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

In the matter of an Appeal made under 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.

**Court of Appeal No:**
**CA/HCC/0117/2024**

**High Court of Gampaha**
**Case No. HC/20/2005**

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

**COMPLAINANAT**

**Vs.**

Abeywickrama Dissanayaka Piyadasa

**ACCUSED**

**NOW AND BETWEEN**

Abeywickrama Dissanayaka Piyadasa

**ACCUSED-APPELLANT**

**Vs.**

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

**COMPLAINANT-RESPONDENT**

| | | |
|---|---|---|
| **BEFORE** | : | **P. Kumararatnam, J.**<br>**R.P.Hettiarachchi, J.** |
| **COUNSEL** | : | **Sarath Jayamanne, PC with Asith Siriwardana, Vineshka Mendis, Prashan Wickramaratne, Dakshin Abeykoon, Dinindu Ratnayake and C.Widushika for Appellant.**<br>**Hiranjan Peiris, ASG for the Respondent.** |
| **ARGUED ON** | : | **28/07/2025** |
| **DECIDED ON** | : | **01/09/2025** |

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**JUDGMENT**

**P. Kumararatnam, J.**

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General for committing the murder of Hapuarachchige Jayasena on 30.07.2003 which is an offence punishable under Section 296 of the Penal Code.

As the Accused had opted for a non-jury trial, the trial commenced before a judge and the prosecution had led 08 witnesses and marked productions P1 to P5, and X1 and closed the case. The learned High Court Judge being satisfied that the evidence presented by the prosecution warrants a case to be answered, called for the defence and explained the rights of the accused.

The Appellant had made a dock statement and closed his case.

After considering the evidence presented by both sides, the learned High Court Judge had found the Appellant guilty under Section 297 of the Penal Code and sentenced him for 14 years of rigorous imprisonment with a fine of Rs.30,000/ and with a default sentence of 12 months rigorous imprisonment.

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

The learned President's Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence. At the time of argument, the Appellant was connected via zoom from prison.

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

In this case, the Appellant and the deceased were employed as security officers by the management of the Dikkanda Estate situated in the jurisdiction of the Gampaha High Court. On the date of the incident the Appellant was on duty and the deceased was off duty and resting at the house allocated inside the estate. PW1 was the chief security officer under whom the Appellant and the deceased worked.

On the date of the incident, at around 1 a.m. PW1 had received a phone call from the Appellant stating that he had stabbed the deceased. The Appellant had further told PW1 that he had no choice as the deceased was spreading rumour about him and as a result, he could not face the society. It transpired

during the said period that the Appellant was having an extra marital relationship with a woman.

Thereafter, the Appellant had gone to meet PW2 and requested a three-wheeler to go to a nearby hotel where his paramour was staying. He had confessed to PW2 that he had stabbed the deceased. After meeting her, when he returned to Dikkanda Estate, PW1 had arrived and both had gone to the police station. At the police station the Appellant was arrested and his statement was recorded.

The evidence revealed that a dispute had subsisted between the deceased and the Appellant as the deceased had spread the rumour about the Appellant's illicit affair. This misunderstanding had been the cause of the incident which culminated in the murder of the deceased.

At the trial PW1, PW2, PW5, PW11, PW14, PW15 and PW17 had given evidence. PW6 had died before he could give evidence in the High Court. Hence, his evidence was marked under Section 33 of the Evidence Ordinance by the prosecution.

According to the Appellant he had stabbed the deceased when he was struck by someone from his behind. It is not contradicted that he made confessions to PW1 and PW2 that he had stabbed the deceased due to sudden anger as the deceased had spread the rumour about his misdeed.

The learned President's Counsel submitted to this court that he is only contesting the sentence, as the given circumstances of the case does not warrant the imposition of a long custodial sentence.

The evidence led by the prosecution revealed that the Appellant was constantly provoked by the deceased for some time, which had gone to the extent of affecting the family life of the Appellant which consisted of his wife and his 06 school going children. This has continuously provoked the Appellant and due to shame and stress he had been made unable to face the society.

The learned President's Counsel who appeared for the Appellant strenuously argued that this is a fit and proper case to be considered under Section 297 of the Penal Code on the basis of provocation and sudden fight. Although the learned High Court Judge had convicted the Appellant under Section 297 of the Penal Code, the judgment does not reveal that the learned High Court Judge had considered the exception to Section 294 of the Penal Code.

**The exception 1 to Section 294 (Murder) of the Penal Code states as follows:**

> 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 above exception is subject to the following provisos:-
>
> 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.
>
> Explanation
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> Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

As stated above, due to the deceased spreading rumours about the Appellant's extramarital affair and that long-standing dispute had

cumulatively provoked the Appellant which ended up in the murder of the deceased.

Considering the evidence presented by both parties, there was ample evidence available to affirm provocation due to the deceased's behaviour. But this had completely escaped the consideration of the learned High Court Judge.

Section 105 of the Evidence Ordinance states;

> When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

In **R. W. M. Nandana Senarathbandara v Attorney General** SC Appeal 32/2015, SC minute dated 17.07.2020, the court 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 recognised in its statutory form. Thereby, the concept of 'Continuing' or 'Cumulative' provocation has been recognised 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"*

In **Premalal v AG** [2000] 2 SLR 403, the court held that:

*"Each case must depend upon its own facts and circumstances. In the present case, my view is that, in judging the conduct of the accused, one must not confine himself to the actual moment when the bow, which ultimately proved to be fatal, was struck, that is to say, one must not take into consideration only the event which took place immediately before the fatal blow was struck. We must take into consideration the previous conduct of the woman. Her evil ways were the common scandal of the village and must have been known to the husband, causing him extreme mental agony, shame and humiliation."*

The evidence clearly shows that the deceased had provoked the Appellant by spreading rumours. Being provoked, the Appellant had lost his self-control and inflicted injuries to the deceased. Therefore, the learned High Court had very correctly held the Appellant responsible under Section 297 of the Penal Code.

The learned President's Counsel submitted to Court that although the learned High Court Judge had correctly held the Appellant responsible under Section 297 of the Penal Code, she had failed to consider the mitigatory factors in favour of the Appellant when she passed the sentence.

The Appellant, had confessed after the incident to the prosecution witnesses that he had committed the offence due to grave and sudden provocation without any pre-planning but on the spur of the moment. Further, he had not absconded after the incident and had directly gone to the police station

with PW1 to inform the incident and had further showed the knife which was used to lacerate the deceased, to the police following his arrest.

Section 8(2) of the evidence Ordinance states:

> "The conduct of any party, or of any agent to any party, to any suit or proceeding in reference to such suit or proceeding or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent therein."

In the case of **Chandrakant Ganpat Sovitkar Vs. State of Maharastra** in (1975) 3 SCC 16 the court held:

> *"When Court takes into account the conduct of an accused, his conduct must be looked at in its entirety."*

Next the learned President's Counsel contended that the conviction against the Appellant was entered only after 21 years of the incident. As such, he has been carrying the mental agony of the instant incident on his shoulders for nearly 21 years. At present the Appellant is 72 years of age and unlikely to commit any offence if he re-enters the society.

It is trite law, when a long delay has occurred in passing the judgment from the date of offence, without any lapse on the part of the Appellant, then it should be considered in favour of the Appellant. The learned President's Counsel for the Appellant submits that the learned High Court Judge has failed to consider this when she passed the sentence on the Appellant.

In **Anura Herath v CIABOC** CA-HCC 0089-090/18 dated 05.07.2023 the court held:

> *"In this matter we observe that the incident had taken place in 2013 and the trial had concluded in 2018. Therefore, from the date of incident 10 years have lapsed. This Court also notes that if the remorsefulness expressed by the Accused –Appellants at this stage had been expressed at the time when the trial was taken up, the long process of a trial could have been avoided and it would have saved the time of the Judge, the Counsel and all parties. Nevertheless, having considered submissions of all parties, this Court is of the view that since both the Accused –Appellants are first time offenders and the time duration, since the date of offence and the conclusion of the trial that the sentences imposed on the Accused – Appellants should be reviewed."*

In **AG v Devapriya Walgamage and Others** [1990] 2 SLR 212 the court held:

> *"A term of imprisonment is not warranted because, thirteen years has lapsed since the commission of the offence, the accused will lose his employment and related benefits, a substantial fine has been imposed which would meet the ends of justice."*

While PW1 was giving evidence, on 27.07.2011 the Appellant expressing remorse wanted to conclude the case early, but the trial dragged on and only concluded on 05.01.2024. Had the prosecution taken up a progressive approach after considering the evidence available, it could have saved the valuable time of the court as well as all the parties.

Finally, the learned President's Counsel submitted to this court that when the sentence was passed, the Appellant was 72 years of age which is two years less comparing to the World Health Organization Data on life

expectancy of a male in Sri Lanka. Although this was brought to the notice of the court during the mitigation submission, the learned High Court Judge has not given due attention to it when she passed the 14 years sentence on the Appellant.

In **Illakotulena Gamaralalage Thilakerathna v The Attorney General SC Appeal No. 173/2017** the Supreme Court held:

> *"Consideration of aggravating or mitigatory circumstances generally, has relevance to the assessment of the seriousness of the offence. The appropriate effect on such consideration in sentence would depend on the circumstances of each case, in which the Court can take note of any factor it considers to aggravate or mitigate the imposed sentence. As such, the consideration of proportionality of the sentence to the gravity of the convicted offence, must be well reasoned.*
>
> "*As held in the case of* ***Alister Anthoney Pereira vs. State of Maharashta***[1]*, Sentencing policy is an important task in the matters of crime. One of the prime objectives of criminal law is imposition of appropriate adequate just and proportionate sentence commenced with the nature and gravity of the crime and the manner in which the crime is done. There is no straight-jacket formula for 4 [2021] 3 SLR 323 5 78 NLR 413 6 [1995] 1 SLR 138 7 [2012] AIR 3820 (SC) 9 sentencing an accused on proof of crime. The courts have evolved certain principles: Twin objectives of sentencing policy is deterrence and correction what sentence would meet the ends of Justice depends on the fact and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offense and all other attendant circumstances. The principle of proportionality in sentencing is a crime duo is well entrenched in criminal jurisprudence. As a matter of law proportion between crime and*

[1] [2012] AIR 3820 (SC)

*punishment bears mostly relevant influence in determination of sentencing the crime to a full stop the court has to take into consideration all aspects including social interest and consciousness of the Society for award of appropriate sentence."*

Considering the facts of the case and the submissions made by both counsels I conclude that this is not an appropriate case in which to order a long custodial sentence against the Appellant.

Therefore, I set aside the sentence of 14 years rigorous imprisonment imposed on the Appellant by the learned High Court Judge of Gampaha and substitute a sentence of four years rigorous imprisonment operative from the date of sentence which is 05.01.2024. The fine imposed by the High Court will remain unchanged. Considering all the circumstances of the case, I order a compensation of Rs.200,000/- payable to the deceased's family, with a default sentence of 6 months simple imprisonment.

Subject to above variation, the appeal is hereby dismissed.

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

**JUDGE OF THE COURT OF APPEAL**

**R. P. Hettiarachchi, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**