

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

Attanayake Arachchige Anura Kumarasiri

Alias Sure

Accused-Appellant

C.A. 227/2009

H. C. of Ampara Case No. HC/AMP/1240/2007.

Vs.

Hon. Attorney General.

Respondent

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

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

Counsel : Amila Palliyage for the accused-appellant

Vijitha Malalgoda, A.S.G. for the A.G.

Argued &

Decided on : 22.02.2014

Sisira J. de Abrew, J.

Heard both counsel in support of their respective cases.

The accused-appellant in this case was convicted of the murder of a man named Sarath Jayaweera and a woman named Niranjala Shayamali. The learned trial Judge, after trial, sentenced the accused-appellant to death on both counts. Being aggrieved by the said conviction and sentence, he has appealed to this Court. According to the prosecution case, the deceased Sarath Jayaweera, who was an army soldier attached to Konduwatuwana Army Camp in Ampara, was in the habit of taking her little daughter on his motor cycle for a short distance every day in the morning before he goes to his army camp. After the ride, he used to come and drop her daughter near the gate. His wife was in the habit of bringing the lunch packet to be given to him when he dropped the daughter near the gate. On the day of the incident, when Sarath Jayaweera did the above routing work, the accused-appellant who was a home guard attached to Central Camp Police Station in Ampara came shot the deceased Sarath Jayaweera. Before he shot Sarath Jayaweera, Niranjala Shayamali who was the wife Sarath Jayaweera covered her husband and appealed to the accused-appellant not to shoot. But the accused-appellant without heeding to the request of Niranjala Shayamali shot both of them. The above facts were revealed by the dying deposition of Niranjala Shayamali who died 14 days after the incident. Rosalin who is the mother of Niranjala Shayamali, on hearing a gun shot, in the morning of 25.07.2006, went

near the road and saw both Sarath Jayaweera and Niranjala Shayamali lying fallen on the road with bleeding injuries. She then walked up to the place shouting not to shoot. At this stage, the accused-appellant addressed her in the following language. "You go away. I will shoot you too." At this time accused-appellant ^{with T56 gun} shot Sarath Jayaweera who was lying fallen, ~~with T 56 gun~~. This was the summary of the prosecution case.

The accused-appellant who gave evidence said that on the day of the incident he found his water connection disconnected and thereafter he took his gun and came to the road. He then saw the deceased Sarath Jayaweera coming on his motor cycle. The deceased Sarath Jayaweera having stopped his motor cycle, walked up to the accused-appellant addressing him in the following language. "I am from army are you trying to kill me". At this time the accused-appellant, who got frighten and thought that the deceased Sarath Jayaweera would grab his gun shot the deceased Sarath Jayaweera. This was the summary of the evidence of the accused-appellant.

Learned counsel appearing for the accused-appellant submits that the accused-appellant should have been convicted of the offence of culpable homicide not amounting to murder on the basis of grave and sudden provocation. Even if we consider the evidence of the accused-appellant, we are unable to conclude that

the accused-appellant was suffering from grave and sudden provocation. Although there is evidence to the effect that there was a dispute between the parties with regard to the water connection that was going over the land of Rosalin, we are unable to conclude that this has given grave and sudden provocation to the accused-appellant.

When we consider the evidence led at the trial, we are unable to interfere with the learned trial Judge's conclusion. For the above reason we refuse to interfere with the learned trial Judge's conclusion. We affirm the convictions and the sentence and dismiss the appeal.

Appeal dismissed.

ACTING PRESIDENT OF THE COURT OF APPEAL

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

I agree

JUDGE OF THE COURT OF APPEAL

Cr/-