

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

Hewa Dewage Rathnasiri

**ACCUSED-APPELLANT**

Vs.

C.A. No. 224/2009

H.C. Balapitiya 702/2004

Hon. Attorney General

Attorney General's Department

Colombo 12.

**COMPLAINANT-RESPONDENT**

**BEFORE:** Anil Gooneratne J. &  
H.C.J. Madawala

**COUNSEL:** Indika Mallawarachchi for Accused-Appellant  
H.I. Pieris S.S.C. for Complainant-Respondent

**ARGUED ON:** 22.01.2015

**DECIDED ON:** 29.01.2015

**GOONERATNE J.**

The Accused-Appellant was indicted for the murder of one I. Deva Siripala on 04.07.2001. Deceased and the Accused-Appellant were brother-in-laws. Prosecution version is that according to witness Chandrapala, a person called Sanipala had arrived and the deceased and Sanipala had perused a 'race paper'. (රේස් කෙලය) and thereafter the three of them had been engaged in a conversation outside a boutique. At that moment (9.30 p.m) the Appellant had approached the deceased and demanded some money. At that point itself the Accused-Appellant had dealt a blow on the head of the deceased with his bare hands. (folios 58/59). Witness had attempted to hold on to the Accused-Appellant to prevent further assault but Accused-Appellant escaped from his clutches and had dragged the deceased by his shoulder a distance of 22 feet to a culvert and dealt several blows and pushed the deceased who fell on the ground.

The above is the prosecution version and both learned counsel who appeared in this appeal did not contest the facts and also admitted that no weapon had been used in the commission of the offence. Learned counsel for

the Accused-Appellant referred to the fact that there is an absence of a murderous intention on the part of the Accused-Appellant and invited this court to consider all the circumstances and the facts relevant to the case on the basis of culpable homicide not amounting to murder as the act complained of was done with the knowledge that it is likely to cause death but without any intention (section 297). Learned counsel also indicated to court that she would not pursue the other grounds of appeal relating to certain misdirection on the part of the learned High Court Judge.

Post-mortem report describes cranio-cerebral injuries to be the cause of death, and injuries are fatal. Further describes that injuries could have been caused by application of blunt force against the supported head. The body of the post-mortem report (pg 3 folio 463) describes 9 injuries and mainly about 5 abrasions. Others are described as laceration and contusions.

We agree that the Appellant did not have the required murderous intention when he committed the acts described above. Accused committed the acts suggested with the knowledge that it would be likely to cause death. No weapon was used by the Accused-Appellant. Material placed before court indicates that there had been a series of acts prior to the incident involving

both parties over betting and racing activities. Certain amount of money may have been due from the deceased to the Accused party as revealed by evidence. As such we set aside the finding and conviction of murder and the sentence of death and substitute a conviction for culpable homicide not amounting to murder on the basis of knowledge. We impose a term of 10 years rigorous imprisonment and impose a fine of Rs. 10,000/- which carries a default sentence of 1 years rigorous imprisonment. (Term imprisonment to run from the date of conviction).

Appeal partly allowed.

JUDGE OF THE COURT OF APPEAL

H.C.J. Madawala J.

I agree.

JUDGE OF THE COURT OF APPEAL