

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

Case No CA 08/04

H.C.Awissawella No.55/2002

Withanage Somasiri

Accused Appellant

Vs.

Hon Attorney General

Respondent

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

Counsel : Suranga Bandara for the Accused-
Appellant
Varunika Hettige SSC for the A.G.

Argued and

Decided on : 02.12.2013

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

Accused-Appellant who is on bail is present in Court.

Heard both Counsel in support of their respective cases.

The accused-appellant in this case was convicted of the offence of culpable homicide not amounting to murder on the basis of grave and sudden provocation. Facts of this case may be briefly summarized as follows:

The deceased in this case was living in the neighbourhood of the accused-appellant. The deceased person had engaged in brewing of illicit arrack. The accused person had given information about

deceased's illicit arrack to the police. It appears from the evidence the accused-appellant, long prior to the incident of this case, had engaged in brewing of illicit arrack. According to the evidence led at the trial he had stopped his illicit business at the time of this incident. On 09th of July 2001 the deceased person had come to meet the accused person and made inquiries about him from witness Lesly Jayawardena. This incident took place in the morning. The deceased person went away since he could not meet the accused - appellant. Later in the evening he again came and made inquiries about the accused-appellant from witness Lesly Jayawardena. The deceased person decided to wait near the house of the accused-appellant as the accused-appellant was not at home. When the accused-appellant, in the evening came home, the deceased person inquired from the accused-appellant whether he had given information about the illicit arrack of deceased person and the accused-appellant admitted that he gave information about the illicit arrack of the deceased person. Then the deceased person started assaulting the accused-appellant. Even prior to this, deceased person had been scolding to the accused-appellant. When the deceased person started assaulting the accused-appellant, he took a knife and stabbed the deceased person. At this time the 2nd accused who was acquitted by the trial Judge, came into this place armed with a sword. The Accused-appellant at this stage took the sword brought by the 2nd accused and gave several blows to the deceased person. The deceased person was a person who for slightest thing

was in the habit of assaulting the people in the area. When we consider all these facts, we feel that the punishment imposed by the learned trial Judge on the accused-appellant is excessive. He has been sentenced to a term of 10 years rigorous imprisonment and to pay a fine of Rs.5000/- carrying a default sentence of 1 year rigorous imprisonment. We set aside the term of 10 years rigorous imprisonment and sentence him to a term of 3 years rigorous imprisonment. The fine imposed by the learned trial Judge remains unaltered. Subject to the above variations of the sentence the appeal of the accused-appellant is dismissed.

Appeal dismissed.

ACTING PRESIDENT OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL

WC/-