

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

CA No. 162/2007
H.C.(Kurunegala)No.19/04

M. Yasawathi

M. Muthunayake

Appellants

Vs.

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

Respondent

CA No.162/2007**H.C.(Kurunegale)No.19/04**

Before : **Anil Gooneratne, J**
H.C.J. Madawala, J

Counsel : Rienzy Arsakularatne P.C. for the Accused –Appellant.
H.I. Pieris SSC for the State.

Argued &

Decided on : **30.01.2015**

Anil Gooneratne, J

The Honorable Attorney General indicted the above accused – appellant on two counts. Count number one relates to conspiracy to commit the murder of M. Chandralatha on 21.10.1997. Count two relates to the murder of M. Chandralatha on the basis of common intention on the said date. According to facts submitted to this court learned President Counsel emphasis that his client, 1st accused-appellant, is the sister of the 2nd accused-appellant who has already been acquitted by this court on 07.02.2013. The reasons is acquit the said appellant is contained in order dated 07.02.2013. It is the position of the learned President’s counsel for the 1st accused –appellant, that there were no eye witnesses. The 2nd accused – appellant was acquitted. The following facts

are submitted to this court which are not disputed by both learned counsel. It was strongly urged before this court that there are no eye witnesses. It was also submitted that the 1st accused appellant made a confession to witness Wimalawathi (PW1) and that confession according to learned President's counsel was made one and a half months after the incident. Subsequently it was also submitted that there was a Section.27 Recovery and on the basis of that application, the dead body in question was recovered. When the dead body was recovered or found (03.12.1997), it was in a partially decomposed state. Attention of this court had been drawn to the report of the Judicial Medical Officer. The Judicial Medical Officer testified before the High Court that the date of death would be two weeks before his examination of the dead body. The indictment has been presented to the high court on the basis that the incident took place on 21.10.1997. According to the indictment it appears that the Medical Officers assertion as to the date of death is incorrect. It contradicts the date of death as stated in the indictment. As regards the identification of the body two matters were highlighted (A) Dentures supposed to be worn by the deceased. (B) one gypsy ear-ring. The witness number 02 Kusumawathi was called by the prosecution to identify the above. The testimony of the witnesses who identified the above are in doubt merely for the reason that the Dentures supposed to be identified had been produced in the High Court marked "P3", and the circumstances, under which the dentures were identified is not really borne out by the evidence, led and it is an item of evidence that should have clear proof.

The other item the gypsy earrings, only one of which had been produced marked "P1" (page no.44). Also there was evidence of three witnesses to the effect that the gypsy earrings was that of the deceased, but in the circumstances under which the identity was made and relevant facts to establish the identity of the Gypsy rings are not properly forth coming from the testimony of the witnesses.

It was also suggested by the learned senior state counsel that the 1st accused-appellant having made the confession on or about one and half months after the incident had been absconding. She was arrested after about two and half years from the date of incident at Galewela in the Kurunegala District.

When this court examines the material submitted and the testimony led in the High Court it appears that the required murderous of intention as per provisions contained in the Penal Code 296 is lacking. This is a fit case to reduce the culpability to a case of culpable homicide not amounting to murder on the basis of knowledge. Although the allegation that was made against this accused appellant was that she assaulted the deceased party with a mamoty as confessed, nevertheless this court is of the view that this is a fit case of culpable homicide not amounting to murder. In all the above circumstances, we have to set aside the conviction of the learned High Court Judge and substitute a conviction for culpable homicide not amounting to murder on the basis of knowledge.

As such we proceed to sentence the 1st accused appellant for 10 years rigorous imprisonment. We also impose a fine of Rs.5, 000/-which carries a default sentence of one year rigorous imprisonment. Subject to above the sentence is varied accordingly (sentence will begin to run from the date of conviction in the High Court dated 24.01.2007). This appeal is partly allowed.

This appeal partly allowed.

Judge of the Court of Appeal

H.C.J. Madawala, J

I agree

Judge of the Court of Appeal

Na/-