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

In the matter of an Application for Revision under Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with the provisions in Chapter XXIX of the Code of Criminal Procedure Act and Section 9 of the High Court of the Provinces (Special Provisions) Act No.19 of 1990.

**Court of Appeal No:
CA//PHC/APN/0132/2021**

**High Court of Negombo
Case No. HC/273/2014**

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

COMPLAINANT

Vs.

1. Migel Juliasge Priyantha alias Chaminda
2. Edirisinghe Arachchige Prasanna alias Chooty Putha

ACCUSED

NOW AND BETWEEN

Edirisinghe Arachchige Prasanna alias
Chooty Putha

2nd ACCUSED-PETITIONER

Vs.

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

COMPLAINANT-RESPONDENT

BEFORE : **Sampath B. Abayakoon, J.**
P. Kumararatnam, J.

COUNSEL : **Kamal Suneth Perera with Anjalee**
Fernando for the Petitioner.
Kanishka Rajakaruna, SC for the
Respondent.

ARGUED ON : **21/07/2023**

DECIDED ON : **30/10/2023**

JUDGMENT

P. Kumararatnam, J.

The above-named 2nd Accused Petitioner (hereinafter referred to as the Petitioner) was indicted along with 1st Accused by the Attorney General on following charge:

On or about the 16th October 2011 the accused jointly committed the murder of Wannakuwatta Waduge Chamara Buddhika which is an offence punishable under Section 296 of the Penal Code.

As the Petitioner opted for a non-jury trial, the trial commenced before a judge and the prosecution had led seven witnesses and marked production P1 and closed the case. Learned High Court Judge having satisfied that the evidence presented by the prosecution warrants a case to answer, called for the defence and explained the rights of the accused.

The Petitioner and the 1st Accused after making dock statements closed the defence case.

The Learned High Court Negombo in his judgment dated 10.09.2021 had acquitted the 1st Accused and convicted the Petitioner under Section 297 of the Penal Code on basis of a sudden fight, which is an exception to Section 294 of the Penal Code.

The exception 4 to Section 294 (Murder) of the Penal Code states as follows:

“Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner”.

Explanation: - It is immaterial in such cases which party offers the provocation or commits the first assault.

Having heard the submissions of both parties and considering the evidence presented by the prosecution, the Learned High Court Judge had convicted the Petitioner for culpable homicide not amounting to murder under Section 297 and sentenced him to 12 years rigorous imprisonment with a fine of Rs.10000/-. In default, 06 months simple imprisonment ordered.

The Petitioner did not appeal against the conviction.

The Learned Counsel for the Petitioner informed this court that the Petitioner has given consent to argue this matter in his absence. At the hearing the Petitioner was connected via Zoom platform from prison.

The Learned Counsel for the Petitioner contended that as the Learned High Court Judge, in his judgment at last paragraph, found the Petitioner guilty under 2nd limb of Section 297 of the Penal Code, he should have been convicted appropriately.

Section 297 of the Penal Code states as follows:

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment of either description for a term which may extend to twenty years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

The Petitioner has advanced following exceptional circumstances to invoke the revisionary jurisdiction of this Court to reduce the sentence by ordering compensation of the aggrieved party.

- a) That the sentence is illegal, as the Court after finding the Petitioner guilty under second limb of Section 297 of the Penal Code, has sentenced for 12 years imprisonment where the maximum term of imprisonment provided in law is 10 years.
- b) That the Learned Judge erred in law by not awarding compensation to the victim thereby violated the Section 2(d) and 3 (o) of the Assistance to and Protection of Victim of Crimes and witnesses Act No.4 of 2015.
- c) That the Learned Trial Judge erred in law by not awarding compensation to the victim thereby violated the Section 17(4) of the Code of Criminal Procedure Act No.15 pf 1979.
- d) That the Learned Trial Judge has failed to strike a balance between compensation and imprisonment.
- e) That the Learned High Court Judge has failed to consider the precedent in the case of **Kumara v AG** reported in [2003] (1) SLR 139.
- f) That the term of imprisonment is excessive in considering attended circumstances.

The Petitioner states that he is a father of two daughters and they were only three years and one years old respectively when this unfortunate incident had happened. Now he is a single parent, as his wife deserted and left them long ago.

The Petitioner further states that he is a heart patient and diagnosed for single vessel disease and a coronary stent was implanted in the year 2019.He has submitted his medical report along with his revision application.

As correctly pointed out by the State Counsel that Sections 2(d) and 3(o) of the Assistance to and Protection of Victims of Crimes and Witnesses Act No.04 of 2015 have no bearing to discretion of the Judge of the High Court

vested by the Constitution and other prevailing laws in imposing sentence to an offender.

Further, Section 17(4) of the Code of Criminal Procedure Act No.02 of 1979 does not make it mandatory to award a compensation to the victim.

The Learned High Court Judge in his judgment finding the Petitioner guilty under 297 of the Penal Code stated as follows:

Page 13 of P2 (The High Court Judgment)

“02 වන චූදිත අධි චෝදනා පත්‍රයේ වරදට නොව අඩු වරදක් වන හදිසි දඬුවම් කෝපය ඇවිස්සුණු විට කල් තබා කල්පනා කිරීමකින් තොරව මරණකරුට පහර දී ඔහුට මරණය ගෙනදුන් තුවාලයන් සිදු කිරීමෙන් සාවද්‍ය මනුෂ්‍ය ඝාතනයේ වරදට වරදකරු කරමි.”

Hence, it is quite clear that the Learned High Court Judge has convicted the Petitioner under second limb of 297 of the Penal Code. Therefore, the Petitioner should have been sentence with an imprisonment up to 10 years. But the Learned High Court Judge has sentenced the Petitioner for an imprisonment of 12 years. Hence, I set aside the 12 years imprisonment imposed on the Petitioner.

Considering all the circumstances of this case, especially his family situation and his health condition, I substitute with a term of 05 years rigorous imprisonment on the Petitioner. The fine imposed by the Learned High Court Judge will remain unchanged with the default sentence.

Further, the Petitioner is directed to pay a compensation of Rs.300,000/- to the deceased family with a default sentence of 2 years rigorous imprisonment.

As the Petitioner is in prison since the date of conviction by the Learned High Court Judge, I order the sentence imposed by this Court be operative from 10/09/2021.

Subject to the above variation the revision application is dismissed.

The Registrar of this Court is directed to send this judgment to the High Court of Negombo.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL