

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

Court of Appeal Case No : CA HC/273/2015

A.M. Joshop Appuhami,
Kanaththawa,
Maligawaththa,
Mugunuwatawatha.

Petitioner

Vs.

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

Respondents

C.A. No: 273/2015

H.C. Chilaw No: 77/2001

BEFORE : **S. Devika de L. Tennekoon, J. &
S. Thurairaja, PC. J.**

COUNSEL : Indika Mallawarachchi for the Accused-Appellant.
Harippriya Jayasundara DSG. for the Respondent.

DECIDED ON : 17.11.2017

S. Thurairaja, PC. J.

Both counsel concluded their submissions. Counsel for the Accused-Appellant submits that she is not challenging the conviction but the sentence and submits following grounds.

1. The learned High Court Judge erred in coming to a conclusion that the culpable homicide not amount in to murder on the basis of sudden fight. It should have been on the basis of knowledge.
2. The learned High Court Judge failed to consider with mens rea of the Accused-Appellant.

3. The learned High Court Judge failed to consider items of evidence favorable to the Appellant and makes submissions on the above grounds.

Learned DSG, Ms. Harippriya Jayasundara submits that she is supporting the conviction and the sentence and she says that the learned High Court Judge's finding a conviction under sudden fight is justifiable considering the evidence available. (grave and sudden provocation is justifiable) She further submits that the deceased died because of the blow on the head caused by the Accused-Appellant. Therefore, she supports conviction and the sentence.

We carefully considered the submissions and the evidence placed before the High Court in this case. We find that the Accused and the deceased did not have any previous animosity and this had happened on a sudden fracas between the parties. The Accused-Appellant and the deceased are from same family and inter-related. As per the evidence available, we find that the Accused-Appellant had dealt one blow on the deceased with a wooden plank available on the scene. The deceased died after 10 days from the incident. It is evidence before the High Court that the deceased had gone to the government hospital at Bingiriya and took medicine for his headache. Thereafter, there is a witness to say that he was involved in his normal work and the other witness says that he didn't work. Nothing before the court that he was on bed rest. There is evidence to say that the deceased had been donated blood at the government hospital for a friend of him. On the third

occasion he complained of a headache, after ten days from the incident and he was taken to the Chilaw general hospital. There he was admitted, treated and transmitted to the National Hospital, Sri Lanka, situated in Colombo, where he died. The counsel for the Accused-Appellant submits that there is causation. Counsel for the Respondent submits that as per the J.M.O's. evidence the death was a result of an assault.

Considering the submissions made by both counsel, we summarize the incident as follows. This incident had happened on a fight, which was not premeditated. The Accused has dealt one blow with a wooden plank available on the scene and the deceased died after ten days with medical interference. The learned High Court Judge could have considered other mitigating circumstances also before the conviction. The Accused-Appellant is not challenging the conviction, but we are mindful, the evidence should have been considered in favour of the Accused-Appellant. This incident had happened in 1997 and the learned High Court Judge also considered it seriously before he passed the sentence.

Considering all circumstances, we affirm the conviction and we reconsider the sentence and vacate the sentence of ten years and impose 8 years Rigorous Imprisonment and we order the same to be implemented from the date of conviction. The other conditions will remain as it is.

We direct the Prison Authorities to implement the sentence from the date of conviction namely 30.11.2015.

Subject to the variation of the sentence, the appeal is dismissed.

Registrar is hereby directed to transmit the record to the Registrar of the High Court of Chillaw.

JUDGE OF THE COURT OF APPEAL

S. Devika de L. Tennekoon, J.

I agree

JUDGE OF THE COURT OF APPEAL

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