

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

In the matter of an Application in  
terms of Section 331 of the Code of  
Criminal Procedure Act No 15 of  
1979.

1. Rasheed Sahith
2. Mohamed Rasick
3. Kachchu Mohamed Jahnkeer

**Appellants**

**C.A. No. HCC 84/2015**

**HC Trincomalee No. 2255/2004**

Kachchu Mohamed Jahnkeer

**3<sup>rd</sup> Accused-Appellant**

**Vs.**

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

**Complainant- Respondent**

**Before** : Achala Wengappuli, J.

K.Priyantha Fernando, J.

**Counsel** : Indica Mallawaratchy with K.Kugaraja for the  
Accused-Appellant.

P. Kumararatnam SDSG for the Respondent.

**Argued and**

**Decided on** : 18.09.2020

**Achala Wengappuli, J.**

Accused-Appellant not produced by the Prison Authorities due to Covid pandemic.

Learned Counsel for the 3<sup>rd</sup> Accused-Appellant informs Court that she has received specific instructions to proceed with the hearing of the appeal in the absence of the Accused-Appellant.

1<sup>st</sup> and 2<sup>nd</sup> accused are absent and unrepresented they are tried in absentia.

This is an appeal where the 1<sup>st</sup> to 2<sup>nd</sup> Accused and the 3<sup>rd</sup> Accused-Appellant were indicted by the Hon. Attorney General for committing murder and the trial was concluded in the absence of the 1<sup>st</sup> and the 2<sup>nd</sup> Accused with the participation of the 3<sup>rd</sup> Accused-Appellant, resulting in their conviction to the said offence.

At the hearing of the appeal preferred by the 3<sup>rd</sup> Accused- Appellant, learned counsel submitted that the sole eyewitness's evidence does not support the conviction for murder since, according to the said witness, the three Accused have only used "thin poles" to assault the deceased who was standing when the witness rushed to the scene upon hearing a noise. The deceased had thereafter collapsed on the ground.

The three Accused have left the scene carrying their poles with them. There is no evidence led by the prosecution as to the circumstances under which the admission of the deceased to the hospital was made. He died soon after. The first information was provided by the hospital staff to the police station.

Learned Counsel for the Accused- Appellant also drew our attention to the medical evidence which indicate that the deceased had suffered two stab injuries along with one cut injury, and submitted that the sole eyewitness's account does not explain in any way of infliction of these injuries, which had in fact resulted in death of the deceased. Therefore, she submits that the conviction based on the said witness cannot be maintained owing to unreliability of the evidence.

The learned Senior Deputy Solicitor General in his reply submitted that the three Accused have beaten up the deceased severely. However, he concedes that there is no evidence as to who had inflicted the stab injuries on the deceased which had resulted in his death.

In these circumstances, this Court is of the view that in the absence of evidence as to who carried the weapon by which the said stab injuries were inflicted on the deceased and in the absence of evidence as to who was responsible for the stab injuries, the three Accused could only be convicted for culpable homicide not amounting to murder on the basis of knowledge, since their complicity is restricted to assault with "thin poles".

The conviction against the 3<sup>rd</sup> Accused- Appellant was entered on 28. 07. 2015 and since then he was in remand pending determination of his appeal.

The clear evidence that has been presented before the trial Court confines to beating of the deceased using sticks which the sole eye witness described as very "thin sticks".

Therefore, this Court set aside the conviction for murder entered against all three Accused by the High Court and substitute with a conviction for culpable homicide not amounting to murder.

The each of the Accused are imposed a imprisonment for a period of sixty two ( 62 ) months and that the said term of imprisonment in relation to the 3<sup>rd</sup> Accused- Appellant, in view of the fact that he had been incarcerated since his conviction, should run from the date of conviction, namely 28. 07. 2015.

In relation to the 1<sup>st</sup> and 2<sup>nd</sup> Accused their terms of imprisonment should run as and when they are arrested and produced before the High Court.

In addition to the imposition of 62 months of imprisonment each Accused is imposed of a fine of Rs. 1000/-, default of which another period of six months of imprisonment is imposed.

In relation to the 3<sup>rd</sup> Accused- Appellant, the two sentences of imprisonment should run concurrently.

The appeal of the 3<sup>rd</sup> Accused- Appellant is partly allowed subject to the above variations.

**JUDGE OF THE COURT OF APPEAL**

**K. Priyantha Fernando, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**

wc/-