

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

Weerakoon Mudiyanseelage  
Loku Banda,  
Walpaluwa,  
Kagama;

Accused-Appellant

C.A.Appeal No.131/2010  
H.C.Anuradhapura No. HC 318/2003

Vs.

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

Respondent

Before : Sisira de Abrew, J.  
P.W.D.C.Jayathilake, J.

Counsel : Ranjith Meegaswatte for the Accused-Appellant  
Dilan Ratnayake SSC for the Attorney-General.

Argued &

Decided on : 26.02.2013

Sisira de Abrew, J.

The accused-appellant produced by Prison Authorities is present in Court.

Heard both Counsel in support of their respective cases.

The accused-appellant in this case was convicted of the murder of a man named Koshettige Don Anura Priyashantha and was sentenced to death. The facts of this case may be briefly summarized as follows:- The deceased person in this case was a person who conducted a business of selling illicit liquor. Around 3.30 p.m on the day of the incident the accused person had come and asked for liquor on credit. The deceased person had refused to give liquor on credit as the accused had taken liquor on credit in the morning as well. When the deceased person made the said refusal, accused kicked the deceased person who fell on the ground. Thereafter he took a stick and gave a blow to the deceased person. This was witnessed by witness Sheelarathne. The deceased person thereafter did not want to go to the hospital as he did not feel any ailment. However, at around 5.30 p.m. on the same day he was admitted to the hospital as he was complaining<sup>of</sup> a headache. There was difficulty in speaking at this time. Later he died in the hospital. According to medical evidence there were no external injuries. But there was internal hemorrhage. Cause of death is : "Extra dural hemorrhage following blunt trauma to the head. " The accused in this case gave evidence and took up the defence of right of private defence. The accused had not taken up this private defence in his statement made to the police. This was marked as an omission. Further the accused did not suggest his defence to the prosecution witnesses. The learned trial Judge considering all these matters had rejected the accused's evidence. In our view, rejection of the accused's evidence by the learned trial Judge is correct. However, when we

consider the facts of this case we are unable to affirm the conviction of murder. When we consider the facts of the case, we hold the view that the accused did not have murderous intention but only had the knowledge that his act is likely to cause death. In our view, the accused-appellant should have been convicted of the offence of culpable homicide not amounting to murder on the basis of knowledge. For the above reasons we set aside the conviction of murder and substitute conviction of culpable homicide not amounting to murder on the basis of knowledge which is an offence punishable under Section 297 of the Penal Code. We sentence the accused-appellant to a term of seven years rigorous imprisonment and to pay a fine of Rs.2500/- carrying a default of three months simple imprisonment. The accused-appellant has been sentenced on 08.10.2010. We direct the Prison Authorities to implement the sentence from the date of conviction (08.10.2010). Subject to above variation of the verdict and sentence the appeal of the appellant is dismissed.

*Appeal dismissed.*

JUDGE OF THE COURT OF APPEAL

P.W.D.C.Jayathilake, I

I agree.

JUDGE OF THE COURT OF APPEAL

KLP/-