

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

C.A. 163/2009

H.C. Anuradhapura Case No: 118/06

Yalagalage Nandasiri
Koruwewa,
Maradankadawala.

Appellant

Vs.

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

Respondent

C.A. 163/2009

H.C. Anuradhapura Case No: 118/06

Before : Sisira J. de Abrew,J. (Acting P/CA) &
P.W.D.C. Jayathilaka,J.

Counsel : Indika Mallawarachchi for the Accused-Appellant.
Haripriya Jayasundara DSG. for the Respondent.

Argued &

Decided on : 05.12.2013

Sisira J. de Abrew,J. (Acting P/CA)

Heard both counsel in support of their respective cases. Accused-appellant in this case was convicted of the murder of a man named Lalith Wattegama and was sentenced to death. Being aggrieved by the said conviction and the sentence he has appealed to this Court. Facts of this case may be briefly summarized as follows:

On the day of the incident around 4 o' clock, there was a fight between the accused's nephew on one side and the deceased and deceased's nephew on one side. Around 5.30 p.m. on the same day the accused-appellant had come to the boutique of the deceased person and inquired whether the deceased had assaulted his nephew. The deceased person had replied in the following language. " Yes we did it what about it " Thereafter deceased's

brother Disna Sunil thinking that there would be a fight, held the accused person by his collar and attempted to push him out of the boutique. Deceased's sister Swarna says that there was a fight between the deceased person and her brothers. She also says that there was an exchange of words between the two parties. She admits that the accused-appellant came to the boutique carrying a helmet in one hand.

The accused-appellant who gave evidence under oaths said that he came to the boutique to inquire into the incident between his nephew and the deceased person. He submits that there was a grapple between him and the brothers of Swarna and in the process the deceased person had sustained an injury.

The question that must be considered is whether the accused-appellant really came to fight with the deceased person or not. This must be considered with the item of evidence that at this time accused person was carrying a helmet. According to Swarnalatha's evidence there was a fight between the two parties and there was an exchange of words. Accused-appellant has only inflicted one stab injury. When we consider all these matters we are of the opinion that the accused-appellant in this case has inflicted the injury on the deceased person in the course of a sudden fight. We therefore hold that the accused-appellant should have been convicted of the offence of culpable homicide not amounting to murder on the basis of sudden fight. The learned trial Judge had not given adequate consideration to this fact. For these reasons we set aside the conviction of murder and the death sentence and substitute a conviction of culpable homicide not

amounting to murder on the basis of sudden fight which is an offence punishable under Section 297 of the Penal Code. We sentence the accused-appellant to a term of 12 years Rigorous Imprisonment and to pay a fine of Rs: 5000/- carrying a default sentence of six months imprisonment. Subject to the above variation of the verdict and the sentence, appeal of the Appellant is dismissed. We direct the Prison Authorities to implement the sentence from the date of sentencing ~~him~~ by the learned trial Judge.

Appeal dismissed.

ACTING PRESIDENT OF THE COURT OF APPEAL

P.W.D.C. Jayathilaka,J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/