

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

In the matter of an Appeal made under
Section 331 of the Code of Criminal
Procedure Act No.15 of 1979.

Court of Appeal No:
CA/HCC/0393-394/2017
High Court of Chilaw
Case No: HC/128/2005

1. Warnakulasuriya Kithsiri Premalal
Ranjith Fernando alias Lal
2. Warnakulasuriya Preethi Sanath
Colin Mathew Fernando

ACCUSED-APPELLANTS

Vs.

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

COMPLAINANT-RESPONDENT

BEFORE : **P. Kumararatnam, J.**
R. P. Hettiarachchi, J.

COUNSEL : **K. A. Upul Anuradha Wickramaratne for the
1st Appellant.**
**Neranja Jayasinghe with Randunu Hellage
and Pravindika Kularathe for the 2nd
Appellant.**
**Wasantha Perera, DSG for the
Respondent.**

ARGUED ON : **27/07/2026**

DECIDED ON : **28/09/2026**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellants (hereinafter referred to as the Appellants) were indicted for committing the murder of Warnakulasuriya Jemis Fernando on 08/02/1996 which is an offence punishable under Section 296 of the Penal Code read with Section 32 of the Penal Code.

After a non-jury trial, the Learned High Court Judge has found the Appellants guilty of the charge and sentenced him to death on 06/12/2017.

Being aggrieved by the aforesaid conviction and sentence, the Appellants preferred this appeal to this court.

The Learned Counsel for the Appellant informed this court that the Appellants have given consent to argue this matter in their absence. Also, at the time of argument the Appellants were connected via the Zoom platform from prison.

The Appellants had raised the following grounds of appeal:

1. The Learned High Court Judge has relied on the evidence of PW1 when the evidence had failed the test of credibility and consistency.

2. The Learned High Court Judge had failed to evaluate the evidence of Appellants and thereby failed to consider whether their evidence is sufficient to reduce the culpability on the basis of sudden provocation.

Background of the Case

According to PW01 Shantha Fernando, the son of the second marriage of the deceased, the Appellants are sons of the deceased from his first marriage. All of them live close to each other and they usually draw water from a common well. The well was situated in front of the deceased's house. The 1st Appellant had also used the same well water. A dispute had arisen with regards to drawing water from the well between the 1st Appellant and the deceased. Due to this, on the day prior to the incident, the 1st Appellant had fought with a girl called Manju who was adopted by the deceased. Due to this incident, the said Manju was hospitalised.

In the morning of the day of the incident, at around 7.00am, the 1st Accused had shouted that he was unable to draw water from the well as the deceased had removed the pulley wheel which facilitated to draw water from the well. Due to this, a tense situation arose and the 1st Appellant had gone to the house of the deceased and had shouted to come out. As the inmates of the house had closed the door, the 1st Appellant had pelted stones at the deceased's house which broke the window. At that time, the 2nd Appellant had also arrived at the scene and the 1st Appellant had broken open a door and entered the deceased's house. At that time the deceased was armed with a spear and had tried to attack the 1st Appellant. The 1st Appellant had grabbed a spear and attacked the deceased and pelted stones. In the meantime, the 2nd Appellant had assaulted the deceased with a pole that he had taken from a nearby house.

The police investigation had revealed that the glass window and a door of the deceased's house was broken and the police had also found several stones inside the house.

According to medical evidence, the injury caused to the head had been fatal and no stab injury was found on the stomach area of the deceased.

Both Appellants had given evidence from witness box.

According to the 1st Appellant, he admits that he did attack the adopted daughter of the deceased on the previous day. On the following morning at about 7.00pm, the wife of the 1st Accused had complained that the pulley wheel of the well had been removed by the deceased, and as a result, the 1st Appellant's family could not draw water from the well. When he went to inquire about this the deceased had called him inside the house and tried to attack him with a spear. At that time the 1st Appellant had grabbed the spear and attacked the deceased. At that the 2nd Appellant had come into the deceased's house by breaking a window. Understanding the difficult situation faced by the 1st Appellant, the 2nd Appellant had then attacked the deceased after picking up a pole from the vicinity.

The 2nd Appellant also narrated the same as to the circumstances under which he had assaulted the deceased.

Both in their evidence admitted to assaulting the deceased due to sudden provocation and in self-defence.

The learned Counsel for the 2nd Appellant had commenced the argument first in this case.

Argument

The learned Counsel for the Appellant strenuously argued that the initial statement given by PW1 contained several omissions and contradictions which certainly would go to the root of the case.

Although PW1 had mentioned in his evidence that the 1st Appellant had shouted and asked the deceased to come out, he had not mentioned the same in his statement to the police. PW1 had admitted that when the Appellants asked from the deceased why he removed the pulley wheel from

the well, the deceased had come armed with a knife. Further, PW1 had admitted that he had given false evidence at the non-summary inquiry. He had further admitted that he had not mentioned to the police and in the non-summary inquiry that the 1st Appellant had threatened him not tell the truth. Further, he had not mentioned that he was threatened to lie on the ground, in the police statement nor in the non-summary inquiry. Therefore, the learned Counsel for the Appellant contended that the evidence given by PW1 is tainted with ambiguities which had escaped the attention of the Learned High Court Judge.

Upon considering the evidence adduced, it is clear that an unpleasant incident occurred as a result of the deceased's act of preventing the Appellant's family from obtaining water from the well. Therefore, the learned Counsel for the 2nd Appellant submits that this is an appropriate case to be considered under Section 297 of Penal Code on the basis of a sudden provocation.

At this stage, the learned Counsel for the 1st Appellant submitted to court that he too agrees to proceed with the argument put forward by the learned Counsel for the 2nd Appellant.

According to exception 1 of Section 294 of the Penal Code

“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 explanation under this exception read as that:

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

The learned Counsel for the Appellants seek relief for lesser culpability on the plea of grave and sudden provocation, which was already suggested to

the prosecution before the commencement of the trial. Further, the defence had suggested to the prosecution witnesses that a sudden fight had occurred, which was elicited from the evidence of the prosecution witnesses.

According to Section 105 of the Evidence Ordinance, it is the responsibility of the Appellant to prove the existence of a general or special exception during the trial on a balance of probabilities. In the absence, the Learned trial Judge should direct his mind to the circumstances and the fact that the Appellant is entitled to have the benefit of the lesser verdict.

In **The King v Bellana Vithanage Eddin** 41 NLR 345 the court held that:

"In a charge of murder, it is the duty of the judge to put to the jury the alternative of finding the accused guilty of culpable homicide not amounting to murder when there is any basis for such a finding in the evidence on record, although such defence was not raised nor relied upon by the accused".

In **J. M. Aruna v Attorney General** CA/57/2011 the Court held that:

"...by an act of the individual which my, sometimes, not provoke a normal man. In such a situation if he causes the death of the said individual especially when he was suffering from the loss of his power of self-control, he is entitled to claim the benefit of the plea of grave and sudden provocation. But for him to get the benefit of grave and sudden provocation, the other individual namely the deceased person must do some kind of act towards him".

In the case of **Gamini v Attorney General** [2011] 1 SLR the court held that:

"Although the accused appellant in his defence did not take the defence of grave and sudden provocation, the trial judge must consider such a plea in favour of the accused appellant in it if emanates from the evidence of the prosecution."

In the case of **Rathnayake Mudiyansele Karunaratne v. The Attorney General** –CA 181/2009 decided 21 November 2011, it was held that:

“If the plea of grave and sudden provocation is available from the evidence of the prosecution itself, Court has a duty to consider such a plea even if the accused did not raise it.”

Further in the case of **Palamura Hewage Harishchandra Kumarasinghe v. Attorney General** (CA HCC 0070/2023) it was held:

“Our Courts have considered that to qualify under Exception 4 to Section 294 of the Penal Code, the Accused has to establish that the incident was committed without premeditation in a sudden fight in the heat of an argument. C. Ananda Grero, Culpable Homicide, Proof and Defences, 1988 at page 69: "Gour in the Penal Law of India states: "Pre-meditation may be established by direct or positive Evidence or by circumstantial evidence. Evidence of pre-meditation can be furnished by former grudges or previous threats and expressions of ill-feelings; by acts of preparation to kill, such as procuring a deadly weapon or selecting a dangerous weapon in preference to one less dangerous, and by the manner in which the killing was committed. For example, repeated shots, blows or other acts of violence are sufficient evidence of meditation.”

In the case of **S.C. Appeal No. 168/2018**, (decided on 25.7.2025) it was further examined:

“The most relevant part in relation to the instant appeal of the said Exception is the section that reads “... in a sudden fight in the heat of passion upon a sudden quarrel”. The said exception speaks of sudden fight which results upon a sudden quarrel. These phrases were used by the Legislature to denote a position that reflects a transformation of a quarrel to a fight within a very short duration of time. It is important to note in this context that the word “sudden” appears twice in the text of

the said Exception and that too, after the phrase “without premeditation”. The emphasis laid in the text of the section on the spontaneity of the act which resulted in the death of a person is therefore clearly recognisable.

The start of the quarrel and its escalation into a fight must happen within a short duration of time. The emphasis placed by the Section on the progressive but sudden escalation of the intensity of the degree of passion with which the opposing parties acts in a quarrel culminating with the act or acts that results in the fatality could easily be discerned from the phrase “... in a sudden fight in the heat of passion upon a sudden quarrel”.

Analysing the evidence presented in this case, it clearly demonstrates that the strained relationship with the deceased had resulted in this unfortunate incident. The Learned High Court Judge had not discussed the concept of sudden provocation in his judgment. Therefore, the Learned High Court Judge had not awarded the benefit to the Appellants under the said mitigatory plea. Further, the evidence given by PW1 is not convincing and it contains lots of contradictions and omissions.

Considering all the circumstances stressed before this court, I conclude that this is an appropriate case to consider the Appellant's entitlement to the benefit of a plea of grave and sudden provocation under Exception-1 to Section 294 of the Penal Code.

Hence, I set aside the death sentence and convict the Appellants for culpable homicide not amounting to murder under Section 297 of the Penal Code. I sentence the Appellant to 13 years rigorous imprisonment with a fine of Rs.20,000/- with a default sentence of 01-year simple imprisonment. Considering all the circumstances, I order the sentence be effective from the date of conviction namely 06/12/2017.

Subject to above variation, the appeal is dismissed.

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree

JUDGE OF THE COURT OF APPEAL