

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

In the matter of an Appeal made under  
Section 331 of the Code of Criminal  
Procedure Act No.15 of 1979.

**Court of Appeal Case No.  
CA/HCC/ 0007/2022**

Rathnayake Mudiyanseelage Mahinda  
Rathnayake

**High Court of Gampaha  
Case No. 20/2008**

**ACCUSED-APPELLANT**

**Vs.**

The Hon. Attorney General  
Attorney General's Department  
Colombo-12.

**COMPLAINANT-RESPONDENT**

**BEFORE** : **P. Kumararatnam.J,  
Pradeep Hettiarachchi, J.**

**COUNSEL** : **Dharshana Kuruppu with Anjana  
Adikaramge for the Appellant.  
Anoopa De Silva, DSG for the Respondent.**

**ARGUED ON** : **09/09/2025**

**DECIDED ON** : **13/10/2025**

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**JUDGMENT**

**P. Kumararatnam J**

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted for committing the murder of Rajakaruna Mudiyanseelage Chaminda Bandara alias Gamini on 30/11/2005, which is an offence punishable under Section 296 of the Penal Code.

After a non-jury trial, the Learned High Court Judge has found the Appellant guilty of the charge and sentenced him to death on 15/11/2021.

Being aggrieved by the aforesaid conviction and sentence, the Appellant preferred this appeal to this court.

The Learned Counsel for the Appellant informed this court that the Appellant has given consent for the matter to be argued in his absence. Also, at the time of argument the Appellant was connected via zoom from prison.

On behalf of the Appellant only one Ground of Appeal is raised. According to the counsel for the Appellant, evidence led at the trial warrants the consideration of the plea of cumulative provocation, which had not been adequately dealt with by the Learned High Court Judge in his judgment.

**Background of the Case albeit briefly is as follows:**

According to PW10 Ajith Sampath Kumara, a cousin of the deceased, the deceased was a worker attached to a factory named “Lanka Cables” situated in the Nittambuwa Investment Zone. As the deceased was not from the area, this witness along with the deceased and some others had been renting a house in Yatiyana, Wathupitiwala. This witness, the deceased and PW11 had gone to bed around 9.30-10.00 p.m. on the night in question. He had shared the bed with the deceased.

This witness had woken up around mid-night hearing a ‘Chuk Chuk’ sound. The room was dark and the witness had seen a person standing beside the deceased with a Kinfe. Reacting immediately, this witness had kicked the person holding the knife but the intruder had run through the main Parlor of the house. Although PW10 had given chase after the intruder, he had been unable to apprehend the person but he had identified him as the Appellant.

According to PW9, on the night of the incident, the Appellant was on duty at the said “Lanka Cables”. He had observed that the Appellant was in a sad mood. Upon inquiry, the Appellant had told him that his wife was having a clandestine affair with the deceased. Due to this the Appellant had told him that he was not in a good mood to work. Therefore, PW9 had advised him to sleep inside the working place. When he got to know about the deceased’s murder, he had searched for the Appellant inside the factory but had been unable to find him at that time.

According to the JMO who held the post mortem on the deceased’s body, there had been 06 cut injuries in the neck area of the body. According to the JMO, the death had been caused due to bleeding from the neck, caused by a sharp cutting weapon.

The Counsel for the Appellant takes up the position that the case against the Appellant should have been considered under the plea of cumulative

provocation and that he should have been convicted not for murder but for culpable homicide not amounting to murder under 297 of the Penal Code.

According to exception 1 of Section 294 of the Penal Code;

*“Culpable Homicide is not murder if the offender whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident”*

The explanation under this exception read as that’

*“Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact”.*

Although the counsel for the Appellant seeks relief lessening the culpability by application of the plea of cumulative provocation, on perusal of the evidence led before the High Court no evidence of provocation was elicited either from the evidence of the prosecution nor was the same suggested during the cross examination. According to Section 105 of the Evidence Ordinance, it is the responsibility of the Appellant to prove the existence of a general or special exception during the trial on a balance of probabilities. In the absence of such proof, the Learned Trial Judge should direct his mind to the circumstances and the fact that the Appellant is entitled to have the benefit of the lesser verdict.

In **The King v Bellana Vithanage Eddin** 41 NLR 345 the court held that:

*“In a charge of murder, it is the duty of the judge to put to the jury the alternative of finding the accused guilty of culpable homicide not amounting to murder when there is any basis for such a finding in the evidence on record, although such defence was not raised nor relied upon by the accused”.*

It is very important at this stage to discuss the development of law regarding the acceptance of cumulative provocation as a special exception to a murder charge in our jurisdiction.

In **Premalal v Attorney General** [2000] 2 SLR 403 Kulatilaka, J held that:

*“Until the judgment of Chief Justice H.N.G Fernando in Samithamby v Queen (1) (de Krester, J-dissenting) our court followed a strict view in applying Exception (1) set out in Section 294 of the Penal Code. Our judges following their counterparts in England interpreted the phrase “sudden provocation” to mean that provocation should consist of a single act which occurred immediately before killing so that there was no time for the anger to cool and the act must have been such that it would have made a reasonable man to react in the manner as the accused did. Our Courts were reluctant to take into consideration any special circumstances which manifested in the particular offender’s case”.*

*Kulatilaka, J. further held that:*

*“Of late we observe a development in other jurisdictions where Courts and juries have taken a more pragmatic view of the mitigatory plea of provocation. In a series of cases in applying the mitigatory plea of provocation Courts took into consideration the prior course of relationship between the accused and his victim”.*

In **W. A. Gamini v Attorney General** CA/142/2009 the court held that:

*“the chain of stressful events in the troubled relationship of the accused and the deceased culminating in the aforesaid unfortunate incident, are probable reasonably sufficient to entertain a plea of continuing or cumulative provocation because the accused retaliated at the spur of the*

*moment and that he could reasonably show that he was deprived of his self-control”.*

Citing the above two judgments His Lordship Jayantha Jayasuriya C. J. in **R. W. M. Nandana Senarathbandara v Attorney General** SC/Appeal/32/2015 decided on 17/07/2020 held that:

*“Jurisprudence referred to above demonstrate that in considering the plea of grave and sudden provocation an accused is entitled to rely upon a series of prior events that ultimately led to the incident at which the death was caused. A court should not restrict its focus to an isolated incident that resulted in the death, in considering a plea of grave and sudden provocation. The aforementioned jurisprudence has widened the scope of this plea by expanding the limitations recognized in its statutory form. Thereby, the concept of “Continuing or Cumulative” provocation has been recognized as a plea coming within the purview of the plea of grave and sudden provocation recognized under Exception-1, section 294 of the Penal Code. Therefore, the proximity of time between the “actus reus” of the accused and the “provocative act” of the victim should be considered in the context of the nature and circumstances in each case, in deciding whether an accused is entitled to the benefit of the plea of Grave and Sudden Provocation”.*

Further His Lordship in **R. W. M. Nandana Senarathbandara v Attorney General** (Supra) has cited an Indian Judgment to explain how the concept of ‘Sustained Provocation’ has been recognised and developed by the Superior Courts of India.

In **Poovammal v State** 2012 (2) MLJ (Crl.) 482 the court held:

*“30. Under the English Criminal Law, the provocation must be grave and also sudden. But, by way of judicial thinking, the Indian Criminal Law has gone ahead. (K. M. NANAVATHI Vs STATE OF MAHARASTRA [A.I.R.] 1962 S.C. 605). In our system, there is the concept of “Sustained Provocation”. It is concerned with the duration of the provocation. There may be incidents/occurrences, which are such that they may not make the offender suddenly to make his outburst by his overt act. However, it may be lingering in his mind for quite some time, torment continuously and at one point of time erupt, make him to lose his self-control, make his mind to go astray, the mind may not be under his control/command and results in the offender committing the offence. The sustained provocation/frustration nurtured in the mind of the accused reached the end of breaking point, under that accused causes the murder of the deceased.”*

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*“34. In SUYAMBUKKANI Vs STATE OF TAMIL NADU [1989 LW (Crl.) 86], it is held as under: - “Though there has been here and there attempts in those decisions to bring the sustained provocation under Exception-1 to Section 300, I.P.C., there is a cardinal difference between provocation as defined under Exception-1 and sustained provocation. The only word which is common is ‘provocation’. What Exception-1 contemplates is a grave and sudden provocation, whereas the ingredient of sustained provocation is a series of acts more or less grave spread over a certain period of time, the last of which acting as the last straw breaking the camel’s back may even be a very trifling one. We are, therefore, far from grave and sudden provocation contemplated under Exception-1 to Section 300, I.P.C. Sustained provocation is undoubtedly an addition by Courts, as anticipated by the architects of the Indian Penal Code”.*

Considering the above cited judgments and the background of this case, I now consider whether this is an appropriate case in which the plea of cumulative provocation under Exception-1 to Section 294 of Penal Code should be considered.

In this case the Appellant was away from home due to his employment. He was suffering mentally due to the fact that his wife was having an illicit affair with the deceased. PW9 had noted that the Appellant was in a troubled mood at the time of this incident. Further, due to this affair, the Appellant was deprived of the love and care of his wife.

Further depriving the love, care and trust of a wife is an unbearable mental agony, especially to the husband. This will cause trauma and affect him psychologically and may cause him to remain in the phases of denial and anger of the loss for extended periods of time.

The Learned Deputy Solicitor General in keeping with the highest tradition of the Attorney General's Department informed that she is in agreement with the Counsel for the Appellant and that this is an appropriate case in which the first exception to Section 294 of the Penal Code should be considered.

Analysing the evidence presented in this case it clearly demonstrates that the stressful events and the strained relationship of the Appellant and the deceased had resulted in the unfortunate incident. Although the Learned High Court Judge had briefly discussed the concept of cumulative provocation, he had not awarded the benefit to the Appellant under the said mitigatory plea.

Considering all the circumstances stressed before this court I conclude that this is an appropriate case in which the first exception under Section 294 of the Penal Code being the mitigatory plea of cumulative provocation should be considered for the Appellant's benefit.

Hence, I hereby set aside the death sentence and convict the Appellant for culpable homicide not amounting to murder under Section 297 of the Penal



Code. I sentence the Appellant for 10 years rigorous imprisonment commencing from the date of conviction namely 15/11/2021. Additionally, I order a fine of Rs.10,000/- with a default sentence of one-year simple imprisonment. The Appellant is further directed to pay a compensation of Rs.250,000/- to the deceased's family. If he does not pay the compensation, he has to serve a default sentence of one-year simple imprisonment.

Subject to the above variation the appeal is hereby dismissed.

The Registrar is directed to send this judgment to High Court of Gampaha along with the original case record.

**JUDGE OF THE COURT OF APPEAL**

**Pradeep Hettiarachchi, J.**

I agree

**JUDGE OF THE COURT OF APPEAL**