

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

**Court of Appeal Case No : CA HC/263/2015**

W.L.D.Premadasa.

Serugasyaya,

Pelwehera,

Dambulla.

**Petitioner**

**Vs.**

Hon Attorney General.

Attorney General's Department,

Colombo 12.

**Respondents**

**CA263/2015**

**HC502/2000**

Before : S. Devika de L. Tennekoon, J  
S. Thurairaja, PC, J

Counsel : Neranjan Jayasinghe for the Accused – Appellant  
H. I. Pieris, DSG for the AG

Decided on : 27.11.2017

**S. Thurairaja, PC, J**

Accused – Appellant is present in court produced by prison authorities. The counsel for the accused – appellant submits that he is contesting the conviction and submits this is not a case of murder but a case of culpable homicide not amounting to murder on the basis of sudden fight and explains the facts of the case to the court.

The learned Deputy Solicitor General, Mr. Dileepa Piries who maintains the highest tradition of the Attorney General's Department and submits that this is a case which should have been convicted under section 297 of the Penal Code for culpable homicide not amounting to murder on the basis of sudden fight. Considering the facts of this case submitted by both counsel, we find that this is the case where two families, that is the family of the accused and the deceased were involved in a fracas. The two

members of the deceased were injured and were taken to the hospital. At the time the deceased was about to set out to the police station had a quarrel with the accused party, the accused who was 67 years old and assaulted the deceased who was 70 years at the time of the incident. It was brought to the notice that the family members of the accused namely, the son also received injuries and were hospitalized. It clearly shows that there was a fight between two parties which was going for some time, on the day of the incident the accused had assaulted the deceased who almost of the same matured age 70 and 67. Considering the facts that we are convinced that this is not a case of murder. Therefore, we vacate the conviction and the sentence imposed by the learned High Court Judge.

After carefully considering the facts of the case, we find the accused guilty for culpable homicide not amounting to murder on the basis of sudden fight. Accordingly, we convict the accused-appellant under section 297 of the penal code. We heard the submissions of both counsel regarding the sentence this is the case where the deceased had suffered severe injury on the head, anybody can easily presume, that the assault was very severe therefore we do consider severity of the injury and the other circumstances therefore we impose a sentence of 12 years rigorous imprisonment and a fine of Rs.5000/- in default three months in addition to that we considering the facts of the case we impose Rs.50,000/-as compensation in default one year rigorous imprisonment. Compensation to be paid to the wife of the deceased, if she is not available, it will be paid to the

granddaughter who gave evidence (PW5) Since the accused appellant was in remand from the time of the conviction, we direct the prison authority to implement the sentence from the date of the conviction namely 04.11.2015.

**Judge of the Court of Appeal**

**S. Devika de L. Tennekoon, J**

I agree

**Judge of the Court of Appeal**

Na/-