

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

In the matter of an Application
for Revision in terms of Article
138 of the Constitution of
the Democratic Socialist
Republic of Sri Lanka.

The Hon. Attorney General
Attorney General's Department,

Complainant

CA (PHC) APN: 133/2016

Badde Liyanage Wasantha
Kumara Fernando

HC Chilaw HC 03/2009

Accused

And Now

Badde Liyanage Wasantha
Kumara Fernando

(Presently in the Remand
prison), Welikada

Before: K.K.Wickremasinghe J.

Petitioner

P.Padman Surasena J.

Vs

The Hon. Attorney General
Attorney General's Department,

Complainant Respondent

COUNSEL : P.C. Anil Silva for the Petitioner

DSG Varunika Hettige for the Respondent

ARGUED ON : 31 /07/2017

WRITTEN SUBMISSIONS ON : 31/08/2017

DECIDED ON : 30/10/2017

The Accused Petitioner (here in after referred to as the Petitioner) has been Indicted in the High Court of Chilaw for committing murder of Anthonilage Pradeep Gamini Fernando on 21st November 2004 at Dummaladeniya , an offence punishable under section 296 of the Penal Code. The Accused Petitioner pleaded guilty to a lesser offence. Thereafter he was convicted for Culpable Homicide not amounting to murder under section 297 of the Penal Code. Accordingly he was sentenced to 15 years Rigorous Imprisonment and ordered to pay a fine of Rs.7500 with a default sentence of 6 months imprisonment. Learned Counsel for both parties were heard in support of their respective positions.

At the trial the evidence of the following witnesses were led on behalf of the prosecution:-

1. Warnakulasuriya Chaminda Roshan Fernando
2. Jayasuriya Kuranage Danushka Shehan Perera
3. Dr. Handun Pathiranalage Wijewardena

After their evidence the accused appellant pleaded guilty to a lesser offence of Culpable Homicide not amounting to murder under the ground of Grave and Sudden Provocation.

Being aggrieved by the said judgment pronounced by the Learned High Court Judge, the Petitioner has filed this application for revision in this court.

Facts of the case:-

The prosecution case was based on the evidence of two eye witnesses mentioned above who were present at the scene of the incident.

According to evidence, the deceased Pradeep, Roshan, Chuti Mahattaya and another person named Deepal went to the sea shore at about 12.30 pm. The accused Wasantha, Batti, Suresh and others were consuming liquor at the wadiya and the deceased and others joined them. Thereafter the wife of the accused came to the wadiya at about 1.30 pm and asked the accused "*Sakkiliya mokada karanne?*" to which the deceased is alleged to have said "*ehema kiyana eka harinahanemanussaya neda?*" at which point the accused had hit the deceased with an empty bottle but it had not struck the deceased.

Thereafter, there had been an altercation after which the accused and Suresh had left the area. After a while the accused had returned and shouted at the deceased and stabbed the deceased. When he fell down the accused ran after Deepal and while running knocked on a person named Annie and fallen on the ground.

The wife of the deceased taken the deceased to the hospital but the deceased had succumbed to his injuries. The contention of the learned counsel is that there is a strong possibility that something would have happened which provoked the accused to act in the manner he did. He further submitted that there was no animosity between the accused and the deceased. Also it was mentioned that the accused is repenting for his action and he was convicted after a long delay.

Learned counsel for the Petitioner submitting Ananda Vs AG (1995) 2SLR 315, AG Vs Devapriya and another (1990) 2 SLR 212, Liyana Mendis Gunadasa and two others Vs AG (CA 141/2006) decided on 20/06/2014 contended that it is settled law that even a deserving sentence made after a considerable period of time should not be imposed at a later stage.

The Learned Counsel for the Respondent has taken up following preliminary objections:-

1. The Petitioner although had a right of appeal which is a statutory right without exercising same has sought to invoke the revisionary jurisdiction.
2. The order of the Learned High Court Judge is not irregular illegal or capricious.

In this present case the accused had pleaded guilty to Culpable Homicide not amounting to murder under Grave and Sudden Provocation, which proves from

evidence. The evidence of two eye witnesses demonstrates how the altercation commenced at the time they were consuming liquor together. The deceased had interfered with the dialogue between husband (the Accused appellant) and wife because of their friend ship. Unfortunately that had resulted for the killing.

The evidence of the JMO reveals that there were three superficial injuries other than the fatal injury.

Considering above, we bring down the sentence imposed by the learned High Court Judge from 15 years to 10 years RI.

Revision Application is hereby allowed.

JUDGE OF THE COURT OF APPEAL

P.Padman Surasena J

I agree,

JUDGE OF THE COURT OF APPEAL