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

In the matter of an Appeal against an order of High Court under Section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

The Democratic Socialist Republic of Sri Lanka

Complainant

Court of Appeal No:
CA/HCC/22/2022
High Court of Badulla
HC/45/14

Vs.

Wanasinghe Mudiyanselage Tennakoon Banda alias Mahathun

Accused

AND NOW BETWEEN

Wanasinghe Mudiyanselage Tennakoon Banda alias Mahathun

Accused – Appellant

Vs.

The Democratic Socialist Republic of Sri Lanka

Complainant- Respondent

Before : Menaka Wijesundera J.

Wickum A. Kaluarachchi J.

Counsel : Harshana Ananda for the Accused-Appellant.

Anoopa De Silva, DSG for the State.

Argued on : 27.03.2024

Decided on : 07.05.2024

MENAKA WIJESUNDERA J.

The instant appeal has been lodged to set aside the judgment dated 31st August 2020 of the High Court of Badulla.

The accused appellant (appellant) has been indicted for committing murder on or about 16.3.2007 under section 296 of the Penal Code.

The appellant has pleaded not guilty and the trial has proceeded and upon the conclusion of the trial the trial, judge had found the appellant guilty for murder and had sentenced him accordingly.

The appellant being aggrieved by the said conviction and sentence had preferred the instant appeal.

The main grounds of appeal raised by the learned Counsel for the appellant were that,

1) The trial judge had failed to consider the contradictory positions of PW1 and PW2.
2) The trial judge had failed to consider the exceptions to murder that is sudden fight and grave and sudden provocation provided under the Penal Code,
3) The trial judge failing to consider the defense case,
4) The trial judge has misdirected himself on the facts of the case.

The evidence of the prosecution was that the appellant and the deceased had been living in close proximity to each other and on the day of the incident the appellant had come to the house of the deceased and her husband around 6.45 in the evening and had scolded in filth for not giving his family hoppers

because the deceased had been running a business of making hoppers and selling.

The deceased and her husband had told him to go away and around 8.20 on the same day he had come back again scolding the deceased husband in filth.

The deceased and the husband had gone out and the appellant had taken a club from the fence to the house of the deceased and had attempted to assault the deceased persons husband but the blow had alighted on the deceased who had been standing near the husband.

The deceased had fallen down injured and she had been rushed to hospital and one day later she had succumbed to her injuries.

The deceased person's husband and another neighbor had given evidence at the trial and the husband of the deceased had narrated the above mentioned facts in evidence and had said very clearly that there was no provocation of the appellant by them and that there was no fight.

But he had been cross-examined that the deceased husband tried to assault the appellant and the said blow alighted on the deceased.

But the husband of the deceased had denied the same.

The neighbor who had given evidence had said that the deceased was alighted with the blow which was meant to be for the husband of the deceased. But he had very clearly said that there was no provocation or a sudden fight between the appellant and the deceased husband as suggested by the appellants Counsel to the witnesses.

The Counsel for the appellant strenuously argued that the trial judge had failed to consider the evidence of the neighbor who had said that the blow alighted on the deceased was meant for the deceased person's husband.

Having considered the evidence of the prosecution we can conclude that the deceased nor her husband provoked the appellant and that there had been no sudden fight between the parties.

It is very clear from evidence that the appellant has been going after the deceased persons husband and when told not to come also he had gone back and had tried to assault the deceased persons husband which had alighted on the deceased and the blow had been dealt with a lot of force and it had caused a head injury on the deceased which had caused her death.

After the incident the appellant had left the area and the appellant had been arrested on the 23rd of the same month which is several days after the alleged incident.

Hence the behavior of the appellant before and subsequently clearly shows his vindictive intentions towards the deceased person's family.

The learned senior Counsel for the respondents strenuously argued that the actions of the appellant clearly display his murderous intention and refused to concede that it falls under any to murder exceptions provided under the Penal Code as urged by the Counsel for the appellant.

The learned Counsel for the respondent cited the case of SC-Appeal 62-2008 by Justice Shirani Bandaranaike in which her ladyship had analyzed murder and the general exceptions of sudden fight and provocation and had cited several Indian judgments. Her Ladyship had commented on the 4th exception to the section of 294 of the Penal Code as to be of "a careful consideration of the said exception indicates that the basis for mitigation is purely depended on the fact that the murder took place in a sudden fight which had occurred in the heat of passion upon a sudden quarrel. An important ingredient which is necessary in such an instance would be that there was no malice or vindictiveness".

But in the instant case we see a lot of malice and vindictiveness on the part of the appellant because he had been coming back to the house of the deceased when the incident took place.

Hence this Court while noting the behavior of the appellant by repeatedly going back to the house of the deceased and the way he had dealt the blow having gone to the house of the deceased in the night and his subsequent behavior clearly shows his murderous intention to commit the instant act.

Hence, we see no merit in the 1st the 2nd and the 4rd grounds of appeal put forward by the Counsel for the appellant.

The third ground of appeal put forward by the Counsel for appellant is that the trial judge had failed to consider the defense.

The defense of the appellant has been that when he went to ask the deceased person's husband about the hoppers that the deceased person's husband had tried to assault the appellant and the said blow had landed on the deceased.

But we find the trial judge had considered the same and had said that it had not been mentioned before which we find to be erroneous because PW 1and 2 had been cross-examined on that and both had denied the same.

Hence although the trial judge had erroneously considered certain facts pertaining to the defense he had arrived at the correct conclusion. It would have been more appropriate if the trial judge had been more explicit in penning down his analysis on the defense case but his limited expression on the analysis of the defense had not caused any prejudice to the appellant because

he had arrived at the correct conclusion and nevertheless the position of the defense is also highly improbable because if the husband of the deceased had taken club first it could not have landed on the deceased because the deceased and the husband had been standing side by side.

Hence on considering the behavior of the appellant during and after the incident and the nature of the blow alighted on the deceased, and the doctor's definition of the fatal injury, only points out to the murderous intention of the appellant as a result of which the deceased had died.

The doctor in describing the fatal injury had said that at the very beginning the fatal blow will not cause death but eventually an edema of the brain would develop and that would cause his death.

Hence, the nature of the injury on the deceased is dangerous to life in the ordinary course of events.

Hence the act of the appellant is an offence described under section 295 of the Penal Code but as it does not fall under any of the exceptions to section 294 of the Penal code the trial judge is justified in finding him guilty for murder.

Hence, we see no merit in any of the grounds of appeal raised by the Counsel for the appellant; as such we see no reason to set aside the judgment and the sentence of the trial judge.

As such the instant appeal is dismissed.

Judge of the Court of Appeal

Hon. Justice Wickum A. Kaluarachchi

I agree.

Judge of the Court of Appeal