

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

In the matter of an appeal under and in terms of S.331(1) of the Code of Criminal Procedure Act No.15 of 1979 read with Article 138 of the constitution.

CA HCC 26-2012

High Court of Tangalle

case No. 40/2006

1. A.D. Nandasena alias Tangalle Kade Nande

Accused-Appellant.

Vs.

2. Hon. Attorney General
Attorney General's Department
Colombo12.

Respondent

BEFORE : Hon. Justice Achala Wengappuli
Hon. Justice Devika Abeyratne

COUNSEL : Indica Mallawaratchy for the Accused-Appellant.
Dileepa Pieris DSG for the Respondents.

**ARGUED &
DECIDED ON** : 05.02.2020

Hon. Justice Achala Wengappuli

Accused-Appellant is present in Court produced by the Prison Authorities.

Learned Counsel for the Accused-Appellant invites this Court to consider the circumstances under which the Accused-Appellant had inflicted 19 injuries on the deceased. She had referred to the prosecution evidence where one eye witness who had said that initially he saw the deceased and the Accused-Appellant were talking to each other and then at a later point of time they were grappling with each other. Then the two of them had fallen into a nearby ditch in which the deceased had sustained his injuries.

Learned Deputy Solicitor General, who appeared for the Respondent, concedes that it was a chance meeting and then in the dock statement the Accused-Appellant had stated that he suspected the deceased to be having an illicit affair with his wife. When he confronted the deceased, the latter had uttered that he had physical relationship with his wife even in the previous night and that had provoked the Accused-Appellant. The Accused-Appellant who was an Army Soldier serving in the operational areas at that time, had returned to his village when this incident happened.

Judging by the circumstances, it appears that the suspected illicit affair between the wife of the Accused-Appellant and the deceased gave rise to this incident and then the utterance made by the deceased had further angered the Accused-Appellant and he had lost his self control on that sudden provocation after which he had inflicted the number of stab injuries.

Therefore, we set aside the conviction entered by the learned High Court judge on the Accused-Appellant for the charge of murder and reduce the culpability to culpable homicide not amounting to murder under the general exception of grave and sudden provocation.

Having considered the circumstances, attendant with the incident and also the time period, the Accused-Appellant had spent in remand, we impose 13 year period of rigorous imprisonment to be effective from his date of conviction i.e. 28.03.2012. He will be imposed a fine of Rs.5000/- in default, there will be a six months of simple imprisonment. If the imprisonment on default term is carried out that has to be considered as a concurrent sentence.

The appeal of the Accused-Appellant is partly allowed.

JUDGE OF THE COURT OF APPEAL

Hon. Justice Devika Abeyratne

I agree

JUDGE OF THE COURT OF APPEAL

CN/-