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

In the matter of an appeal under and in terms of Section 331 of the Code of Criminal Procedure Act No. 15 of 1979 and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA HCC 10/2022

HC of Rathnapura case No: HCR 27/2009

Democratic Socialist Republic of Sri Lanka

Complainant

Vs.

Dematagoda Kamkanamalage Wimala Ranjani alias Kumari

Accused

AND NOW BETWEEN

Dematagoda Kamkanamalage Wimala Ranjani alias Kumari

Accused-Appellant

The Attorney General

Attorney General's Department

Colombo 12

Respondent

Before: **B. Sasi Mahendran, J.**
Amal Ranaraja, J

Counsel: Tirantha Walaliyadda, PC, with M. Dias D. Perera and Deepika Samanrathna for the Accused- Appellant
Wasantha Perera DSG for the Respondent

Written Submissions: 29.09.2022 (by the Accused-Appellant)
30.05.2023 (by the Respondent)
On

Argued On: 27.11.2025

Judgment On: 27.01.2026

JUDGEMENT

B. Sasi Mahendran, J.

The Accused- Appellant (hereinafter referred to as the Appellant) was indicted before the High Court of Ratnapura on the charge of committing the offence of murder of one Sanjeewa Ruwan Kumara, the husband of the Appellant, on 23.12.2006, punishable under Section 296 read with Section 32 of the Penal Code.

At the trial, the prosecution presented evidence through 12 witnesses and marking productions P1-P14 and thereafter closed its case. The Appellant, in her defence, made a dock statement.

At the conclusion of the trial, the Learned High Court Judge, by judgment dated 06.08.2021, found the Appellant guilty of murder and imposed the death sentence.

Being dissatisfied with both the conviction and the sentence imposed by the Learned High Court Judge, the Appellant preferred an appeal before this Court, articulating the following grounds in support of their challenge.

1. The learned High Court Judge misdirected himself by failure to judicially evaluate contradictions in the evidence of the PW-01 in the proper context, which cast a reasonable doubt on the prosecution case with regard to the credibility of the purported solitary eyewitness.
2. Learned High Court Judge misdirected himself by failure to apply the established legal principles to evaluate the testimony of the solitary eyewitness, that was not a sterling quality but full of contradictions, which should not have been acted upon to convict the Accused Appellant for a capital punishment charge
3. Whether the Learned High Court Judge has failed to give the benefit of the arisen doubts to the benefit of the Appellant?

During the course of arguments, the Learned Counsel for the Appellant brought to the notice that the Appellant had attacked the deceased as a result of cumulative provocation. It is our duty to consider whether there is sufficient evidence to establish that the plea of cumulative provocation may properly be invoked. In order to ascertain this, it is necessary to examine the evidence placed before the Learned High Court Judge.

The facts and circumstances of this case are as follows,

PW1, Sisira Chaminda Bandara Kumara, the sole eyewitness of this case, the cousin of the Appellant, testified that he was 18 years old at the time of the offence and 27 years old when giving evidence before the court. On the alleged day of the incident, from approximately 4.00 to 4.30 in the evening, the witness went to the Appellant's house. At that time, the front door was open, and he saw the Appellant inside. He observed the deceased lying on the bed in the living room, struggling. The Appellant then stated, "මුගෙන් ඇති වැඩක් නැහැ", and attacked the deceased's neck continuously with a tea knife.

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ප්‍ර : කොහෙටද සංජීව අයියගේ ගැහුවේ

උ : බෙල්ලට

ප්‍ර : දිගටම ගැහුවේ බෙල්ලටද ඇගේ කොහේටවත් ගැහුවද ?

උ : බෙල්ලට ගහගෙන ගහගෙන ගියා

PW1 further testified that the Appellant threatened him not to disclose the incident to anyone, warning that she would kill him if he did. He stated that he did not approach the

deceased because the Appellant was armed with a knife. When questioned by the prosecution as to why he did not take the deceased to the hospital, PW1 explained that he was afraid and therefore did not touch the deceased. Subsequently, the Appellant closed the doors of the house and proceeded up the hill.

PW1 stated that he did not initially inform the police of the incident because the Appellant had stated "ඔය ගැන වැඩිය හොයන්න එපා, කාටවත් කියන්න එපා, ඔයා පාඩුවේ ඉන්න". Subsequently, a neighbour observed the witness leaving the residence of the deceased and reported the matter to the police, upon which the police commenced questioning in relation to the incident. The witness stated that the knife used in the incident was approximately one and a half feet in length, and during the trial, he was able to identify it. The Appellant threw the knife into the forest near the toilet located behind the house, and he saw it near a Kottan tree. The witness also stated that he had gone to the Appellant's house on the request of the deceased.

During cross-examination, he admitted the fact that he had given two statements to the police. The defence then marked a contradiction, noting that the police had summoned the witness to the police station by calling Wasantha Chaminda. Another contradiction was marked, stating that he is angry with a person called Dayananda, PW 4. The witness testified that he had given his statement to the police five or six days after the incident. The defence suggested that the witness killed the deceased with the assistance of the Appellant, and the witness has denied this.

The defence marked an omission, pointing out that in the statement recorded on 31.12.2006, the witness had not mentioned that the Appellant had threatened him not to disclose the incident to the police. The witness further testified that he and the Appellant were engaged in an extra-marital affair, which the deceased was unaware of. He also stated that he himself had been treated as a suspect in connection with the matter.

In reexamination, He admitted that in his first statement, he had lied, explaining that he did so because he was afraid the Appellant might kill him.

PW2, Podi Mahaththaya, the father of the deceased, testified that both he and the deceased were working at the house of Sudu Mahaththya. When the prosecution suggested that he might have observed any quarrel between the appellant and the deceased, he replied in the negative.

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ප්‍ර : තමා දැකලා තියෙනවාද මේ විත්තිකාරිය සහ තමාගේ පුතා රන්ඩු වෙනවා ?

උ : නැහැ

On the day in question, at around 12.30 p.m., he and the deceased went to Sudu Mahaththya's residence, and thereafter, the deceased returned to his house. PW2 and Sudu Mahaththya then proceeded to another task, and after returning to Sudu Mahaththya's residence, PW2 observed the Appellant together with her daughter. He stated that the Appellant looked at them and then left for her mother's house at around 4.30 p.m.

The witness testified that he heard the Appellant screaming, claiming that three individuals had come and attacked both the deceased and herself.

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ප්‍ර : රන්ජනී යනකොට තමාලට මොකවත් කිවුවද?

උ : නැහැ. අප දිහා බලලා අහක බලාගෙන ගියා. මර ලතෝනි දීලා කෑගහන නිසා අපි ගියා බලන්න. සන්ජීවව තුන්දෙනෙක් ඇවිත් කැත්තෙන් ගැහුවෝ කපුවෝ කිවුවා. මටත් ගැහුවා කිවුවා. එහෙම කියලා මෙයා හයියෙන් ලතෝනි දුන්නා. මම දන්නේ නැහැ මටත් ගැහුවා. මම පැනලා අවා කිවුවා.

He further stated that they did not examine whether the Appellant had sustained any injuries, but instead rushed to the deceased's house along with Sudu Mahaththya and Jayawardena, PW 3, where they found the front door locked by the Appellant. After forcing the door open, the witness entered the house and observed the deceased lying on the bed, with blood on the floor and a deep cut to the neck. The witness testified that he covered the body of the deceased and remained at the scene until the police arrived at approximately 12.30 p.m.

During cross-examination, the defence highlighted a major omission, noting that the witness had not mentioned in his police statement that the Appellant had stated three individuals came. When the defence suggested that, according to his police statement, Nevil and three others had attacked the deceased, the witness responded that he could not remember and that he did not know anyone named Nevil.

PW3, Dematagoda Kankanamlage Jayawardena, the father of the Appellant and brother of PW2, testified that on the alleged day, the Appellant came to where PW2 and Sarath Kumara were present. At that time, the Appellant stated, "තාත්තේ සංජීවට කවුද ගහලා ඒ

පණිවිඩය කියන්න ආවේ". Following this, according to the witness, the PW 2 and Sudu Mahaththya went to the deceased's house. PW3 explained that, due to tiredness, he returned home and later went to the police station together with the Appellant. On the following day, he went to the deceased's house.

During cross-examination, the witness stated that, to his knowledge, the deceased and the person named Nevil had not engaged in any enmity.

PW 4, Siththuarachchilage Dayananda, around 1:00 p.m., who is a neighbor of both the Appellant and the deceased, heard a male voice shouting abusive words. Curious about the disturbance, he attempted to see what was happening. At that time, his son called out to the deceased. PW4 then observed the deceased speaking on the phone and uttering abusive words. Afterwards, PW4 went to sleep. Upon waking, he saw the Appellant leaving her house, accompanied by her daughter. Later, while trying to return to sleep, PW4 noticed PW1 running towards the Appellant's house.

The witness stated that on previous occasions, he had not observed the Appellant and the deceased engaged in quarrels. And further on that day also he had not noticed any quarrel.

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ප්‍ර : ඒ ගෙදර රණ්ඩු සරුවල් එහෙම වෙනවද ?

උ : එහෙම දැකලා නැහැ

ප්‍ර : ඔය සිද්දිය වුනු දවසේ කවුරු හරි ඇවිල්ලා ඒ ගෙදර මොකක් හරි සිද්දියක් වුණාද?

උ : දැක්කේ නැහැ

ප්‍ර : සද්දයක් ඇහුනද, රණ්ඩුවක සද්දයක් වගේ ඇහුනද ?

උ : නැහැ. ගුවන් විදුලි හඬ තමයි ඇහුනේ.

However, on the alleged day of the incident, he did not witness any such fighting. Instead, he only heard the sound of the radio.

According to PW 7, the Judicial Medical Officer, Dr. Susil Kumara, who conducted the post mortem testified that he observed more than fifteen internal injuries on the body, and that the neck had been almost severed, remaining attached only by a portion of skin.

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> ප්‍ර : මහත්තයට ඒ මොනවගේ තුවාලද යන කාරණය පිළිබඳව ගරු අදිකරණයට පැහැදිලි කිරීමක් කරන්න පුලුවන්ද ?
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> උ : කැපුම් තුවාල 15 කට වඩා අදික ප්‍රමාණයක් මා නිරීක්ෂණය කළා ස්වාමීනි. ඒ තුල බෙල්ලේ තුබුන රුධිර වාහිනී සියල්ලම කැපී වෙන්වී තිබුනා. ඊට අමතරව මස් පිඩු, ගලනාලය, ස්වාසනාලය සහ කොඳු ඇට පෙලේ අස්ථි දෙකක් කැපිලා වෙන්වෙලා තිබුනා. එනම් 4 වැනි සහ 5 වැනි ග්‍රයිවී කශේරුකා දෙක කැපී වෙන්වී තිබුනා. සියලුම රුධිර වාහිනී කැපී වෙන් වී තිබුනා.

According to his evidence, the attack had occurred while the deceased was lying on his back, facing upwards. The witness further stated that there were no injuries other than those to the neck, which indicates the absence of any defensive action.

Upon the conclusion of the prosecution case, the Appellant, by way of a dock statement, asserted that she had no involvement in the crime. She denied the allegation of an extra-marital affair with PW1, stating that PW1 was lying and that no such relationship existed. Regarding the day of the incident, the Appellant claimed that in the evening Nevil and three others came and began fighting with the deceased. Then she has left the house together with her daughter and went to her mother's house and reported the incident.

The Learned High Court Judge, upon evaluating the evidence, has arrived at the following conclusions.

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> මෙම නඩුවේ චිත්තිය විසින් කරුණු ගෙනහැර පෑමක් නොකළ ද, චිත්තිකාරිය විසින් චිත්තිකූඩුවේ සිට කරන ලද ප්‍රකාශයේ දී සඳහන් කිරීමක් නොකළ ද චිත්තිකාරිය විසින් සිදු කර ඇති මරණකරුගේ මරණය සිදු කිරීමේ වරද යම් ව්‍යතිරේකී අවස්ථාවකට වැටෙන්නේ ද යන්න මා දැන් පරීක්ෂා ක බලමි. මෙම නඩුවෙහි බලවත් හෝ හදිසි කුපිතවීමක් හේතු කොට ගෙන ආත්ම දමනය කර ගත නොහැකිව චිත්තිකාරිය විසින්, මරණකරුගේ ගෙළ කපා මරණය සිදු කළේය යනුවෙන් නිගමනයකට එළඹීමට කිසිදු කරුණක් මෙම නඩුවේ සිද්ධිමය කරුණු සහ ඉදිරිපත් වී ඇති සාක්ෂි පරීක්ෂා කර බැලීමේදී මා හට පෙනී යන්නේ නැත. තවද ආත්මාරක්ෂාවේ අයිතිය ක්‍රියාත්මක කිරීමකදී හෝ හදිසි දබරයකදී හෝ සටනක දී කෝපය ඇවිස්සුන අවස්ථාවක් තුළදී මෙම නඩුවේ මරණ කරගේ මරණය චිත්තිකාරිය විසින් සිදු කර ඇත යන්න නිගමනය කිරීමට හෝ කිසිදු කරුණක් මෙම නඩුවේදී ඉදිරිපත් වී නැත.

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> තවද පැ.සා. 01 සිසිර චමින්ද කුමාර නමැති සිද්ධිය ඇස දුටු සාක්ෂිකරු තම සාක්ෂියේදී පවසා ඇති පරිදි මෙම විත්තිකාරිය "මුගෙන් ඇති වැඩක් නැහැ " යනුවෙන් පවසා මරණකරුගේ බෙල්ලට පිහියෙන් ගහගෙන ගහගෙන ගිය බවට පවසා ඇති අතර, එම සාක්ෂිය ද එක්ව ගෙන බැලීමේදී මෙම නඩුවේ විත්තිකාරිය මරණකරුගේ මරණය සිදු කිරීමේ ඒකායන චේතනාවෙන්ම ක්‍රියාකර ඇති ආකාරය මැනවින් පැහැදිලි වේ.

It is my duty to consider whether the Learned Trial Judge failed to consider plea of grave and sudden provocation. Exception 4 to Section 294 of the Penal Code reads as follows:-

> *"Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in cruel or unusual manner".*

It is a well-settled principle that, when provocation is pleaded, it need only be established on the balance of probabilities. The courts have consistently affirmed that the burden lies upon the accused to demonstrate that, at the material time, provocation occurred to such an extent that he was deprived of the power of self-control. Moreover, an essential element of the doctrine requires that the accused must have caused the death either of the person who provoked him, or of another, by reason of mistake or accident committed in the heat of passion.

What is a grave and sudden provocation? Palitha Fernando PC (Former Attorney-General), in his book Selected Essays on Criminal Law of Sri Lanka, page 311 states that:

> *"As stated previously, any provocation will not entitle the offender to the protection of the mitigatory plea. It has to be a degree of provocation that would result in a reasonable person loosing his self control. In deciding whether the provocation measures up to that degree, court would have to examine the provocatory words objectively. Even mere verbal abuse, if sufficiently provocative, will attract the protection of the mitigatory plea. However in considering whether the provocation given satisfies the requirement necessary to bring it within the exception, court should necessarily consider the education and social standing of the offender. Thus the test used for the purpose is the test of a reasonable average man of the same social back ground and education of the offender. Therefore, in my view, the*

provocatory statement alleged to have been made should necessarily be considered by court in arriving at the conclusion whether the accused would be entitled to the mitigatory defence of provocation. It is necessary that court considers whether the statement attributed to the victim was sufficiently provocative to provide the accused of the mitigatory defence so that the offence of murder could be reduced to culpable homicide not amounting to murder. The issue as to whether the retaliatory action triggered off by the provocation should be proportionate to the provocation given, in order to attract the provisions of the exception has also been considered by our courts. Our courts have approved the view that the retaliatory action and the provocation should not be taken as two separate acts but as an integral part of the whole process when deciding on the application of the exception of grave and sudden provocation to any
given case."

The Courts have consistently held that, in evaluating a plea of provocation, it must be established whether the Accused was indeed deprived of self-control due to the provocation, and whether such provocation was grave.

Nagalingam S.P.J in ***K.D.J. Perera v. The King***, 53 NLR 193, at page 201, held that:

"Under our law, what has to be established by a prisoner who claims the benefit of exception 1 to section 294 of the Penal Code is : (1) that he was given provocation, (2) that the provocation was sudden, (3) that the provocation was grave, (4) that as a result of the provocation given he lost his powers of self-control, (5) that whilst deprived of the power of self-control he committed the act that resulted in the death of the victim."

Further held that:

"In the first place, it would be necessary to ascertain what is meant by provocation. Provocation, according to the dictionary, would be any annoyance or irritation, and for our purpose it must be defined as anything that ruffles the temper of a man or incites passion or anger in him or causes a disturbance of the equanimity of his mind. It may be caused by any method which would produce any one of the above results-by mere words which may not amount to abuse or by words of abuse, by a blow with hands or stick or club or by a pelting of stones or by any other more

serious method of doing personal violence. The next requisite is that the provocation must be such as to bring it within the category termed sudden, that is to say, that there should be a close proximation in time between the acts of provocation and of retaliation-which is a question of fact. This element is of importance in reaching a decision as to whether the time that elapsed between the giving of provocation and the committing of the retaliatory act was such as to have afforded and did in fact afford the assailant an opportunity of regaining his normal composure, in other words, whether there had been a " cooling " of his temper. The third element is that the provocation should be grave. That is the element with which we are concerned particularly in this case. Provocation would be grave where an ordinary or average man of the class to which this accused belongs would feel annoyed or irritated by the provocation given to the extent that he would, smarting under the provocation given, resent the act of provocation or retaliate it. It is entirely dependent upon the act of the provoker and cannot be said to be based upon the nature or mode of resentment adopted by the person provoked in giving expression to his resentment."

Based on the aforementioned authority, I now turn to consider whether there is any evidence of provocation. According to PW1, while at the deceased's residence, the witness observed the appellant repeatedly assaulting the deceased, describing the act as 'බෙල්ලට ගහගෙන ගහගෙන ගියා'. Further, according to PW 1, the Appellant has uttered the words of මුගෙන් ඇති වැඩක් නැහැ, which denotes the murderous intention of the Appellant. The post-mortem report records that the deceased sustained fifteen severe injuries, predominantly to the neck, which was almost severed from the body. The Judicial Medical Officer confirmed that these injuries were inflicted while the deceased was in a sleeping position. Significantly, the evidence does not disclose any abusive or provocative conduct on the part of the deceased at the time of the incident.

Furthermore, PW2 testified that he had never observed any altercation between the appellant and the deceased, while PW4 likewise confirmed that on the day in question, he did not witness any quarrel between them. In addition, the Appellant has not asserted that his actions were the result of any provocation by the deceased, which deprived her of self-control. As I pointed out earlier, there is no evidence in the prosecution case or in the defence case that the Appellant acted under the grave sudden provocation.

During the stage of argument, counsel for the respondent submitted that the Court possesses the authority to peruse the statements of the witnesses in order to ascertain whether they had indicated the existence of any quarrel between the deceased and the appellant prior to the incident. Is it the correct procedure? I am guided by the following judgements where our courts held that unless a trial court peruses the said statements to find out the contradictions and omissions, this court has no right to peruse the information book.

Dharmasiri v. Republic of Sri Lanka, 2010 (2) SLR 241 at page 244, Sisira De Abrew J held that;

> *"It is therefore seen from the said judgment that the trial Court is given power to read the contents of the statements recorded in the Information Book only when a contradiction or omission is brought to the notice of Court. If an omission or contradiction was marked at the trial then, the Court of Appeal, according to the said judgment, will have the same power to read the contents of the statements recorded in the Police Information Book. This power has been given to the trial Court, according to the said judgment, in order to test the correctness of the contradiction or omission that was brought to the notice of court. Therefore if no contradiction or no omission was marked, according to the said judgment, Court of Appeal will not be entitled to peruse the Information Book."*

K.A. Shantha Udayalal v. The Attorney General, SC Appeal, LA.NO. 57/2017, Decided On 30.01.2018, Sisra De Abrew J held that;

> *"I would like to refer to a judicial decision in Punchimahaththaya Vs. The State 76 NLR page 564 wherein the Court held as follows: "Court of Criminal Appeal (or the Supreme Court in appeal) has no authority to peruse statements of witnesses recorded by the Police in the course of their investigation (i.e. statement in the Information Book) other than those properly admitted in evidence by way of contradiction or otherwise. Section 122(3) of the Criminal Procedure Code which enables such statements to be sent for to aid the Court is applicable only to Courts of inquiry or trial".*

Given the above facts, it is evident that the Appellant cannot rely on the defence of sudden provocation. The evidence does not indicate any provocative conduct on the part of the

deceased at the time of the incident. Moreover, there is no suggestion of a continued or sustained alteration between the deceased and the Appellant prior to the fatal act. Therefore, the Appellant is not entitled to raise the defence of loss of self-control due to provocation.

The next question is whether the prosecution has established the murderous intention. It is also relevant to consider the 3d limb of Section 294, which reads as follows: -

Except in the cases hereinafter excepted, culpable homicide is murder

> *"Firstly - (omitted)*
>
> *"Secondly - (omitted)*
>
> *"Thirdly -if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; "*

It is relevant in this case to consider illustration "C under Section 294." It reads as follows:-

> *"A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death"*

The third limb of Section 294 of the Ceylon Penal Code is, in substance, identical to the third limb of Section 300 of the Indian Penal Code. The interpretation of this provision was considered by the Supreme Court of India in ***Virsa Singh v. State of Punjab*** (A.I.R. 1958 Vol. 45, p. 465). In its analysis of the third limb, the Court observed as follows:

> *"To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300, thirdly;*
>
> *First, it must establish, quite objectively, that a bodily injury is present,' Secondly, the nature of the injury must be proved. These are purely objective investigations.*

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say that it was not accidental or unintentional or that some other kind of injury was intended.

Once these elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under Section 300 thirdly. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature... Once the intention to cause bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. "

In the case of ***Chandrasena alias Rale v. Attorney General,*** 2008 (2) SLR 255 at page 270, Sisira De Abrew J held that;

"In order to establish a charge of murder under third limb of Section 294 of the Penal Code, prosecution must prove the following ingredients beyond reasonable doubt.

1. The accused inflicted a bodily injury to the victim.

2. The victim died as a result of the above bodily injury.

3. The accused had the intention to cause the above bodily injury.

4. The above injury was sufficient to cause the death of the victim in the ordinary course of nature."

In the instant case, we observe that the multiple injuries inflicted by the appellant are corroborated by the testimony of the Judicial Medical Officer, PW7. We are also mindful of the injuries sustained to the neck while the deceased was sleeping. In light of these

circumstances, we are satisfied that the prosecution has established beyond a reasonable doubt that the appellant committed the murder of Sanjeewa Ruwan Kumara.

In those circumstances, I am not inclined to interfere with the judgment delivered by the Learned High Court Judge together with the sentencing order and dismiss the appeal.

The Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja J,
I AGREE

JUDGE OF THE COURT OF APPEAL