

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

Amzer Mohideen Mohamed Sanoon

Fazly

1st Accused- Appellant

C.A.No. 35/2014

H.C. Puttalam No. 24/2007

Vs.

Hon. The Attorney General

The Attorney General's Department,

Colombo 12.

Respondent

BEFORE : **S. DEVIKA DE L. TENNEKOON, J. &**

S. THURAIRAJA, P.C., J.

COUNSEL : Amila Palliyage for the Accused-Appellant

Lakmali Karunanayake SSC for the Respondent.

ARGUED AND

DECIDED ON : 05th March, 2018

S. THURAIRAJA, P.C., J.

The Accused-Appellant is present in Court, produced by the
Prison Authorities.

Counsel for the Accused-Appellant submits that he is challenging conviction and submits that, in this case considering the available evidence, the Accused-Appellant should have been convicted for culpable homicide not amounting to murder on the basis of a sudden fight. When the trial was taken up before the High Court, at the beginning itself the Accused-Appellant moved that he want to plead guilty for culpable homicide not amounting to murder on the basis of sudden fight, which was not accepted by the learned High Court Judge and the trial proceeded. After trial the Counsel submitted that the conviction cannot be sustained because there was enough evidence in favour of the Accused-Appellant for conviction for culpable homicide not amounting to murder on the basis of sudden fight under Section 297 of the Penal Code.

It appears that the deceased and the Accused had quarreled regarding money transaction of Rs. 30/=. The eye witness said that both the accused and the deceased were fighting in his compound and he asked both of them to leave. When they left, he heard that the deceased raised a cry saying that he had been stabbed. When the witness came out, he found that the Accused was running away from the scene. The deceased had a serious injury on his stomach which resulted popping out of intestine from his stomach. Counsel for the Accused-Appellant submits that he is not evading from the incident. He submits that the Accused-Appellant had stabbed the deceased but he had no knowledge or intention of killing of the deceased. Therefore, he

moves that this Court to vacate the conviction and to convict him under Section 297 of the Penal Code.

Learned Senior State Counsel who is appearing for the Attorney General, upholding the highest traditions of the Attorney General's Department and submits that she considered the evidence carefully and she agrees that this is not a case of murder, but culpable homicide not amounting to murder on the basis of sudden fight. She concedes to the facts submitted by the Counsel for the Accused-Appellant. Further, she submits that the Post Mortem Report reveals one stab injury and the deceased was under the smelling of liquor. She also submits that the proceedings reveals that there was a sudden fight. Both Counsel make submissions regarding the incident and leaves the sentence in the hands of Court.

We carefully considered the submissions made by both Counsels and the evidence available before us. We find that this is a case of culpable homicide not amounting to murder on the basis of sudden fight. There is only a stab injury and the Accused-Appellant had not denied openly in his dock statement. In the defence he was trying to shift the burden to another person. Anyhow, the available material convince us to convict the Appellant under Section 297 of the Penal Code. Therefore, after careful consideration, we vacate the conviction and sentence made under Section 296 of the Penal Code, and we convict the Accused-Appellant under Section 297 of the Penal Code for

culpable homicide not amounting to murder on the basis of sudden fight. Considering all available material and the submissions, we impose a sentence of 10 years Rigorous Imprisonment on the Accused-Appellant and a fine of Rs.5000/= in default of 06 months Simple Imprisonment.

Appeal partly allowed.

JUDGE OF THE COURT OF APPEAL

S. DEVIKA DE L. TENNEKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Kwk/=