

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

**C.A. No: 220/2012**

H.C. Kandy Case No:125/2001

Sinnaiya Ganeshan

No: 18,

Pitakanda,

Matale.

**Petitioner**

**Vs.**

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

**Respondent**

C.A. No:220/2012

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H.C. Kandy Case No:125/2001

BEFORE : VIJITH K. MALALGODA, PC, J. (P/CA) &  
H.C.J. MADAWALA, J.

COUNSEL : Alan David for the Accused-Appellant.  
S. Thurairajah DSG for the A.G.

ARGUED &  
DECIDED ON : 13.03.2015  
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**VIJITH K. MALALGODA, PC, J. (P/CA)**

Accused-appellant is present in Court produced by the Prison Authorities.

Matter is taken up for argument. Counsel for the accused-appellant submits that in this case two accused were indicted for the murder of one Karuppan Sathyaseelan. At the trial out of the two accused, the 1<sup>st</sup> accused Murugiah Balachandran was absent and the trial proceeded in absentia. The 2<sup>nd</sup> accused Sinniah Ganeshan was present at the trial and both accused were convicted by the learned High Court Judge for the murder of Karuppan Sathyaseelan. But the accused who was absconding had not appealed against the said conviction. This appeal is only on the conviction and sentence on

Sinniah Ganeshan who is the 2<sup>nd</sup> accused. According to the evidence an incident had taken place on 25.07.1996 in the evening when the two accused met the deceased on the road. Counsel submits that even though the deceased had an argument with the 2<sup>nd</sup> accused on the previous day, meeting on this fateful day is a chance meeting. Only eye witness for this case is one Rajagopal who is said to be the nephew of the deceased. Counsel for the accused-appellant submits that there are serious contradictions inter se with regard to the weapons used by the two accused in the evidence of Rajagopal. He further submits that the deceased's dying deposition contradicts with the version of Rajagopal. When leaving all these aside he submits that his main submission before this Court is with regard to the failure by the trial Judge to consider the culpability of the accused. Learned trial Judge had failed to consider whether there was a sudden fight or any other circumstances under which the offence committed. However, the learned Deputy Solicitor General appearing for the Attorney General concedes the above position and submits that the failure by the learned trial Judge to consider the accused's culpability is very important when considering the final outcome in this matter. Learned Deputy Solicitor General has no objection for this Court convicting the accused-appellant for culpable homicide not amounting to murder based on a sudden fight. When considering the evidence of this case this Court agrees with the submissions made by both Counsel. We observe that this is a chance meeting and therefore we decide to set aside the conviction on the 2<sup>nd</sup> accused by the learned trial Judge for murder and

replace the conviction with one under culpable homicide not amounting to murder based on sudden fight under Section 297 of the Penal Code. We impose a jail term of 12 years rigorous imprisonment with a fine of Rs.5000/- on the accused-appellant. In default of the payment of fine we impose further period of 2 years simple imprisonment. Sentences will operate from today. The appeal is partly allowed.

Registrar is directed to communicate this order to the High Court of Kandy and return the brief to the High Court of Kandy in order to inform the accused-appellant the new sentence and issue a fresh committal on the accused-appellant, accordingly.

PRESIDENT OF THE COURT OF APPEAL

**H.C.J. MADAWALA, J.**

I agree.

JUDGE OF THE COURT OF APPEAL

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