

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

1. Kodituwakkulage Pradeep
Samantha Alias Fredie
2. Panangalage Don Nilanka

C.A. 21 – 22/2009
H.C. Colombo 861/2002

ACCUSED-APPELLANT

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

RESPONDENT

BEFORE: Anil Gooneratne J. &
Malinie Gunaratne J.

COUNSEL: A.K. Chandrakanth for the 1st Accused-Appellant
Neranjana Jayasinghe for the 2nd Accused-Appellant
Wasantha Nawaratne Bandara P.C., A.S.G. for the Respondent

ARGUED ON: 09.05.2014

DECIDED ON: 30.05.2014

GOONERATNE J.

The two Accused-Appellants were indicted for the murder of one Atulugamage Dimuthu Dilrukshan Silva. Both Accused were convicted of murder and sentenced to death. At the hearing before this court learned counsel who appeared for the 1st Accused-Appellant informed this court that he does not wish to challenge the conviction and would only mitigate the sentence. However the 2nd Accused-Appellant did not follow suit but challenged both the conviction and sentenced, and indicted to court that the 2nd Accused-Appellant was only 16 years old on the date of incident. Learned counsel also produced a certified copy of the Birth Certificate of the 2nd Accused-Appellant. Learned Additional Solicitor General Mr. Bandara P.C. appeared for the Attorney General did not object to this application.

The case of the prosecution very briefly is that witness No. 1, the deceased's mother testified that the deceased use to visit her periodically and on the day of the incident he had come to see her and had gone to a nearby boutique. The witness had been looking at her sons movement from the time the deceased left the house and got on to the road to proceed to the boutique. Then

after a while the witness saw the 2nd Accused attacking the deceased with a club, and when the deceased fell on the ground the 1st Accused attacked and stabbed the deceased with a knife. The witness also state that she ran closer to the place of incident and had seen the entire incident in close proximity. It is also in evidence that the 1st Accused attacked on the forehead was clearly witnessed by the mother of the deceased.

The learned counsel for the 2nd Accused-Appellant based his argument on the footing that the 2nd Accused-Appellant had no murderous common intention. He referred to certain sequences of evidence to demonstrate that it differ in certain aspects. In that respect referred to the evidence at pg. 133/134 suggesting that the witness could not identify, and also about the incident. Then again at pg. 141 the aspect of identifying the club used to commit the offence. The learned counsel for 1st Accused-Appellant as observed above only concentrated on the sentence and submitted to court that a lesser sentence should be imposed on the 1st Accused-Appellant.

The learned Additional Solicitor General in his address to court emphasized on the following:

- (a) Defence never touched on motive and whereas the suggested items of evidence based on motive, highlighted at pg. 106 & 112, i.e deceased

intervened and stopped a fight on an earlier occasion where the Accused were involved. As such Accused were angry about it.

- (b) Not even a suggestion was put to witness No.1, to falsely implicate the accused.
- (c) The main witness's evidence corroborate in all respects.
- (d) 1st Accused pleaded guilty to the charge.
- (e) The evidence of the main witnesses truthfulness and no contradiction, omissions surfaced during the course of the trail.
- (f) Main witness's evidence corroborated with medical evidence i.e injury No. 7.
- (g) 1st & 2nd Accused absconded and surrendered to court.

In all the facts and circumstances of this case, I am of the view that there are no proper acceptable grounds for this court to intervene and interfere with the Judgment of the High Court Judge. Learned counsel for both Accused-Appellants have not been able to convince this court to favour both Accused to grant any relief other than to urge the age requirement as at the date of incident. The 2nd Accused-Appellant was only 16 years old. This fact was not disputed. It is the view of this court that the need to consider amendment to Section 281 of the Criminal Procedure Act No. 15 of 1979 by the Amendment Act No. 52 of 1980, wherein Section 11 the words "under the age of 16 years " has been

substituted by the words "under the age of 18 years. 2nd Accused-Appellant was only 16 years old. As such court pronounces in view of the sentence of death, a sentence of life imprisonment on the 2nd Accused-Appellant. Subject to above appeal is dismissed. Conviction of 1st Accused-Appellant is affirmed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL