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

Democratic Socialist Republic of Sri Lanka

COMPLAINANT

Vs.

Court of Appeal Case No.

CA/HCC 0059/2024

High Court of Colombo

Case No. HC 6824/2013

1. Mohomad Kamal
2. Raman Sivalingam
3. Godellawaththage Chamara Devappriya
4. Periyathambi Mahendra Sudakar
5. Muttaiah Chandrakanth alias Ajibu
6. Balakrishnar Ambigeswaran alias Bahuman
7. Suppiah Ganesh Kumar alias Kumar
8. Victor Lakmal Liyanage
9. Mohammed Fusmi
10. Mohammed Irshad

ACCUSED

AND NOW BETWEEN

Mohomad Kamal

ACCUSED-APPELANT

Vs.

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

COMPLAINANT-RESPONDENT

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

R. P. Hettiarachchi, J.

COUNSEL : **Harshana Ananda for the Appellant.**
Malik Azeez, SC for the Respondent.

ARGUED ON : **26/02/2026**

DECIDED ON : **08/06/2026**

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JUDGMENT

P. Kumararatnam J

The above-named Accused-Appellant (hereinafter referred to as the Appellant) with nine others are indicted as follows:

1. On or about 15.05.2005, in the jurisdiction of Colombo the accused were members of an unlawful assembly with common object of causing hurt to Fawzul Rahman alias Selvadore Janson punishable under Section 140 of the Penal Code.
2. In the course of the same transaction the accused had committed the murder of Fawzul Rahman alias Selvadore Janson while being members of an unlawful assembly or with knowledge that the said offence would be committed in the prosecution of the common object, thereby committing an offence punishable under Section 296 read with Section 146 of the Penal Code.
3. In the course of the same transaction the accused had committed the murder of Fawzul Rahman alias Selvadore Janson punishable under Section 296 read with Section 32 of the Penal Code.

Upon electing a non-jury trial, the prosecution had called all necessary witnesses and closed their case. After the closure of the prosecution's case, the Learned High Court Judge acting under Section 200(1) of the Code of Criminal Procedure Act No. 15 of 1979, acquitted the 2nd ,3rd ,4th ,5th ,6th, and 7th by his order dated 19.10.2022. Defence had called on the Appellant and the 8th Accused and both Accused had made short dock statements and closed their case.

Considering the evidence led at the trial, the Learned High Court Judge has found the Appellant guilty under Section 297 of the Penal Code and had sentenced him to 20 years rigorous imprisonment and had imposed a fine of Rs.15000/- with a default sentence of 06 months simple imprisonment.

The 8th Accused was acquitted from the case.

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

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

On behalf of the Appellant, only one Ground of Appeal is raised. According to the Counsel for the Appellant, evidence led at the trial does not warrant the imposition of the maximum sentence that could be imposed under Section 297 of the Penal Code.

Background of the Case

An incident had happened prior to the killing of the deceased. According to PW2 and PW4, they had witnessed the Appellant and the 8th Accused assaulting the deceased.

Hearing the primary incident, PW3, the brother of the deceased warned the deceased not to go out and advised him to stay at home. PW3 had sought refuge at a friend's house. Later he had come to know about the death of the deceased.

PW2, the wife of the deceased too had corroborated the evidence given by PW3. Adding further, she said despite PW3's advice to the deceased to remain in the house, the deceased had gone out armed with a knife and had

sustained injuries caused by the Appellant and the 8th Accused, and had died as a result. Mother of PW2 also corroborated what PW2 had sated.

PW1, the mother of the deceased had been treated as an adverse witness by the prosecution.

According to the JMO, the deceased had sustained 16 cut injuries and the cause of his death was haemorrhage and shock resulting from the cut injuries.

The Appellant in his dock statement took up the position that he was not in the village and that his inclusion in this case was due to a personal animosity.

The Counsel for the Appellant contends that although the Learned High Court Judge had correctly found the Appellant guilty under Section 297 of Penal Code on the basis of a sudden fight, he was not awarded the benefit when he was sentenced to the maximum jail term.

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."*

It is very important at this stage to discuss the development of law regarding the acceptance of provocation as a special exception to a murder charge in our jurisdiction.

In **Premalal v Attorney General** [2000] 2 SLR 403 Kulatilaka,J held that:

> *"Until the judgment of Chief Justice H.N.G Fernando in Samithamby v Queen (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".*

Kulatilaka, J. 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".*

In the case of **Samithamby v The Queen** (1962) 64 NLR 13 it was held:

> *"An offender may be said to have been deprived of his power of self-control by grave and sudden provocation within the meaning of Exception 1 to section 294 of the Penal Code even though there was an interval of time between the giving of the provocation and the time of the killing, if the evidence shows the at, all the time during the interval, the accused suffered under a loss of self-control."*

In the case of **Chuti v The Attorney General** [2003] 2 SLR 272 it was held that:

> *"When considering a prosecution for murder whether the accused was deprived of self-control by grave and sudden provocation, the jury must apply an objective test. It must be considered objectively in relation to the class of society to which the accused belongs".*

In the case of **Punchibanda v The Queen** (1969) 72 NLR 529 it was held:

> *"Mere abuse unaccompanied by any physical act may be sufficient provocation to reduce what would otherwise be an offence of murder to the offence of culpable homicide not amounting to murder.*
>
> *It is the duty of the Judge to direct the jury that in considering the question of provocation they should consider whether the provocation was grave to an average person from the same social class and background as the accused person."*

In the case of **Namaratne and Another v The State** (2001) 2 Sri L.R. 27 it was held that:

> *"In this country mere abuse, even if unaccompanied by physical violence made in certain circumstances afford sufficient provocation to reduce the offence of murder to culpable homicide not amounting to murder, and the question whether such provocation was grave enough to mitigate intentional killing of a man is a question of fact to determine."*

According to the witnesses, the deceased had gone out armed with a knife even though he was severely warned to remain in the house. He had sustained fatal injuries when he had gone out with a knife.

Ashworth in 1975 Criminal LR 558-559 opines as follows:

> "The significance of the deceased's final act should be considered by reference to the previous relations between the parties, taking into account any previous incidents which add colour to the final act" ……. The point is that the significance of the deceased's final act and its effect upon the accused-and indeed the relation of the retaliation to that act-can be neither understood nor evaluated without reference to previous dealings between the parties".

In this case, the evidence transferred that the deceased had gone out from the house armed with a knife despite the advice to remain in the house. This clearly shows the participation of the deceased in this incident.

The incident had taken place in the year 2005 and the trial had commenced in the High Court in the year 2019. The conviction and sentence were imposed in the year 2023. Further, the Appellant, in mitigation has brought to the notice of the Court about his family situation.

Considering all circumstances, I consider it is not appropriate to impose a maximum sentence of 20 years in this case. Considering all the circumstances of the case, I set aside the 20 years rigorous imprisonment and substitute it with 10 years rigorous imprisonment. The fine imposed by the learned High Court Judge is to remain same.

Additionally, I order a compensation of Rs.250,000/- payable to the deceased's family. In default a 01-year simple sentence is imposed.

Considering all the circumstances, I order the sentence be operative from the date of conviction i.e.; from 27.06.2023.

Subject to the above variation of the sentence, the appeal is dismissed.

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree

JUDGE OF THE COURT OF APPEAL