

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

Rathnayake Mudiyansele Karunaratne,

Accused-Appellant

Vs.

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

Respondent

C.A. 181/2009

High Court of Puttlam Case No: 84/05

BEFORE : SISIRA DE ABREW, J. &  
D.S.C. LECAMWASAM, J.

COUSNEL : Indika Mallawarachchi for the accused-  
appellant.

Kapila Waidyaratne DSG. for the  
Respondent.

ARGUED &  
DECIDED ON : 21.11.2011

SISIRA DE ABREW, J.

Heard both counsel in support of their respective cases.

The accused-appellant in this case was convicted for the murder of a man named Mohotti Arachchilage Weerasena and was sentenced to death. Facts of this case may be briefly summarized as follows:

The deceased was the brother-in-law of the accused-appellant. On the day of the incident around 9.00 p.m., the deceased who came home after consuming liquor went to the road which was in front of his house. Thereafter the inmates of the deceased's house heard a commotion from the road. The wife, son and the daughter-in-law of the deceased went towards the direction where they heard the commotion. Priyadharshani Kumudu the daughter-in-law of the deceased had then seen both the deceased and the accused-appellant exchanging words. The wife of the deceased had pushed the accused-appellant away from the scene.

According to the evidence of the son of the deceased both the accused-appellant and the deceased were getting ready to fight. At this time, the accused-appellant stabbed the deceased three times who died as a result of the said injuries. Learned counsel for the accused-appellant submits that the accused-appellant should have been convicted of the offence of culpable homicide not amounting to murder on the basis of grave and sudden provocation. Learned D.S.G. concedes this position. From the above facts it appears that plea of grave and sudden provocation was available on the evidence of the prosecution itself. The Learned trial Judge has failed to consider the plea of grave and sudden provocation. 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. This view is supported by the judicial decision in **King Vs Albert Appuhamy 41 NLR page 505** wherein the Court of Criminal Appeal held: "Failure on the part of a prisoner 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". **In King Vs. Bellana Withanage Eddin 41 NLR page 345** Court of Criminal Appeal held thus: "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 King Vs Vidanalage Lanty 42 NLR page 317** Court of Criminal Appeal observed the following facts " There was evidence in this case upon which it was open to the jury to say that it came within exception 4 to Section 294 of the Penal Code and that the appellant was guilty of culpable homicide not amounting to murder. No such plea, however, was put forward on his behalf. In the course of his charge the presiding Judge referred to this evidence as part of the defence story but not as evidence upon which a lesser verdict might possibly be based. Held; that it was the duty of the presiding Judge to have so directed ~~to~~ the jury and that in the circumstances, the appellant was entitled to have the benefit of the lesser verdict". Applying the

principles laid down in the above judicial decisions, I hold that the trial Judge in this case, should have considered the plea of grave and sudden provocation. As I pointed out earlier the plea of grave and sudden provocation was available in the prosecution evidence itself.

We therefore hold that the conviction of murder reached by the learned trial Judge is erroneous. For these reasons, we set aside the conviction of murder and the death sentence. We convict the accused-appellant for the offence of culpable homicide not amounting to murder on the basis of grave and sudden provocation which is an offence punishable under Section 297 of the Penal Code and sentence the accused-appellant to a term of 10 years Rigorous Imprisonment and to pay a fine Rs: 5000/- carrying a default sentence of three months simple imprisonment. We direct the learned High Court Judge of Puttlam to issue a fresh committal indicating the sentence imposed by this Court. Subject to the above variation of the verdict and the sentence, Appeal of the appellant is dismissed.

We direct the Prison Authorities to implement the sentence imposed by this court from the date of conviction namely 14.10.2009.

*Appeal dismissed.*

JUDGE OF THE COURT OF APPEAL

D.S.C. LECAMWASAM, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/-