

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

Kudupitiya Arachchilage
Wickremasinghe alias Chuti
Ukkung,

Accused -Appellant

C.A. Appeal No. 304/2006

H.C.Kurunegala No. H.C.231/2001

Vs.

Hon. Attorney General,

Respondent

Before : **SISIRA J DE ABREW, J.(P/CA) &**
P.W.D.C. JAYATHILALA, J.

Counsel : Indika Mallawaarachchi for
Accused-Appellant.

Harripriya Jayasundera D.S.G. for the
Attorney General.

Argued &

Decided on : 10.03.2014

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

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 Punchi Naidelage Premaratne and was sentenced to death. Being aggrieved the said conviction and the sentence he has appealed to this court. Facts of this case as narrated by the prosecution witnesses may be briefly summarized as follows. On the day of the incident the deceased person and one Sirisena went to the boutique of the accused-appellant. Both of them purchased liquor from the wife of the accused-appellant. Sirisena went to the compound. The deceased Premaratne continued to stay near the table of the boutique. Little later Sirisena's attention was drawn as he heard some noise. When he looked back he saw the accused appellant dealing a blow to the head of the deceased. The deceased person fell on the ground, got up and walked again. Sirisena heard the deceased telling one Bande Mudalali that the accused-appellant assaulted on his hand. The deceased too admitted to his son that the accused-appellant dealt a blow on his hand.

The accused-appellant also gave evidence. According to his evidence he saw the deceased Premaratne hugging his wife. He further says that his son came and questioned the deceased Premaratne as to why he ate the egg on his plate of the rice. At this time according to accused-appellant, deceased Premaratne told the son of the accused-appellant that he would dash him on the floor. At this time accused-appellant took a club and attacked on the hand of the deceased person. The question that must be considered by this court is whether the accused-appellant should be convicted of the offence of murder or of the offence of culpable homicide not amounting to murder on the basis of grave and sudden provocation. Learned Counsel 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. I now advert to this question. Soon after the incident when the son of the deceased person questioned the accused-appellant as to why he assaulted the deceased person, the accused-appellant replied that the deceased person came and inquired about his family affairs. This was admitted by Wasantha the son of the deceased person. Thus when we consider the said evidence of the son of the deceased, certain amount of credibility can be attached to story of the accused-appellant. When we consider the all the above matters, we feel that the accused-appellant under

grave and sudden provocation inflicted injuries to the deceased person.

Learned trial Judge rejected the accused-appellant's evidence. One of the reasons was that although the accused-appellant says that he was assaulted by a crowd he did not sustain any injury. We feel that the said observation by the learned trial Judge is wrong. The son of the deceased admitted that he too assaulted the accused-appellant. Therefore the said observation by the learned trial Judge is wrong. Learned trial Judge has observed that there had not been a plate of rice when the police visited the scene. The wife of the accused-appellant was present at home at the time of the incident. It is difficult to think that the wife of the accused-appellant allowed the plate of rice to remain on the table without washing it. Learned trial Judge has failed to consider this aspect. We therefore hold that the said reason to reject the accused-appellant is also not correct. Learned trial Judge has observed that there had not been a table at the place of the offence. But the prosecution witnesses had admitted that there was a table at the scene of the offence. These were the reasons given by the learned trial Judge to reject the evidence of the accused-appellant. We feel that these reasons are not correct. When witness Sirisena gave evidence, the Judge who

convicted the accused-appellant did not record his evidence. But the learned trial Judge, in his judgment, has stated that he observed the demeanour and deportment of witness Sirisena. If he did not record the evidence of witness Sirisena how did he observe the demeanour and deportment of Sirisena? Learned trial Judge has cited the above reasons to accept Sirisena's evidence.

When we consider the evidence led at the trial, we feel that the accused-appellant inflicted the injuries to the deceased person under grave and sudden provocation. We therefore hold the view that he should have been convicted of the offence of culpable homicide not amounting to murder on the basis of grave and sudden provocation which is an offence punishable under section 297 of the Penal Code.

For the above reasons, we set aside conviction of murder and death sentence and enter conviction of the offence of culpable homicide not amounting to murder on the basis of grave and sudden provocation which is an offence punishable under Section 297 of the Penal Code. We sentence the accused-appellant to a term of 10 years rigorous imprisonment and to pay a fine of Rs. Two Thousand and Five

Hundred (2,500/-) carrying a default sentence three months simple imprisonment.

We direct the Prison Authorities to implement the sentence from the date of sentencing by the learned trial Judge.

Verdict altered.

PRESIDENT OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL.

/mds