

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

M. Vetrivel

M. Govindaraj

P. Kandasamy

ACCUSED – APPELLANTS

CA Case No. 34/2011

HC. (Batticaloa) Case No. 2245/04

The Hon. Attorney General

RESPONDENT

BEFORE

: Deepali Wijesundera J.

: L.U. Jayasuriya J.

COUNSEL

: Dr. Ranjith Fernando for the
1st Accused – Appellant.

Indika Mallawaarachchi for
2nd and 3rd Accused – Appellants

H.I. Peiris DSG for the
Attorney General

ARGUED ON

: 11th September, 2017

DECIDED ON

: 29th September, 2017

Deepali Wijesundera J.

The appellants were indicted in the High Court of Batticaloa under section 296 read with section 32 of the Penal Code for the murder of one Kandaiya Navaratnam and after trial all three appellants were convicted for murder and were sentenced to death.

The only ground of appeal raised by the appellant's learned counsel is that the learned High Court Judge failed to consider that there was high antecedent probability of death resulting from the injuries caused, in the light of the fact that the deceased died seventeen days after the injuries caused by the appellants.

The Judicial Medical Officer in 'his evidence has stated that there were two surgeries performed on the abdomen of the deceased. He has described that the deceased had been stabbed with sharp weapons and that these weapons were soiled with pathogens which entered the abdominal cavity when injuries are caused with such weapons, and that pathogens caused septicemia as they have a very high capability of multiplying within a short period of time.

The learned Deputy Solicitor General argued that the evidence of the Judicial Medical Officer when carefully considered as a whole strongly implies that there is a very high degree of probability that in the ordinary course of nature, septicemia setting in on the deceased as a results of the stab injuries inflicted by the appellants resulted in death.

The learned counsel for the appellants argued that the Judicial Medical Officer in his evidence stated that in normal conditions the deceased would have died within 24 to 48 hours after the injuries (pages 119 to 123 of the brief).

The learned counsel for the second and third appellants referring to section 294 of the Penal Code argued that the appellants did not intend to cause the death of the deceased. When one examines the injuries caused to the deceased it clearly shows that the appellants had the requisite murderous intention at the time of attacking the deceased. The Judicial Medical Officer had observed that the deceased had been stabbed with sharp weapons and that weapons had been soiled with pathogens which entered the abdominal cavity which caused the septicemia. He has further stated that septicemia is a serious condition that causes the death of a patient even when admitted to a hospital.

The Post Mortem Report clearly given two causes of death namely.

1. *Death due to multiple cut injuries in the scalp counting multiple fracture in the skull causing extra Dural Hemorrhage.*
2. *Perforation of stomach and contaminated omenlu pathogens and septicemia due to stab injuries to the stomach.*

The judgments cited by the appellant's counsel namely **Mendis vs The Queen 54 NLR 177** and the case reported in **CA no. 32 of 1998 decided on 06/07/1998** have no relevance to the instant case. In **Mendis vs The Queen** the cause of death is toxemia where the injury has been described as follows.

"A punctured wound 3/8th inch in diameter by quarter inch deep over the upper right shin three inches below the knee with underlying fracture of both bones of leg. There was blistering and black discoloration over the whole front and sides of right leg and swelling of the right foot and knee."

When the evidence of the Judicial Medical Officer is taken as a whole it clearly shows that there is a high degree of probability that the death of the deceased was due to the injuries caused by the appellants.

Section 294 (3) of the Penal Code states for the constitution of the offence of murder there must be material and media which would enable the judge to hold that in the ordinary course of nature the injuries inflicted were sufficient to cause death as opposed to mere likelihood. The Judicial Medical Officer has testified that the injuries (page 122 of the brief) are sufficient in the ordinary course of nature to cause the death of the deceased. The learned trial judge has evaluated the evidence placed before him and arrived at his finding. Therefore I am not inclined to agree with the argument of the learned counsel for appellants, and set aside a well considered judgment.

The judgment dated 23/05/2011 is affirmed. Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya J.

I Agree.

JUDGE OF THE COURT OF APPEAL