

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

In the matter of an application for Special
Leave to Appeal from the Order dated
14.09.2022 made in The Court of Appeal of
the Democratic Socialist Republic of Sri
Lanka Case No. CA/HCC/424/2019.

Supreme Court Leave to Appeal

Application No: SC/SPL/LA/280/2022

In the matter of an Appeal under Section
331 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.

Court of Appeal

Case No: CA/HCC/424/2019

The Democratic Socialist Republic of
Sri Lanka

Complainant.

SC.SPL.LA. 280/22

-Vs-

Alagar Arshakumar

Accused.

-Vs-

Hon. Attorney General,

Attorney General's

Colombo 12.

Complainant- Respondent.

AND NOW BETWEEN

Alagar Arshakumar

Welikada Prison,

Colombo 08.

Accused- Appellant-
Petitioner.

-Vs-

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Complainant-Respondent-
Respondent

BEFORE : E.A.G.R. AMARASEKERA, J.,
YASANTHA KODAGODA, PC, J.,
ARJUNA OBEYESEKERE, J.,

COUNSEL : Iresh Seneviratne, Yuwin Mathugama instructed by Ms.
Oshadhi Fernando for the Appellant.
Wasantha Perera , DSG for the Respondent.

ARGUED &

DECIDED : 31. 08.2023

Judgment

Yasantha Kodagoda, PC, J

Heard learned counsel for the Appellant and learned Deputy Solicitor General for the Hon. Attorney General.

The Appellant stood indicted for having on 14th December 2009 in Maradana committed the Murder of one Hewagamage Thilakaratne, and for having caused hurt to one A.H.M. Thamara Kumari. The High Court convicted the Accused-Appellant for having committed both offences. The Court of Appeal affirmed the conviction and sentence.

The Incident:

The Appellant worked in a small boutique which was a restaurant situated in Maradana, and the deceased being the proprietor of the restaurant slept in the rear of that place along with his wife (injured victim). The evidence reveal that the Appellant was an employee of the deceased and the deceased had not being regularly paying the Appellant his wages. During the evening of the day of the incident, having booked a bus journey to proceed home on a bus which was due to depart at 12 midnight that day, the Appellant had returned to his place of employment to obtain his wages from his employer (the deceased). Around mid night, he appears to have woken- up the deceased, and asked for his wages. The deceased had refused pay the wages due to the Appellant. It is the Accused's evidence under oath (which testimony has not been successfully impeached by the prosecution), that an argument ensued, and the deceased slapped him. The Accused got angry and had retaliated by stabbing and cutting the deceased with the aid of a knife used for cooking, which had been nearby along with other cooking utensils. This incident had occurred at about 1.30am, and by that time the accused had missed the bus in which he was due to go home.

Circumstances taken into consideration:

1. The deceased has sustained 11 cut injuries and 8 stab injuries, of which four had been fatal, and one had been necessarily fatal. It appears that the Appellant had within a brief moment of time acted in a rage and inflicted all these injuries on the deceased. This is clearly reflective of the accused having lost self-control.
2. During the course of this incident, the accused had sustained 8 injuries, the infliction of which has not been explained as part of the

prosecution's narrative of evidence. The wife of the deceased who claimed to be an eyewitness does not explain how the accused sustained injuries.

3. There is no evidence that the Appellant had from outside brought into the scene of the incident the knife that was used to inflict the fatal injuries, or that he had previously surreptitiously kept the knife at the location of the scene so that he could use it subsequently to inflict injury on the deceased. This shows that the Appellant who had got angry sequel to the deceased refusing to pay his wages and thereafter slapping him, quite spontaneously took the knife which was nearby and stabbed the deceased.
4. The accused is an uneducated, unskilled labourer from the lower strata of society. His susceptibility to provocation would have been quite high. Furthermore, there is no evidence of premeditation of committing murder.

All these items suggest unequivocally to the accused having been provoked by the deceased, and having lost control of himself and got into a rage and attacked the deceased.

Finding:

In view of the above circumstances, this Court concludes that the accused had been suddenly and gravely provoked by the deceased, at the time he attacked the deceased.

In the circumstances, this Court while answering the two questions of law in the affirmative, arrives at the conclusion that the conduct of the Accused- Appellant comes within the purview of exception 1 to

section 294 of the Penal Code and that the infliction of injury on the deceased by the accused had been at a time when the Appellant was deprived of the power self-control due to grave and sudden provocation, and thereby he caused the death of the person who gave such provocation. I have considered and concluded that none of the provisos of the 1st exception would be applicable to this case.

It is unfortunate that the Appellant's case had not been presented before the Court of Appeal in a manner that would have enabled that Court to have considered his culpability from the perspective of the 1st exception to section 294. Had it been done, in all probability, the Court of Appeal would have also arrived at this same finding.

In the circumstances, this Court vacates and sets aside the impugned judgment of the Court of Appeal dated 14.09.2022 and the Judgment of the High Court dated 25.07.2019 and substitute therefor a verdict of culpable homicide not amounting to murder on the basis of the 1st exception to section 294. Accordingly, a sentence of 20 years imprisonment (which sentence shall operate from the date of the original conviction imposed by the High Court) is imposed on the Appellant.

The conviction and the sentence with regard to the 2nd count to shall remain the same.

Accordingly, this Appeal is partly allowed.

This Court wishes to take of this opportunity to appreciate the highly professional, thorough and persistent manner in which learned

counsel for the Appellant pursued this appeal on behalf of his client. This Court also wishes to place on record its appreciation of the submissions that were made by learned Deputy Solicitor General in his capacity as an officer of this Court and as representative counsel for the Hon. Attorney General. He placed before this Court the true facts of this case in a fair manner, and assisted Court in the dispensation of justice. His conduct is in line with the traditions and the ethical standards of true officers of the Attorney General's Department.

JUDGE OF THE SUPREME COURT.

E.A.G.R. AMARASEKERA, J.,

I agree

JUDGE OF THE SUPREME COURT.

ARJUNA OBEYESEKERE, J.,

I agree

JUDGE OF THE SUPREME COURT.

AG/-