

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRILANKA

In the matter of an Appeal in terms of
Section 331 (1) of the Code of Criminal
Procedure Act No 15 of 1979 read with
Article 138 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Democratic Socialist Republic of Sri Lanka

Complainant

CA Appeal No:

CA/HCC/0081/2022

Vs

Hatharabage Lekamlage Gunawardena

Accused

HC Rathnapura Case No:

HCR 48/2008

AND NOW

Hatharabage Lekamlage Gunawardena

Accused – Appellant

Vs

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

Complainant – Respondent

Before : **P. Kumararatnam, J.**

Pradeep Hettiarachchi, J.

Counsel : Nihara Randeniya for the Accused – Appellant.

Sudharshana De Silva, ASG for the State.

Argued on : 06.08.2025

Decided on : 07.11.2025

Pradeep Hettiarachchi, J

Judgment

1. The Accused–Appellant (hereinafter referred to as **the Appellant**) was indicted before the High Court of Ratnapura on two counts, namely:
 - a. For committing the murder of **Kankanamlage Punchi Banda alias Nilame**, an offence punishable under **section 296** of the Penal Code.
 - b. For causing simple hurt to **Mahakandawatta Arachchilage Manjula**, an offence punishable under **section 315** of the Penal Code.
2. The trial against the Appellant was heard without a jury by a Judge of the High Court. At the conclusion of the trial, the learned High Court Judge found the Appellant guilty on the first count and accordingly sentenced him to death.
3. It is against said conviction and the sentence, the Appellant has preferred the instant appeal. The grounds of appeal advanced by the Appellant are as follows:
 1. The Learned High Court Judge failed to analyze the prosecution case properly and failed to consider the evidence favorable to the defence.
 2. The Learned High Court Judge rejected the defence evidence on a wrong premises and failed to consider the evidence of the Appellant which would suffice to create a reasonable doubt of the prosecution case.
 3. That the prosecution failed to prove the charge of murder against the Appellant beyond reasonable doubt.
4. However, during the argument, the Appellant mainly contended that he had committed the murder of the deceased due to grave and sudden provocation and therefore could not have been convicted under section 296, but should instead have been convicted under Exception 1 to section 294.

5. The prosecution relied on two eyewitnesses, namely H. L. Karunarathne (PW1) and M. M. Manjula Amarasinghe (PW2). PW1 is the brother of the Appellant. According to the evidence of PW1, the incident took place at the residence where the Appellant and his aged father lived. On the day of the incident, as requested by the Appellant, PW1 came to look after their bedridden father. On that day, the deceased, PW2, and one Somarathne also visited the house to see the father of the Appellant and PW1.
6. According to the testimony of PW1, the deceased, PW2 Manjula, and Somarathne were seated and talking to each other. All of a sudden, the Appellant attacked PW2 with a knife, causing PW2 to run away. Thereafter, the Appellant attacked the deceased several times with the same knife, and when the deceased ran outside, the Appellant struck him again, causing the deceased to fall to the ground.
7. PW2, in his evidence, admitted that the deceased was under the influence of liquor at the time of the incident. According to his testimony, the Appellant first attacked him, and as he ran away, he did not see what happened thereafter.
8. PW7 is the Judicial Medical Officer (JMO) who conducted the post-mortem examination of the deceased. In his evidence, the JMO described the nature and extent of the injuries observed on the body of the deceased. According to the JMO, there were twenty injuries in total, of which nineteen were caused by a sharp-cutting weapon. Injuries Nos. 1, 2, and 8 were classified as grievous. In the JMO's opinion, the cause of death was shock and hemorrhage resulting from multiple cut injuries inflicted by a heavy, sharp weapon.
9. The JMO further stated that had the deceased been treated without delay, he could have been saved; however, the cumulative effect of the injuries, when considered in their totality, was highly likely to cause death.
10. Furthermore, the JMO explained the injuries sustained by PW2 Manjula Amarasinghe and stated that Injuries Nos. 1, 3, and 5 were caused by a sharp-cutting weapon.

11. D.S.D. Weerasinghe, ASP of Seethawakapura, testified as PW6. He conducted the investigation into the incident, visited the scene of the crime, and recorded his observations. According to his observations, there were blood patches in the compound of the house as well as in the kitchen. It thus appears that the attack took place inside the kitchen and that the deceased and the injured were present there at the time of the incident.
12. When PW6 visited the scene, the father of the Appellant was present, and due to his age and health condition, particularly being bedridden, the witness was unable to record a statement from him.
13. According to PW6's testimony, the Appellant surrendered himself to the police station, and his statement was recorded by the officer himself. Pursuant to the statement, a knife was recovered in terms of section 27 of the Evidence Ordinance.
14. At the conclusion of the prosecution case, the Appellant made a dock statement and stated that PW2 had struck his father's head against the wall, and therefore he attacked them with a knife.
15. Since it was argued on behalf of the Appellant that the attack was the result of grave and sudden provocation, it is pertinent to examine whether the evidence presented by the prosecution and the defence persuades this Court to conclude that the Appellant acted as a result of such provocation.
16. Evidently, there was no animosity between the deceased and the Appellant. Furthermore, the evidence of PW1 suggests that neither the deceased nor the injured were closely associated with the Appellant or PW1. Although PW1 stated that the deceased and PW2 visited the Appellant's house to see his ailing father, there is little reason for this Court to believe that they in fact came for that purpose, as the evidence shows that they were not on friendly terms and there was no close association between them as claimed by PW1.
17. The evidence of PW1 further indicates that the Appellant's behavior during that period was somewhat abnormal, as he habitually kept the doors closed even

during the daytime. PW1's evidence also reveals that the Appellant was suspicious of everyone.

18. The evidence of PW1 confirms that the appellant personally attended to his bedridden father. PW1 further testified that the appellant was generally suspicious of others and habitually kept the doors closed even during the daytime. Given that no animosity existed between the appellant and the deceased, it is difficult to discern any motive for the appellant to attack the deceased, absent some incident that provoked him to act in such a manner. The evidence of PW1 also confirms that the appellant personally attended to his bedridden father, receiving little or no assistance from others.
19. A close scrutiny of PW1's evidence reveals that the appellant was distressed by the conduct of the deceased and PW2 towards his father shortly before the incident. PW1 further deposed that, immediately prior to attacking PW2 and the deceased with a knife, the appellant inquired as to what they were doing to his father.
20. The learned High Court Judge appears to have given insufficient attention to this evidence. Had it been considered in conjunction with the dock statement, it would have been evident that some doubt existed regarding the prosecution's version of the manner in which the appellant attacked the deceased and PW2. In that context, it is my considered view that the dock statement raises a reasonable doubt, and accordingly, the benefit of such doubt should be extended to the appellant. In his dock statement, the appellant maintained that he attacked PW2 with the knife in response to certain offensive remarks directed at his father.
21. The next question for consideration is whether the conduct of the deceased and PW2 was sufficient to provoke the appellant. In ***Chuti V The Attorney General [2003] 2 Sri LR 271***, it was held:
 1. *Mere abuse even unaccompanied by any physical act-may be in certain circumstances regarded as sufficient provocation.*
 2. *When considering a prosecution for murder whether the accused was deprived of self control by grave and sudden provocation, the jury must apply an objective test. It must be considered objectively in relation to the class of society to which the accused belongs.*

22. As noted, the appellant personally attended to his ailing and bedridden father, led an isolated life, and had no support from others. It is evident that the appellant had inquired what they were doing to his father just seconds before he attacked the deceased and PW2. These circumstances, taken together, indicate that the appellant may have been provoked under the circumstances immediately preceding the incident.
23. In the landmark case of ***K.M. Nanavati v. State of Maharashtra (AIR 1962 SC 605)***, the Supreme Court of India established an objective test for "grave and sudden provocation" to determine if a murder charge should be reduced to culpable homicide not amounting to murder. The court's criteria are that the provocation must be both grave and sudden, the fatal act must be a direct result of the loss of self-control, there should be a short interval between the provocation and the act to exclude premeditation, and in certain circumstances, words and gestures can be considered provocation.
24. In ***Muthu v. State of Tamil Nadu (2007) 12 SCC 514***, the Supreme Court of India reduced the conviction from murder (Section 302 IPC) to culpable homicide not amounting to murder (Section 304 Part II IPC). The court found that the killing occurred during a sudden quarrel and in the heat of passion, without premeditation, and applied Exception 4 of Section 300 IPC, sentencing the appellant to five years' simple imprisonment.
25. The defence put forward by the appellant at the trial was that he had attacked the deceased and PW2 as a result of grave and sudden provocation. However, the learned Trial Judge, in his judgment, has merely observed that no evidence was forthcoming from any of the prosecution witnesses in support of the defence of grave and sudden provocation.
26. It is pertinent to emphasize that, according to the observations made by ASP D. S. D. Weerasingha at the scene of the crime, the attack had initially taken place inside the kitchen. He testified as follows:

ප්‍ර : ඊට අමතරව යම් දෙයක් නිරීක්ෂණය වුනාද මේ මුලුතැන් ගේ ඇතුලේ ?
 උ : ඊට අමතරව මේ පහරදීම සිදු මුල් අවස්ථාවේදී නිරීක්ෂණය වුනා සිමෙන්ති පොළොව මත ලේ කිහිපයක් තිබෙනවා.

භූ : මේ ලේ පැල්ලම් පිහිටා තිබුණේ කොතනද මුලුතැන්ගේ ?
 උ : මුලුතැන්ගේ මැද හරියේ සිමෙන්ති පොළොවේ මත, මම එම ස්ථානය
 මගේ නිරීක්ෂණය සටහන් එක්ස් වශයෙන් සලකුණු කර තිබෙනවා.

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27. The foregoing observations cast doubt on the accuracy of the testimony of PW1, who stated in his evidence that the deceased was attacked while they were conversing near the bed where his father was lying, and that after receiving the blows, the deceased went outside and was again attacked on the pavement. If that were the case, bloodstains could not have been observed inside the kitchen.
28. If that were the case, it is pertinent to consider what prompted the deceased or PW2 to proceed to the kitchen. The learned High Court Judge has failed to accord due consideration to this glaring discrepancy between the evidence of PW1 and the observation made by PW6. The totality of the foregoing evidence, when carefully analyzed and evaluated, undoubtedly leads to the inference that there is an element of truth in the dock statement. Consequently, the dock statement cannot be disregarded in its entirety. The resultant position is that the dock statement lends support to the appellant's version to the extent that he acted under grave and sudden provocation.
29. Counsel for the appellant contended that the case against the appellant should have been considered in light of the plea of grave and sudden provocation, and therefore, the appellant ought to have been convicted not of murder but of culpable homicide not amounting to murder under Section 297 of the Penal Code.
30. 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".
31. In the present case, it is evident that the attack took place suddenly, without any premeditation. Moreover, no evidence has been produced to establish the

existence of any animosity between the deceased and the appellant. As evidenced from the testimony of PW1, moments before the attack, the appellant had asked what they were doing to his father. It is also evident that the appellant was looking after his ailing, bedridden father. According to the evidence of PW1, the appellant had felt very tired and had asked PW1 to help his father on that day. In such a situation, if the deceased or PW2 had done something, even if very trivial, it may have given rise to sudden provocation.

32. When this piece of evidence is taken into account in conjunction with the dock statement of the appellant, it can be reasonably inferred that the appellant acted under grave and sudden provocation.
33. Apparently, PW1 was not effectively cross-examined by the defence counsel to elicit evidence regarding what transpired immediately before the attack. The appellant was indicted under Section 296 of the Penal Code, which prescribes the punishment of death. When it is axiomatic that there was no animosity or motive, and the appellant has taken the position that he acted under grave and sudden provocation, it becomes the duty of the trial judge to carefully examine the evidence relating to the appellant's version. When it is discernible from the prosecution's evidence that the appellant attacked without any motive or animosity, and the conduct of the deceased and PW2 was indicative of creating some displeasure in the mind of the appellant, in my view, the dock statement of the appellant cannot be lightly disregarded.
34. It is also pertinent to emphasize that a mere omission on the part of counsel to elicit relevant evidence from a witness should not be permitted to defeat the ends of justice. The duty of the Court is to evaluate the totality of the evidence placed before it, and if it is apparent that the alleged offence was committed under grave and sudden provocation and without premeditation, such omission cannot be allowed to operate to the prejudice of the appellant.
35. Therefore, taking into consideration the evidence in its totality, particularly the circumstances that led to the incident, the suddenness of the act, and the absence of any premeditation, I am of the view that the appellant's act would more appropriately fall within the ambit of Exception 1 to Section 294 of the Penal

Code, namely, culpable homicide not amounting to murder committed under grave and sudden provocation.

36. Accordingly, I set aside the conviction and sentence under Section 296 of the Penal Code and substitute it with a conviction under Section 297 of the Penal Code.

37. In the circumstances, I sentence the appellant to 12 years of rigorous imprisonment. The appellant is also imposed a fine of Rs. 25,000, with a default sentence of one year's rigorous imprisonment. The term of imprisonment shall run from the date of conviction, i.e., 15.02.2022.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree,

Judge of the Court of Appeal