

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

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

Vs

Rajapakshage Lal Ranjan

Accused

AND NOW BETWEEN

Rajapakshage Lal Ranjan

Accused – Appellant

Vs

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

Complainant – Respondent

Court of Appeal Case No:

CA/HCC/0015/2022

High Court of Tangalle

Case No: **HC 05/2009**

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

Counsel : Migara Gunaratna for the Accused-Appellant.
Anoopa de Silva, D.S.G, for the State.

Argued on : 09.12.2025

Decided on : 06.03.2026

Pradeep Hettiarachchi, J

Judgment

1. In this appeal, the accused-appellant (hereinafter referred to as “the appellant”) challenges only the sentence imposed upon him. The appellant was indicted before the High Court of Tangalle on a charge of committing the murder of Kattadige Saindara, an offence punishable under Section 296 of the Penal Code. Following a trial conducted without a jury, the learned High Court Judge found the appellant guilty and accordingly convicted him and sentenced him to death.
2. In the present appeal, the appellant contends that the circumstances under which the death of the deceased occurred warrant consideration of the Exceptions enumerated in Section 294 of the Penal Code, and that his conviction ought therefore to be reduced to culpable homicide not amounting to murder. The appellant places particular reliance on Exception 4 to Section 294 of the Penal Code.
3. In the present case, the deceased was a 70-year-old woman and a neighbour of the appellant. On the day of the incident, the appellant went to the residence where the deceased was living in search of his wife. Upon calling out for his wife, the deceased came out and informed the appellant that she was not present. Immediately thereafter, the appellant assaulted the deceased with a club. As a result of the blow to the head, the deceased fell to the ground and died on the spot. The appellant thereafter attempted to assault the other occupants of the house, who managed to escape.
4. The appellant now contends that the incident occurred under grave and sudden provocation without premeditation and that he is therefore entitled to the benefit of Exception 1 to Section 294 of the Penal Code. However, Exception 1 applies only

where the offender is deprived of the power of self-control by grave and sudden provocation.

5. In view of the said argument, it becomes necessary to examine whether the evidence adduced at the trial indicates that the act in question was committed under grave and sudden provocation, without premeditation, and without the appellant having taken undue advantage.
6. In determining this issue, the testimony of PW4 assumes considerable importance. PW4, Ruwan Udayakumara, was the sole eyewitness who testified on behalf of the prosecution. According to the evidence of PW4, the deceased was his paternal grandmother. On the day of the incident, she was residing at their ancestral home. PW4's father had gone to Colombo at the time. The other occupants of the house were PW4's mother, brother, sister, and the deceased.
7. PW4 testified that while they were watching television at night, the appellant arrived at the house and inquired whether his wife was present. At that moment, the deceased came out and informed the appellant that his wife was not there. As she turned and proceeded back into the house, the appellant struck her at the main doorway with a wooden club. The appellant was armed with a wooden pole at the time.
8. The witness further stated that the blow was directed at the head of the deceased, causing her to fall to the ground. During the incident, PW4's mother also sustained an injury to her hand when she was struck by the appellant. Thereafter, all of them fled through the rear door, as the appellant attempted to assault them as well.
9. It is significant to note that the appellant does not dispute the fact that he struck the deceased with a wooden club, resulting in her death. The appellant's contention is that the act occurred under grave and sudden provocation, as he was allegedly provoked when the deceased responded negatively while inquiring about the whereabouts of his wife.
10. However, the evidence adduced at the trial does not support the appellant's claim of acting under sudden provocation. PW4's testimony indicates that the appellant came armed with a wooden club, targeted the deceased deliberately, and struck her in the

head. The act was neither a momentary loss of self-control nor a spontaneous reaction; rather, it reflects a degree of deliberation.

11. After about 10 minutes he returned to the scene and found that the grandmother was dead. On the following day the witness made a statement to the police. As stated earlier, the appellant never contested the hitting of the deceased with a wooden club. What the appellant argued is that this happened under grave sudden and provocation as when the deceased had come looking for his wife and when the deceased responded him in the negative, he attacked the deceased under grave and sudden provocation.
12. At the conclusion of the prosecution case, the appellant made a dock statement denying his involvement to the crime. Furthermore, the defense also summoned the police officer, Jayatunga, who arrested the appellant, to testify. However, his evidence did not corroborate the appellant's claim that the killing occurred in the heat of grave and sudden provocation. Rather, it established that the appellant was apprehended after the incident without any indication of immediate threat or retaliation, reinforcing the view that the act was intentional and not a momentary lapse of self-control.
13. What is discernible from the proceedings of the High Court is that, the appellant did not expressly invoke any of the exceptions enumerated in Section 294 of the Penal Code as a defence. Nevertheless, it is trite law that where the evidence led by the prosecution itself discloses circumstances which may bring the impugned act within the ambit of any of the said exceptions, the Court is duty bound to consider the applicability of such exceptions when evaluating the evidence, notwithstanding the absence of an express plea by the accused. In this regard, following authorities provide much guidance.
14. In the Indian case of ***Munshi Ram and Others Vs. Delhi Administration (1968) AIR 702***, Hegde, J. held that,

“It is well settled that even if an accused does not plead self defence, it is open for the court to consider such a plea if the same arises from material on record. See In Re- Jogali Bhaige Naiks and Another A.I.R. 1927 Mad.97. The burden of establishing that plea is on the accused and that burden can be discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record.”

15. In this regard observations made by Justice Sisira De Abrew in the case of **Gamini Vs. Attorney General [2011] 1 Sri.L.R. 236** would be of much relevance. He observed that:

1) *Though the accused-appellant in his defence did not take up the defence of grave and sudden provocation, the trial judge must consider such a plea in favour of the accused- appellant if it emanates from the evidence of the prosecution.*

2) *Failure on the part of the petitioner or his Counsel to take up a certain line of defence, does not relieve a judge of the responsibility of putting to the jury such defence if it arises on the evidence*

16. It is well settled that for a Court to consider the applicability of grave and sudden provocation under Exception 1 of Section 294 of the Penal Code, there must be material on record, emanating either from the prosecution or the defence, which reasonably supports such a contention. In the absence of such evidence, a trial court is not entitled to speculate or infer provocation.

17. As the appellant contends that the killing occurred under grave and sudden provocation, it becomes necessary to examine Exception 1 to Section 294 of the Penal Code.

Exception 1. 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

Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

18. The key elements to be considered under this exception are:

1. **Grave and sudden provocation** – There must be a provocation of such a nature that it would deprive an ordinary person of self-control.
2. **Absence of premeditation** – The act must be spontaneous; there should be no prior planning or calculated intent to kill.
3. **No undue advantage taken** – The offender should not exploit the situation to inflict harm beyond what the provocation would justify.

19. In the present case, it is necessary to determine whether the evidence, particularly the eyewitness testimony of PW4, indicates that the appellant acted under these circumstances, or whether the attack was deliberate and targeted, negating the applicability of Exception 1.

20. The evidence of Dr. Sudath de Silva, who conducted the post-mortem of the deceased, is also of considerable relevance in determining the culpability of the appellant. According to Dr. Sudath's observations and opinion, the deceased sustained two head injuries, one of which was necessarily fatal, as it involved a fracture of the skull and damage to the brain. Dr. Silva further stated that the injuries were likely caused by a heavy blunt weapon. When the club marked as "P" was shown to him, he opined that the injuries could have resulted from trauma inflicted by that club.

21. On a careful consideration of the evidence, particularly the testimony of PW4, it is evident that the act committed by the appellant cannot be reasonably classified as occurring under grave and sudden provocation. PW4's evidence clearly indicates that the appellant arrived at the deceased's residence armed with a wooden pole and intentionally inquired about his wife's whereabouts. Upon receiving a negative response from the deceased, the appellant immediately struck her on the head with a

wooden club, causing her to fall to the ground. The assault was not a spontaneous reaction to sudden provocation but rather a deliberate act carried out in the presence of multiple household members.

22. It is also pertinent to observe that no evidence was forthcoming from any witness to indicate that the deceased had entered into an argument with the appellant, or had responded to him in an aggressive manner when he inquired about his wife, in a manner sufficient to deprive him of self-control and provoke the attack.
23. On every count, this case is nothing but one of murder. The nature of the weapon used; the fact that the appellant came to the deceased's house armed with a club; the number of blows inflicted on the deceased; the part of the body at which those blows were directed; and the degree of force used by the appellant, all point to the conclusion that the appellant was determined to kill the deceased.
24. The evidence clearly indicates that the appellant arrived at the scene armed with a wooden club, demonstrating prior preparation. This circumstance strongly suggests that he had come with a preconceived intention to cause fatal harm to his wife. When he was informed that his wife was not present, he redirected his aggression towards the deceased. In effect, the appellant, having come to the residence with a murderous intent, transferred that intent to the deceased and inflicted the fatal blow.
25. What emerges from the totality of the evidence is that the appellant's conduct was neither spontaneous nor accidental, but deliberate and purposeful. His arrival while armed, the immediate assault upon the deceased when his objective was frustrated, and the severity of the injuries inflicted clearly establish that he acted with the requisite intention to cause death.
26. The facts of this case also attract the well-established doctrine of *transferred malice*. The evidence demonstrates that the appellant arrived at the residence armed with a wooden club, clearly indicating prior preparation and a pre-existing intention to cause fatal harm to his wife. When he was informed that his wife was not present, he immediately directed his violence towards the deceased.

27. In law, where an accused person, possessing the requisite intention to kill or cause fatal injury to one person, instead causes the death of another, the intention is deemed to be transferred to the actual victim. The culpability remains unaffected merely because the intended target was not the person who ultimately suffered the fatal consequence. The mental element accompanying the original intent follows the act.
28. ***R v Latimer (1886) 17 QBD 359*** is a foundational English criminal law case establishing the doctrine of "[transferred malice](#)." The court held that if a defendant intends to harm one person but accidentally harms another, their *mens rea* (intent) transfers to the actual victim, making them liable for the unintended injury.
29. **Gyanendra Kumar v. State of U.P., AIR 1972 SC 502** This case established a foundational principle for the doctrine of transfer of malice under Section 301 IPC. The accused's intention to kill the fleeing man was clear, and the unintentional killing of his uncle was treated as murder due to the transferred intent. The court's reasoning emphasized that the accused's *mens rea* (guilty mind) remained intact, regardless of the victim's identity.
30. **Abdul Ise Suleman v. State of Gujarat, 1995 CrLJ 464** This case dealt with a scenario where the accused fired at a group, killing an unintended victim, and the court upheld murder charges under Section 302 read with Section 301 IPC. The ruling rejected arguments of negligence (Section 304A IPC), emphasizing the intent to cause death. In the current judgment, this precedent was cited to demonstrate that acts with intent to cause death, even if resulting in an unintended victim's death, attract murder liability.
31. In the present case, the appellant's conduct in arriving armed, his immediate resort to lethal violence upon being frustrated, and the nature of the injury inflicted on a vulnerable 70-year-old victim, clearly establish the presence of a murderous intention. Even if it were assumed that his primary target was his wife, the intention to kill stands transferred to the deceased whom he actually struck. Accordingly, the ingredients of murder under Section 296 of the Penal Code are fully satisfied.
32. It is true that the prosecution has not established any motive for the killing of the deceased. However, the absence of proof of motive, by itself, would not persuade this Court to reduce or set aside a charge of murder where the attendant circumstances

satisfy the ingredients of Section 294, and where the evidence does not support any other conclusion consistent with grave and sudden provocation.

33. Further, PW4's account demonstrates that the appellant subsequently attempted to attack other occupants of the house, who only narrowly escaped injury by fleeing through the rear door. The use of a weapon, the targeting of multiple persons, and the apparent attempt to continue the assault all indicate premeditation and a deliberate intent to cause harm. There is no evidence to suggest that the appellant acted under sudden passion or without self-control; rather, the act appears calculated and deliberate.
34. In the circumstances, the conditions required for the application of Exception 1 to Section 294 of the Penal Code namely, that the act was committed in the heat of sudden and grave provocation without premeditation or undue advantage are clearly absent. Consequently, the appellant's reliance on this exception cannot be sustained, and there is no basis to alter the conviction for murder to culpable homicide not amounting to murder.
35. As stated earlier, the evidence on record does not disclose any act on the part of the deceased that could amount to grave and sudden provocation. The mere statement by the deceased that the appellant's wife was not present in the house cannot, by any objective standard, be regarded as grave provocation sufficient to deprive an ordinary person of self-control.
36. Furthermore, the circumstances do not disclose the existence of a sudden fight. There is no evidence of any quarrel, exchange of blows, or mutual provocation. The act of the appellant appears to have been unilateral. The use of a club to strike a 70-year-old woman on the head, resulting in instantaneous death, demonstrates a deliberate and forceful assault rather than a reaction born of sudden loss of control. The subsequent attempt to assault other occupants of the house further militates against the theory of momentary provocation.
37. In these circumstances, the essential ingredients required to invoke Exception 1 are clearly absent. The provocation, if any, was neither grave nor sudden, and there is no material to suggest that the appellant was deprived of the power of self-control in the manner contemplated by the law.

38. In ***Attorney-General v John Perera*** 54 NLR 265 the Privy Council observed that

“The defence of provocation may arise where a person does intend to kill or inflict grievous bodily harm but his intention to do so arises from sudden passion involving loss of self control by reason of provocation”.

The Privy Council in the same judgment further held that:

“In order to reduce the crime from murder to manslaughter the offender must show first that he was deprived of self control and secondly that that deprivation was caused by provocation which in the opinion of the jury was both grave and sudden”

39. In ***Mancini v. Director of Public Prosecutions*** 1942 A.C. 1, Viscount Simon observed:

“It is not all provocation that will reduce the crime of murder to manslaughter. Provocation, to have that result, must be such as temporarily deprives the person provoked of the power of self control, as the result of which he commits the unlawful act which causes death. “In deciding the question whether this was or was not the case, regard must be had to the nature of the act by which the offender causes death, to the time which elapsed between the provocation and the act which caused death, to the offender's conduct during that interval, and to all other circumstances tending to show the state of his mind”

40. In ***Vijayakumar v. State Represented by Inspector of Police*** [2025] 1 S.C.R. 869 the Supreme Court of India held:

It is not each and every provocation that will reduce the crime from murder to culpable homicide not amounting to murder. The provocation must be both grave and sudden. In order to invoke the benefit of the exception, it must be established that the act committed by the accused was a simultaneous reaction of grave as well as sudden provocation which deprived him of the power of self-control. If the provocation is grave but not sudden, the accused cannot get the benefit of this exception. Likewise, he cannot invoke the exception where the provocation though sudden is not grave.

41. Having carefully considered the entirety of the evidence and the submissions advanced on behalf of the appellant, this Court finds no legal or factual basis to interfere with the

conviction entered by the learned High Court Judge. The circumstances of the case do not attract the benefit of Exception 1 to Section 294 of the Penal Code, nor do they disclose any mitigating factors sufficient to reduce the offence from murder to culpable homicide not amounting to murder. The assault was deliberate, directed against an elderly and unarmed individual, and resulted in instantaneous death.

42. Accordingly, the appellant is not entitled to the benefit of Exception 1 to Section 294 of the Penal Code, and the conviction for murder under Section 296 cannot be disturbed.

43. In the absence of any misdirection on the part of the learned trial Judge or any mitigating circumstances warranting interference, this Court is of the view that the conviction under Section 296 of the Penal Code is sound in law and supported by the evidence. Accordingly, the appeal against sentence is dismissed, and the conviction and sentence imposed by the High Court are hereby affirmed.

Judge of the Court of Appeal

P. Kumararatnam,J

I agree,

Judge of the Court of Appeal