND NOW BETWEEN**

Joseph Camillus Rodrigo

**Accused – Appellants**

Vs.

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

**Respondent**

Before: Menaka Wijesundera J.

B. Sasi Mahendran J.

Counsel: Saliya Peiris PC with Chamara Wannisekara and Savithri

Fernando for the Accused – Appellant.

Janaka Bandara DSG for the Respondent.

Argued on: 08.03.2023

Decided on: 10.05.2023

**MENAKA WIJESUNDERA J.**

The instant appeal has been lodged to set aside the judgment dated 31.10.2017 of the High Court of Chilaw.

The accused appellant had been indicted for a charge of murder under the Penal Code. The appellant had pleaded not guilty and upon conclusion of the trial the learned judge had convicted him for the same and had passed the death sentence. Hence upon being aggrieved by the sentence and conviction the instant appeal had been filed.

But at argument stage both parties agreed that they prefer for the Court to consider finding the appellant guilty for culpable homicide not amounting to murder based on a sudden fight.

The Counsel for the appellant submitted that the appellant was the brother of the deceased wife and the deceased had been in the habit of harassing the deceased wife upon being drunk and on the day of the incident the deceased had come drunk and had started his usual fight with the wife and the appellant had intervened.

The Counsel for the respondent brought to the notice of Court the number of injuries on the deceased and the nature of the fatal injury on the deceased.

Upon considering the submissions of both parties we observe that the deceased had been in the habit of frequently quarrelling with his wife and thereafter beating her and the appellant being the brother had intervened which had ensued it to be an altercation which the appellant did not expect.

Hence as urged by both sides the conviction for murder is set aside and we find the appellant guilty for culpable homicide not amounting to murder based on a sudden fight we sentence to appellant for seven years rigorous imprisonment to be operative from the date of conviction and a fine of rupees 25000 is imposed in default 6 months imprisonment.

Subject to the above variation the instant appeal is dismissed.

**Judge of the Court of Appeal.**

**I agree.**

**B. Sasi Mahendran J.**

**Judge of the Court of Appeal.**