

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA**

An Appeal filed in terms of Section 331 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**

Court of Appeal Case No:

**CA/HCC/0197-25**

High Court of Chilaw Case No:

**30-2020**

Alahakoon Arachchilage Sirisena *alias*

Alahakoon Arachchilage Don Sirisena

**Accused**

**AND NOW BETWEEN**

Alahakoon Arachchilage Sirisena *alias*

Alahakoon Arachchilage Don Sirisena

**Accused – Appellant**

**Vs**

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

**Complainant - Respondent**

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

Counsel : Kavithri Ubeyseke for the Accused – Appellant.  
: Riyaz Bary D.S.G for the State.

Argued on : 11.02.2026

Decided on : 14.05.2026

**Pradeep Hettiarachchi, J**

### **Judgment**

1. The Accused-Appellant (hereinafter referred to as “the Appellant”) was indicted before the High Court of Chilaw on two counts of murder, offences punishable under section 296 of the Penal Code. The trial was conducted before the Learned High Court Judge of Chilaw without a jury.
2. At the conclusion of the trial, the Appellant was found guilty on both counts and was accordingly convicted and sentenced to death by the Learned High Court Judge. It is against the said conviction and sentence that the Appellant has preferred the present appeal. The Appellant relies on four main grounds of appeal, namely:
  - a. The Learned High Court Judge has failed to carefully consider the evidence of the prosecution and take notice of the evidence in favour of the Appellant;
  - b. The Learned High Court Judge has failed to consider/evaluate the defence duly; and,
  - c. The Learned High Court Judge has failed to consider/evaluate the infirmities in the evidence of prosecution witnesses.

3. Additionally, Learned Counsel for the Appellant advanced a further ground of appeal, invoking Exception 1 to Section 294 of the Penal Code, and contended that the act attributed to the Appellant was committed under grave and sudden provocation, and therefore would not amount to murder but to culpable homicide not amounting to murder.
4. I shall first consider grounds (a) and (c), as they challenge the strength of the prosecution's evidence. In doing so, I will examine whether the Learned Trial Judge failed to take into account evidence favorable to the defence and failed to give due consideration to the infirmities in the prosecution evidence, as contended by the Appellant.
5. At the trial before the High Court, the prosecution primarily relied on the evidence of PW2, Thushara Sampath, the sole eyewitness to the incident. His evidence may be briefly summarized as follows:
6. The two deceased, Ariyawathi and Punchi Menika, were daughter and mother, respectively. Ariyawathi had been cohabiting with the Appellant as husband and wife following the breakdown of her first marriage. However, due to frequent quarrels between them, she had returned to reside with her mother.
7. The Appellant had, on several prior occasions, requested Ariyawathi to return to live with him, but she had consistently refused. It is also in evidence that prior to this incident, the Appellant had visited the house several times with the same intention, but without success. On the day of the incident, PW2 was at home feeding pigeons when the Appellant arrived.
8. At that time, Ariyawathi was sweeping the compound. The Appellant inquired from PW2 as to her whereabouts. PW2 requested the Appellant to move a little away, as his voice was disturbing the pigeons he was feeding. Thereafter, the Appellant and Ariyawathi moved further away from the place where PW2 was standing. PW2 was unable to observe them, as his view was obstructed by a wall.

9. Shortly thereafter, PW2 heard Ariyawathi shouting “Ammo” and saw her running, being pursued by the Appellant, who was armed with a knife. As Ariyawathi was passing Punchi Menika, the Appellant suddenly stabbed Punchi Menika, causing her to fall to the ground. Thereafter, PW2 observed the Appellant and Ariyawathi engaged in a scuffle, and when Ariyawathi fell to the ground, the Appellant stabbed her multiple times.
10. When PW2 moved towards Punchi Menika, who had fallen to the ground, the Appellant returned and stabbed her several more times. Thereafter, the Appellant also pursued PW2; however, he managed to escape.
11. Subsequently, upon being informed by the neighbors, the police arrived at the scene. Thereafter, PW2 proceeded to the police station and made a statement.
12. When the matter was taken up for argument before this Court, Learned Counsel for the Appellant placed substantial reliance on Exception 1 to section 294 of the Penal Code and contended that the evidence adduced at the trial amply demonstrates that the Appellant acted under grave and sudden provocation. It was therefore submitted that the conviction entered under section 296 of the Penal Code cannot be sustained.
13. In support of this contention, it was submitted that the evidence of PW2 does not disclose any element of premeditation on the part of the Appellant, but rather demonstrates that he acted under grave and sudden provocation. It was further contended that the Appellant was not armed with a knife upon his arrival and was in a sober condition, and therefore, the evidence of PW2, when properly considered, does not support a conclusion that the attack was premeditated.
14. Moreover, it was contended that there was sufficient material to infer cumulative provocation and that the Learned Trial Judge rejected the Appellant’s version without any plausible basis.
15. I shall now examine whether the Learned High Court Judge had failed to consider the special exceptions under Section 294 of the Penal Code.

16. Section 294 of the Penal Code defines the offence of murder. When an Accused was charged with murder, the prosecution had to prove that he had acted in one of the manners described in section 294 of the Penal Code.
17. However, when an Accused seeks to invoke any of the Exceptions enumerated in section 294 of the Penal Code, the question of paramount importance to be determined is whether the evidence adduced at the trial establishes that the Accused acted under grave and sudden provocation and is, therefore, entitled to the benefit of Exception 1 to section 294. In other words, the applicability of Exception 1 must be determined on the basis of whether the Appellant's conduct satisfies the strict legal requirements governing grave and sudden provocation.
18. Since the Appellant in the present appeal contends that the acts complained of were committed under grave and sudden provocation, this Court is required to examine the applicability of 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.*

19. Thus, the critical issue for determination in the present case is whether the conduct of the Appellant, in stabbing the two deceased, was accompanied by the degree of intention or knowledge necessary to bring the offence within Section 294, or whether the circumstances justify a reduction of the offence to culpable homicide not amounting to murder under Section 297.
20. The law relating to grave and sudden provocation is well settled. In order to attract the benefit of Exception 1 to Section 294, it must be established that:
- a. The Accused was deprived of the power of self-control by reason of grave and sudden provocation;
  - b. The act causing death was committed before there was time for passion to cool; and,
  - c. The provocation was such as would have caused a reasonable person, placed in the same circumstances, to lose self-control. The test is both subjective and objective, requiring the Court to consider the actual state of mind of the Accused as well as the standard of a reasonable person.
21. It must be emphasized that trivial incidents would not ordinarily constitute grave and sudden provocation. The provocation must be of such a nature and degree as to temporarily deprive the Accused of self-control, leading to the commission of the act in the heat of passion.
22. In *Punchi Banda vs. Queen* 74 NLR 494, it was held that: “*Mere abuse unaccompanied by any physical act may be sufficient provocation to reduce the offence of murder to culpable homicide not amounting to murder.*” The principle has been reiterated in the case of *King vs. Coomaraswamy (1940)* 41 NLR 280.
23. However, if there is evidence of premeditation, prior animosity, or sufficient time for reflection, the Exception would not be applicable.

24. Applying these principles to the present case, it is necessary to closely examine the factual matrix to determine whether the circumstances disclose any such grave and sudden provocation. The burden of establishing the applicability of the Exception rests on the Appellant, albeit on a balance of probabilities.
25. If, upon evaluation of the evidence, it is found that the Appellant acted in a calculated or deliberate manner, or that there existed sufficient time for passions to subside, the protection afforded by Exception 1 would not be available. Conversely, only where the evidence clearly demonstrates a loss of self-control triggered by an immediate and grave provocation can the offence be reduced.
26. The following authorities also provide valuable guidance in determining the issue of grave and sudden provocation.
27. The law relating to Exception 1 to section 294 in the Penal Code was settled in *A.G. vs. K.D.J. Perera* 54N.L.R.265(P.C), which was decided by the Privy Council. In that case, the conclusion reached by the Privy Council was that a consideration of the method and degree of the retaliation was necessarily integral to the assessment of the gravity of the provocation.
28. In *K.M. Nanavati vs. State of Maharashtra, AIR 1962 SC 605*, the Supreme Court of India discussed the elements to be considered when grave and sudden provocation is pleaded. The provocation must be both grave and sudden. The Accused must have acted immediately upon receiving the provocation, before regaining self-control. There must be a genuine loss of self-control, and the response must be proportionate to the provocation. **If the reaction is excessive or brutal, the court may reject the defense.** (*emphasis added*)
29. In *Mancini vs. Director of Public Prosecutions (on Behalf of His Majesty) [1941] UKHL J1016-1*, the court established a key principle regarding provocation and murder. The case clarified that provocation, while potentially reducing a murder charge to manslaughter, must be "grave and sudden" and sufficient to cause a

reasonable person to lose self-control. The court emphasized that the provocation must be so severe that it temporarily deprives the person of their self-control, leading them to commit an unlawful act resulting in death.

30. In ***Bakhtawar vs. State of Haryana, AIR 1979 - SC 1006***, the Indian Supreme Court held as follows:

*"For the commission of the offence of murder, it is not necessary that the accused should have the intention to cause death. It is now well settled that if it is proved that the accused had the intention to inflict the injuries actually suffered by the victim and such injuries are found to be sufficient in the ordinary course of nature to cause death, the ingredients of clause Thirdly, of sec. 300 of the Indian Penal Code are fulfilled, and the accused must be held guilty of murder punishable under sec. 302 of the Indian Penal Code."*

31. In ***Ram Rai and Another vs. State of Rajasthan 2004(3) WLC246***, the applicability of grave and sudden provocation was discussed as follows:

*"The applicability of the doctrine of provocation rests on the fact that it brings about a sudden and temporary loss of self-control. The test applied is the conduct of a reasonable person in circumstances which give rise to grave and sudden provocation. Before an accused can draw any benefit from Exception I to Section 300 Indian Penal Code, (Section 300 of the Indian Penal Code is in terms identical to sec. 294 of the Ceylon Penal Code) there should be some circumstance to indicate that the act of the accused was done in the same transaction in which he received the grave and sudden provocation."*

32. In the instant case, the evidence establishes that the Appellant had visited the premises on several prior occasions in an attempt to persuade Ariyawathi to return with him, which she had consistently refused. On the day in question, the Appellant arrived in search of her and, shortly thereafter, armed with a knife, pursued her and inflicted fatal injuries.

33. Although PW2 did not observe the Appellant carrying a knife, having regard to the location where the stabbing occurred, it is highly improbable that the Appellant picked up a knife allegedly placed near the pigeon cage and then proceeded to stab the deceased, as asserted in his dock statement. According to the evidence of PW2, both the Appellant and the deceased, Ariyawathi, had moved away from the pigeon-feeding area when requested to do so by PW2.
34. Further, there is no evidence from PW2 to suggest that any quarrel, confrontation, or physical altercation had taken place prior to the Appellant moving away from the pigeon cage. In these circumstances, the Appellant's version that he was struck with a broom and subjected to abusive language by the deceased Punchi Menika, which allegedly provoked him into committing the acts of stabbing, is not supported by the evidence and appears to be an afterthought.
35. Significantly, the Appellant first attacked Punchi Menika without any apparent provocation, and thereafter proceeded to repeatedly stab Ariyawathi when she fell to the ground. The subsequent act of returning to stab Punchi Menika again, and even pursuing PW2, clearly demonstrates a course of deliberate and continued conduct rather than a loss of self-control induced by any sudden or grave provocation.
36. The above sequence of events, as spoken to by PW2, does not disclose any circumstance capable of constituting grave and sudden provocation within the meaning of Exception 1 to section 294 of the Penal Code.
37. It was further contended on behalf of the Appellant that the alleged act of provocation should not be considered in isolation, but rather in the context of a sequence of provocative events which, it is submitted, drove the Appellant to a state of loss of self-control, culminating in the commission of the alleged offences. In other words, it was contended on behalf of the Appellant that the sequence of events established in the case discloses cumulative provocation.

38. In support of this contention, the Appellant cited *Premalal vs. Attorney General [2000] (2) Sri L.R. 404*, where it was held inter alia that:

*"Our judgments interpreted the phrase "sudden provocation" to mean that provocation should consist of a single act which occurred immediately before the 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."*

*"Of late, we observe a development in other jurisdictions where courts have taken a more pragmatic view of the mitigatory plea of provocation ... in a series of cases Court took into consideration the prior course of relationship between the accused and his victim."*

39. It is a well-settled principle that, in considering the applicability of Exception 1 to section 294 of the Penal Code, the Court must examine whether the alleged provocation, whether singular or cumulative, was of such a nature as to deprive the Accused of self-control and whether the reaction was immediate and proportionate to the provocation alleged.

40. However, it must be emphasized that the doctrine of cumulative provocation cannot be invoked as a matter of course to convert a deliberate act of violence into one committed in the heat of passion.

41. Applying these principles to the present case, the evidence does not disclose any continuous sequence of provocative acts of such gravity as to culminate in the loss of self-control by the Appellant.

42. It is evident that the deceased, Ariyawathi, had returned to reside with her mother due to harassment at the hands of the Appellant. The fact that the Appellant made several attempts to reconcile with Ariyawathi, coupled with her refusal to return to him, cannot, in my view, constitute sufficient grounds for cumulative provocation.

43. Moreover, in the absence of any evidence that the deceased Punchi Menika prevented Ariyawathi from returning to the Appellant, her killing cannot, in any event, be justified or attributed to cumulative provocation.
44. Further, the Appellant's conduct in pursuing PW2 and threatening to kill him as well serves to negate any inference that he was acting under a loss of self-control induced by cumulative provocation.
45. In determining the issue of grave and sudden provocation in the present case, the evidence of the Judicial Medical Officer who conducted the autopsies on both deceased persons is of considerable relevance. The nature, multiplicity, and location of the injuries inflicted on both deceased persons clearly indicate a deliberate and sustained attack rather than a momentary loss of self-control.
46. According to the JMO, six injuries were observed on the body of Punchi Menika, of which five were stab injuries. In his opinion, injury No. 2 had penetrated the right ventricle of the heart and was necessarily fatal. Similarly, injury No. 3 had caused damage to the liver and was sufficient, in the ordinary course of nature, to cause death.
47. Furthermore, ten injuries were observed on the body of the deceased Ariyawathi. According to the JMO, injury No. 4 had penetrated both the left and right ventricles of the heart and was necessarily fatal. Injuries Nos. 1, 2, and 3 could have been sustained while the deceased was struggling with the assailant, whereas injuries Nos. 4 and 5 had been inflicted from behind. These findings are consistent with the testimony of PW2.
48. The presence of multiple targeted injuries, including those inflicted after the victims had fallen or while attempting to flee, is wholly inconsistent with an act committed in the heat of passion upon sudden provocation.
49. Also, these injuries demonstrate a degree of persistence, intention, and brutality which negates any suggestion of a temporary loss of self-control. When this medical

evidence is considered together with the eyewitness testimony of PW2, it becomes evident that the Appellant engaged in a continuous and deliberate course of conduct. Accordingly, the plea of grave and sudden provocation, whether viewed in isolation or as cumulative provocation, is not supported by the evidence and must be rejected.

50. As articulated in *K.M. Nanavati vs. State of Maharashtra (supra)*, if the reaction is excessive or brutal, the court may reject the defense of grave and sudden provocation. To elaborate more, the response must be proportionate to the provocation. More importantly, the consideration of the method and degree of the retaliation was necessarily integral to the assessment of the gravity of the provocation as observed in *A.G. vs. K.D.J. Perera (supra)*.

51. In these circumstances, the acts of the Appellant cannot be said to have been committed in the heat of passion upon sudden provocation. On the contrary, the manner in which the offences were carried out, the use of a deadly weapon, and the repeated nature of the attacks negate any suggestion of a temporary loss of self-control. Accordingly, the Appellant is not entitled to the benefit of Exception 1 to section 294 of the Penal Code.

52. In *Senarath Bandara vs. Attorney General [2020] 3 Sri L.R. 1*, both grave and sudden provocation and cumulative provocation were considered, and the Court held that:

*1. For an accused to succeed in a plea of provocation in order to reduce the offence from murder to manslaughter under Exception 1 to section 294 of the Penal Code, he must prove on a balance of probability that the provocation took place; it was grave and sudden; he was deprived of the power of self-control due to the provocation; he caused the death of the person who provoked him or any other person by mistake or accident.*

*2. Whether the accused is entitled to the plea of grave and sudden provocation is a question of fact.*

3. *If there is a cooling-off period between the act of provocation and the act of killing, the strict interpretation of Exception 1 to section 294 suggests that the plea of provocation is not entitled to succeed.*

4. *However, the scope of this defence has subsequently been expanded in that although a gap in time exists between the act of provocation and the fatal attack, if there had not been a cooling off of the mind of the accused but instead a state of continued mental stress and trauma due to the nature and the gravity of the provocative act, the accused is entitled to the benefit of the plea of grave and sudden provocation on the basis of continuing or cumulative provocation.*

53. Upon consideration of the foregoing factual and legal context, I find no reason to disagree with the findings of the Learned Trial Judge. In the circumstances, the conviction of the Appellant on all counts is affirmed.

54. Accordingly, the appeal stands dismissed.

**Judge of the Court of Appeal**

**P. Kumararatnam, J**

I agree,

**Judge of the Court of Appeal**