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

In the matter of an Appeal in terms of Section 331 of the Code of Criminal Procedure Act No. 15 of 1979, as amended, reads with Article 13 of the Constitution and the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

CA-HCC-238/19

HC of Kegalle Case No:

HC 3463/2016

The Democratic Socialist Republic of Sri Lanka

Complainant

Vs.

Pathirannahalage Nimal Weerasinghe

Accused

And Now

Pathirannahalage Nimal Weerasinghe

Accused-Appellant

Vs.

The Hon. Attorney General

Attorney General's department

Colombo 12.

Complainant-Respondent

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

Amal Ranaraja, J

Counsel: Jagath Nanayakkawa for the Accused-Appellant

Maheshika Silva DSG for the Respondents

Argued On: 07.07.2025

Written Submissions: 22.03.2021 (by the Accused-Appellant)
On 11.05.2021 (by the Respondent)

Judgment On: 31.07.2025

JUDGMENT

B. Sasi Mahendran, J.

The Accused-Appellant (hereinafter referred to as 'the Accused') was indicted before the High Court of Kegalle for committing murder of Wijesundara Mudiyanselage Punchi Appuhamy an offence punishable under Section 296 of the Penal Code. After the trial, the learned High Court Judge convicted the accused guilty and the death sentence was imposed.

Being aggrieved by the said conviction and sentence, the Accused had preferred an appeal to this court and submitted the following grounds of appeal:

1. Whether the Learned High Court Judge of Kegalla has failed to give the benefit of the arising doubts to the benefit of the Accused-Appellant?

2. The previous and the post behaviour of the Accused

The prosecution led the evidence through 12 witnesses, and marked productions from P1 to P7 and thereafter closed its case. After the conclusion of the prosecution case, the accused, in his defence, made a dock statement.

The facts and the circumstances are briefly summarised as follows:

According to the testimony of PW 01, Weerakkodi Arachchige Nandawathi, the Accused son-in-law of the deceased, Wijesundara Mudiyanselage Punchi Appuhamy allegedly visited the latter's residence around 14.09.2012, seeking his wife, the youngest daughter of both PW 01 and the deceased. The Accused conversed with the deceased for about half an hour, during which PW 01 moved inside the house. She later overheard the Accused scolding the deceased. He then called the deceased closer, claiming he wanted to share a secret. As the deceased complied, PW 01 witnessed the Accused launch a sudden attack on his neck, inflicting multiple injuries. Out of fear, PW 01 did not intervene immediately. When she tried to stop the assault, the Accused chased her, prompting her to lock the house and run outside to hide. She subsequently contacted her second daughter from a neighbouring residence, requesting immediate assistance.

PW 11, Dr. Solanga Arachchige Don Channa Perera, the Judicial Medical Officer (JMO) who conducted the post-mortem examination, observed 13 incised injuries on the body of the deceased, primarily concentrated on the head, neck, and chest. According to his expert opinion, the injuries were inflicted by a curved instrument through multiple forceful strikes, resulting in extensive bodily harm. His findings aligned with the testimony of PW 01, further corroborating the account of the stabbing.

PW 02, Kithulgala Darmadassi Thero, testified that he encountered the Appellant near the temple's belfry and overheard his conversation on the phone. Upon crossing to the opposite side of the road, PW 02 noticed a crowd gathered near the residence of the

deceased. He then contacted the police. Subsequently, PW 10, Inspector of Police R.A. Roshantha Samarasekara, arrested the Appellant on 14.09.2012 and recorded his statement. According to PW 10's testimony, a cleaver was recovered that night based on information provided by the Appellant. However, PW 01 contradicted this account, stating that the cleaver had been found near a banana tree and was handed over to her by a neighbouring woman employed at a garment factory.

The learned High Court Judge excluded PW 10's evidence on that specific matter. However, the Judge found PW 01's narrative of the stabbing incident to be consistent and credible, deeming it sufficient to support the conviction of the accused.

Upon evaluating the testimony of PW 01, the sole eyewitness to the alleged incident, it is apparent that she consistently maintained her claim of having personally witnessed the occurrence. During cross-examination, defence counsel suggested that she had not actually observed the incident. In response, PW 01 firmly reaffirmed that she had indeed seen the events unfold. Furthermore, she stated that, based on the conduct and manner of speech of the parties involved, she did not observe anything that appeared suspicious prior to the incident.

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ප්‍ර : විත්තිකරු කතා කර කර උනන්නේ තමුන්ගේ පුරුෂයා එක්ක?

උ : එහෙමයි.

ප්‍ර : ඊට පස්සේ තමුන් ගෙට ගිය. ඒ නිසා ඊට පස්සේ වෙච්ච සිද්ධියක් මොනවත් දැක්කේ නැහැ කියලා කියන්නේ විත්තියෙන්?

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ප්‍ර : සාක්ෂිකාරිය ඔබ ඔබගේ ස්වාමිපුරුෂයාට චුදිතයා කොටනවා දැක්කද?

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ප්‍ර : ගේ ඇතුලට ගියාම එළියේ වෙච්චි සිද්ධිය දැක්කද?

උ : ගේ ඇතුලට ගියේ නැහැනේ දොරකඩ හිටියේ බලාගෙන දොරකඩ බලාගෙන හිටියේ ගේ ඇතුලටම ගියේ නැහැ.

ප්‍ර : එතනට ඉන්නවද?

උ : ඉන්නව.

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ප්‍ර : ඔබට මේ පිහිය හඳුනා ගන්න පුලුවන්ද?

උ : පුළුවන්.

ප්‍ර : කොහොමද ඒක හඳුනා ගන්නේ ?

උ : මේ පිහිය තමයි. ඒ කොටන වෙලාවේ මම බලාගෙන සිටියා. මේ මීටත් මෙච්චර විතර තමයි.

PW 01 gave direct testimony that she had observed the Accused stab the deceased. She further stated that the weapon was recovered by a third party following the incident and confirmed that it had been brought to the scene by the Accused himself. Upon careful consideration of her testimony, it is apparent that PW 01 remained consistent throughout cross-examination, and the Learned High Court Judge was justified in concluding that her evidence was both credible and trustworthy.

During the oral submissions, Learned counsel for the Accused submits that the accused should have been convicted of the offence of culpable homicide not amounting a murder based on grave and sudden provocation. It is well-established that when provocation is pleaded, it needs only to be proven on a balance of probabilities. Our courts have consistently held that it is incumbent upon the Accused to demonstrate that, at the time of the incident, provocation did occur such that the Accused was deprived of the power of self-control. Furthermore, a crucial aspect of the doctrine is that the Accused must have caused the death either of the person who provoked him, or of another individual, due to a mistake or accident arising in the heat of passion.

The cumulative provocation is an exception that falls under Exception 01 of 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."

What is a grave and sudden provocation?

Palitha Fernando former AG , PC (Former Attorney-General) in his book *Selected Essays on Criminal Law of Sri Lanka*, page 311 states that:

> "As stated previously, any provocation will not entitle the offender to the protection of the mitigatory plea. It has to be a degree of provocation that would result in a reasonable person loosing his self control. In deciding whether the provocation measures up to that degree, court would have to examine the provocatory words objectively. Even mere verbal abuse, if sufficiently provocative, will attract the protection of the mitigatory plea. However in considering whether the provocation given satisfies the requirement necessary to bring it within the exception, court should necessarily consider the education and social standing of the offender. Thus the test used for the purpose is the test of a reasonable average man of the same social back ground and education of the offender. Therefore, in my view, the provocatory statement alleged to have been made should necessarily be considered by court in arriving at the conclusion whether the accused would be entitled to the mitigatory defence of provocation. It is necessary that court considers whether the statement attributed to the victim was sufficiently provocative to provide the accused of the mitigatory defence so that the offence of murder could be reduced to culpable homicide not amounting to murder.

> The issue as to whether the retaliatory action triggered off by the provocation should be proportionate to the provocation given, in order to attract the provisions of the exception has also been considered by our courts. Our courts have approved the view that the retaliatory action and the provocation should not be taken as two separate acts but as an integral part of the whole process when deciding on the application of the exception of grave and sudden provocation to any given case."

The Courts have consistently held that, in evaluating a plea of provocation, it must be established whether the Accused was indeed deprived of self-control due to the provocation, and whether such provocation was grave.

Nagalingam S.P.J in **K.D.J. Perera v. The King**, 53 NLR 193, at page 201, held that:

> "Under our law, what has to be established by a prisoner who claims the benefit of exception 1 to section 294 of the Penal Code is : (1) that he was given provocation, (2) that the provocation was sudden, (3) that the provocation was grave, (4) that as a result of the provocation given he lost his powers of self-control, (5) that whilst deprived of the power of self-control he committed the act that resulted in the death of the victim."

Further held that:

> "In the first place, it would be necessary to ascertain what is meant by provocation. Provocation, according to the dictionary, would be any annoyance or irritation, and for our purpose it must be defined as anything that ruffles the temper of a man or incites passion or anger in him or causes a disturbance of the equanimity of his mind. It may be caused by any method which would produce any one of the above results-by mere words which may not amount to abuse or by words of abuse, by a blow with hands or stick or club or by a pelting of stones or by any other more serious method of doing personal violence.
>
> The next requisite is that the provocation must be such as to bring it within the category termed sudden, that is to say, that there should be a close proximation in time between the acts of provocation and of retaliation-which is a question of fact. This element is of importance in reaching a decision as to whether the time that elapsed between the giving of provocation and the committing of the retaliatory

act was such as to have afforded and did in fact afford the assailant an opportunity of regaining his normal composure, in other words, whether there had been a " cooling " of his temper.

The third element is that the provocation should be grave. That is the element with which we are concerned particularly in this case. Provocation would be grave where an ordinary or average man of the class to which this accused belongs would feel annoyed or irritated by the provocation given to the extent that he would, smarting under the provocation given, resent the act of provocation or retaliate it. It is entirely dependent upon the act of the provoker and cannot be said to be based upon the nature or mode of resentment adopted by the person provoked in giving expression to his resentment."

Based on the aforementioned authority, I now turn to the question of whether there is any evidence of provocation. The postmortem report indicates that the deceased sustained severe injuries, particularly to the head and neck. The medical officer confirmed that these injuries were consistent with the use of a weapon. Notably, the evidence does not demonstrate any abusive or provocative behavior on the part of PW 01 or the deceased at the time of the incident. Furthermore, the accused has not claimed that his actions resulted from any provocation by either the deceased or PW 01 that led him to lose self-control. It is also significant that the weapon used by the accused was brought with him to the scene and was not picked up from the location.

Given the above facts, it is evident that the accused cannot rely on the defence of sudden provocation. The evidence does not indicate any provocative conduct on the part of the deceased or PW 01 at the time of the incident. Moreover, there is no suggestion of a continued or sustained alteration between the parties prior to the fatal act. Therefore, the accused is not entitled to raise the defence of loss of self-control due to provocation.

In view of all the findings discussed both herein and earlier, there is no basis to interfere with the decision of the learned High Court Judge. The conclusion reached is well supported by the available evidence and legal principles, leaving no grounds for appellate intervention.

For aforementioned reasons, I find no merit in the ground of appeal urged.

The appeal, therefore dismissed as it is devoid of any merit. The conviction and sentence were affirmed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL