

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

**In the matter of an appeal in terms of
Article 13(8) of the Constitution of the
Democratic Socialist Republic of Sri
Lanka and in terms of section 331 of
the Code of Criminal Procedure Act
No. 15 of 1979.**

Democratic Socialist Republic of Sri
Lanka

Complainant

Court of Appeal
Case No. **CA HCC 0248/2023**

Vs.

High Court of Matale
Case No. **HC 112/07**

Ramaiya Kirishandan,
Dumbara Prison,
Pallekele

Accused

AND NOW BETWEEN

Ramaiya Kirishandan,
Dumbara Prison,
Pallekele

Accused-Appellant

Vs.

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

Complainant-Respondent

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

Counsel: Sri Lal Dandeniya, AAL, for the Accused-Appellant.

 Janaka Bandara, D.S.G. for the Respondent.

Argued on: 22.01.2026

Judgment on: 16.02.2026

JUDGMENT

AMAL RANARAJA, J.

1. The Accused-Appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Matale* in High Court case number HC 112/07.

2. The charges in the indictment are as follows;

Charge 01

That on or about July 16, 2003, at *Matale*, within the jurisdiction of this Court, the appellant did commit the murder of one *Krishandan Devayani*, and thereby committed an offence punishable under section 296 of the Penal Code.

Charge 02

During the same course of transaction as above, the appellant did commit the murder of one *Krishandan Divyana* and thereby committed an offence punishable under section 296 of the Penal Code.

3. At the conclusion of the trial, the appellant has been convicted of the charges and sentenced to death.
4. Aggrieved by the conviction, the disputed judgment, together with the sentencing order, the appellant has preferred the instant appeal to this Court.

Case of the prosecution

5. At the time of the incident, the appellant has been a married man and a father of three children. Two of the children have resided with him while the third has lived with the appellant's estranged wife.
6. It has been alleged that the appellant's wife was having an extra marital affair with a man named *Sugath* which was stated as the reason for their separation.
7. On the date of the incident, PW02 the appellant's sister has lived in a line room in the *Western Estate* in *Matale*. The appellant has also resided in a room close to that of PW02's.

8. That night, PW02 has heard someone vomiting from the direction of the appellant's room and has gone to investigate. Upon entering the room, she has observed the two children, who lived with the appellant, seated on the bed and appearing drowsy. The appellant himself has been vomiting in the area the kitchen was situated. When questioned a child has stated that the appellant had prepared tea which the children subsequently drank.
9. Consequently, the appellant has confessed to his sister, i.e. to PW02, that he had given his children a poisonous substance and consumed it himself.
10. Promptly, the group that had gathered at the room of the appellant by that time have ensured that the appellant and his children were hospitalised.
11. The children, identified as the "*deceased*" in the charges have succumbed in hospital. *Dr. K. G. R. V. Pathirana* (PW24) has conducted the post mortem examinations with the reports marked 37-10 and 37-11. *Dr. Pathirana* has concluded that the deaths have resulted from cardiac arrest caused by organophosphate poisoning.

Case of the appellant

12. The appellant has maintained that he did not force the children to ingest a poison. He has claimed that others present in his room may

have given the children various items to consume and that it is plausible that one of these individuals would have inadvertently given them the poisonous substance.

Grounds of appeal

13. When the matter was taken up for argument, the learned Counsel for the appellant did not dispute, the learned High Court Judge's findings of the appellant being guilty. However, the learned Counsel contended that the appellant should be convicted of culpable homicide not amounting to murder and has implored the exception of cumulative provocation in mitigation.

As such, the learned Counsel of the appellant urged the following grounds of appeal;

- i. That the learned High Court Judge has failed to consider that the evidence of attendant circumstances warrant a substitution for the murder, of a conviction of culpable homicide on the basis of continuing and cumulative provocation.
- ii. That the learned High Court Judge has failed to consider the evidence of attended circumstances to reduce the culpability under the principle of the English law

“diminished responsibility” and warrant a substitution for the murder of a conviction of culpable homicide.

Evaluation

14. Cumulative provocation refers to a legal concept where a victim of long term physical or psychological abuse reacts to a final, seemingly minor act of provocation by killing his abuser. Unlike, grave and sudden – provocation, this doctrine recognises that the cumulative effect of prior abuse often can lead to a sudden loss of self-control, warranting a reduction in a charge from murder to culpable homicide not amounting to murder.

15. The legal concept of cumulative provocation in Sri Lanka has developed through judicial interpretation of exception 1 to section 294 of the Penal Code of Sri Lanka, which deals with grave and sudden provocation to reduce murder to culpable homicide not amounting to murder. While the statute emphasises a sudden act, recent superior court jurisprudence has expanded this to include “continuing or cumulative” provocation, recognising that a final, relatively minor act may break a person’s self-control after a long history of abuse or provocation.

16. For easy reference, the text of exception 1 to section 294 of the Penal Code of Sri Lanka is reproduced below;

“Exception 1 - Culpable homicide is not murder if the offender whilst deprived of the power of self- control by grave and sudden provocation, cause the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

Firstly - That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly - That the provocation is not given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant.

Thirdly – that the provocation is not given by anything done in the lawful exercise of the right of private defence.”

17. The legal concept of cumulative provocation addresses a significant challenge to the traditional defence of grave and sudden provocation, particularly in cases involving protracted abuse or harassment.

18. Historically, the law mandated that a loss of self-control due to provocation had to be sudden. This requirement often fails to account for situations where an individual, subjected to a prolonged course of

abuse or demeaning conduct, eventually “snapped” in response to a final, perhaps a minor trigger.

19. The evolution of case law has progressively broadened the interpretation to encompass such scenarios.

(a) In *Premalal vs. Attorney General* [2000] 2 SLR 403, Kulathilaka, J, has held that:

“Until the judgment of Chief Justice H.N.G. Fernando in Samothamby 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”.

Kulathilaka, J, has 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”.

(b) In *Wijesinghe Arachchige Gamini vs. Attorney General*, CA/142/2009 decided on August 30, 2016, M. M. A, Gaffoor, J, has 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”.

(c) In *R.W.Nandana Senarathbandara vs. Attorney General* SC/Appeal/32/2015, decided on July 17,2020, Jayantha Jayasuriya, C.J. has 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”.

20. As per the exception 1 to section 294 of the Penal Code, culpable homicide is not murder when the offender deprived of self-control by provocation also causes the death of a third person by mistake or accident.

21. By ‘mistake’ or by ‘accident’ are largely interchangeable phrases in english, both indicating that an action was unintentional, not planned and often resulted in an unwanted outcome.

22. By mistake implies an error in judgment or action. Whereas, an accident would imply a mishap, an unexpected event, or something that

happened outside one's control. Further, as per the provisions in section 73 of the Penal Code, accident in the doing of a lawful act is a general exception;

“Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner, by lawful means and with proper care and caution”.

23. The learned Counsel on behalf of the appellant has asserted that based on the evidence adduced at the trial, the appellant's wife was involved in an extra marital affair with a person named *Sugath* and was living separately from the appellant. These actions by the person named *Sugath* particularly the breakdown of the marriage of the appellant due to this affair, are argued to have created a persistent and significant source of cumulative provocation for the appellant over an extended period.

24. Adding to this enduring distress on the day of the tragic event and shortly before the charged incident, the person named *Sugath*, has aggressively confronted the appellant on his return from the shop, the person named *Sugath* is alleged to have first spat directly into the appellant's face and subsequently kicked him.

25. This direct physical and emotional assault, it is contended has further inflamed the appellant's already profoundly provoked state. It is as this juncture, in the grip of extreme and compounded provocation, that the appellant is further contended to have caused the death of his daughters by administering poison.

26. It being as stated above, the appellant has caused the death of third persons and not the person who gave the provocation. In those circumstances, it is incumbent on the appellant to establish on a balance of probability, that those deaths were caused by mistake or accident.

27. Testimony also revealed that the appellant has confessed to his sister (PW02) that he made the children named in the charges consume poison after consuming it himself. These circumstances do not stem from a mistake or accident.

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[*vide* page 609 of the Appeal Brief]

28. Accordingly, the appellant is unable to implore the exception of cumulative provocation in mitigation, based on exception 1 to section 294 of the Penal Code.

29. “Diminished responsibility” is a partial defence in criminal law, specifically for murder, allowing an accused to argue that an “abnormality of mind” or “mental impairment” significantly reduce his culpability at the time of the crime. If successful, it reduces a conviction from murder to culpable homicide not amounting to murder. The particular accused must show that he suffered from a recognised mental condition, for example PTSD, severe depression. The mental state must have significantly affected the accused’s ability to understand his actions to form rationale judgments or exercise self-control.
30. The burden rests on the accused, typically requiring expert psychiatric or psychological evidence.
31. This defence applies when a mental disease or defect exists but it is not severe enough to constitute a full ‘insanity’ defence. However, the appellant has failed to establish that he suffered from the recognised medical condition to significantly reduce his culpability at the time of the offence.
32. In those circumstances the contention that the learned High Court Judge has failed to consider the evidence, attendant circumstances to reduce the culpability of the appellant under the, english law doctrine of ‘diminished responsibility’ must fail.

33. Due to the circumstances referred to above, I am not inclined to interfere with the conviction and the disputed judgment, together with the sentencing order and proceed to affirm the same.

34. I dismiss the appeal. However, make no order regarding costs.

Appeal dismissed.

35. The Registrar of this Court is directed to send a copy of this judgment to the *High Court of Matale* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree,

Judge of the Court of Appeal