

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

1. Loku Galapththige Cyril
2. Dehipagoda Pushpalatha Mangalika
3. Karunawathi Weerawarna Wickramthunga

**Accused-Appellants**

Vs

The Democratic Socialist Republic of Sri Lanka  
**Complainant Respondent**

CA 182/2003  
HC Hambantota 5/96

Before : Sisira J De Abrew J &  
PWDC Jayathilake J  
Counsel : Navin Marapana for the accused appellant  
DPJ De Livera DSG for the Respondent

Argued on : 2<sup>nd</sup>, 5<sup>th</sup> and 6<sup>th</sup> of August 2013  
Decided on : 18.9.2013

**Sisira J de Abrew J.**

The accused appellants in this case, after trial, were convicted of the offence of culpable homicide not amounting to murder on the basis of grave and sudden provocation and sudden fight which is an offence under section 297 of the Penal Code. The 1<sup>st</sup> accused appellant was sentenced to a term of five years rigorous imprisonment (RI) and to pay a fine of Rs.7,500/- carrying a default sentence of four years imprisonment. The 2<sup>nd</sup> accused was sentenced to a term of three years RI and to pay a fine of Rs.3,000/- carrying a default sentence of two years

imprisonment. Same punishment was imposed on the 3<sup>rd</sup> accused appellant. Being aggrieved by the said conviction and the sentences they have appealed to this court.

Facts of this case as narrated by the prosecution witnesses may be briefly summarized as follows.

The 1<sup>st</sup> accused appellant (1<sup>st</sup> accused) was running a boutique by the side of the road leading to a village known as Tikirigammanaya. The 1<sup>st</sup> accused and his wife the 2<sup>nd</sup> accused appellant (2<sup>nd</sup> accused) were living in a section of this boutique. The 3<sup>rd</sup> accused appellant (3<sup>rd</sup> accused) is the mother of the 2<sup>nd</sup> accused. The deceased person Ariyaratne alias Ariyapala was living with Hettiarchhige Karunawathi (hereinafter referred to as the deceased's wife) as husband and wife although he was married to the sister of the 3<sup>rd</sup> accused. In the morning of 24<sup>th</sup> July 1990 when the deceased's wife was going to her work place, Amara who is one of the sisters of the 3<sup>rd</sup> accused had an exchange of words with her. The deceased person at this stage intervened and settled the dispute by assaulting both women. The deceased's wife returned home without going to the work place. The deceased's wife and the deceased person thereafter went and lodged a complaint in Thissamaharama police and both of them returned to the village around 1.30 p.m. The deceased person's wife went home while the deceased person stayed near the boutique of the 1<sup>st</sup> accused. This was the summary of evidence of the wife of the deceased. Around 2.30 p.m. when the deceased person was near the boutique of the 1<sup>st</sup> accused, the 3<sup>rd</sup> accused came and held him from behind. At this stage the 2<sup>nd</sup> accused came and attacked the leg of the deceased person with a katty and the 1<sup>st</sup> accused attacked the head of the deceased with an iron bar. This iron bar according to the witnesses was a tool of gem mining trade. One end of the iron bar was pointed and the other end was flat. Witness Sunil who witnessed this attack, at one

stage, says that with the blow given by the 2<sup>nd</sup> accused with the katty, the deceased person fell on the ground but later he says the deceased person fell on the ground when the 1<sup>st</sup> accused attacked him with the iron bar. The 1<sup>st</sup> accused gave four to five blows on the deceased person's head with the iron bar.

Karunawathi the wife of the deceased person says that, on hearing that her husband being attacked, she came to the road and then saw her husband lying fallen under the Nuga tree which according to the police observation was twelve feet away from the boutique of the 1<sup>st</sup> accused. All three accused appellants were seen standing near her husband. The 1<sup>st</sup> accused was armed with an iron bar (P1) and the 2<sup>nd</sup> accused was armed with a katty (P2). The 3<sup>rd</sup> accused was not having any weapon.

The evidence of the 2<sup>nd</sup> accused may be briefly summarized as follows: Around 11.00 a.m. on the day of the incident the deceased person came near her boutique on two or three occasions carrying a jug of illicit liquor (kassipu). He was scolding the family of the accused appellants and at one stage he threatened to set fire to their boutique. Around 2.30 p.m. she heard a bottle breaking sound and then saw the deceased person inside the boutique carrying an iron bar. He then jumped at her and held her by her hair. Then both of them grappled and fell on the bed. They struggled on the bed for five to ten minutes. When she screamed with excitement her husband came. At this stage she got herself released from the grip of the deceased person. Her husband started grappling with the deceased person who was having the iron bar. He held on to the iron bar but could not take it. At this stage she brought the katty which was kept in the house and attacked the deceased person with it several times. The deceased person fell near the door step when she attacked his leg. According to her evidence she had attacked the

deceased person inside the boutique. However her husband who was grappling with the deceased person did not sustain injuries from her. She says if she did not attack the deceased person, he would have attacked both of them with the iron bar. According to her evidence, she had exercised her right of private defence. She does not say that her husband attacked the deceased person. She says that the 3<sup>rd</sup> accused was not at this place at the time of the incident described by her. This was the summary of her evidence.

The most important question that must be decided in this case is whether the 2<sup>nd</sup> accused attacked the deceased person inside her boutique. If this question is answered in the affirmative, such an answer will support her evidence. According to her, when her husband was grappling with the deceased person inside the boutique, she kept on attacking him with the katty and this attack took place inside the boutique. Were there blood stains inside the boutique? The investigating officer (Sumathipala Vidanepathirana) had gone to the boutique and had observed a broken toffee bottle. He does not say that he observed blood stains inside the boutique. He says he noticed blood stains under the Nuga tree which was twelve feet away from the boutique. From the police officer's evidence, it is very clear that there were no blood stains inside the boutique. Then is the evidence of the 2<sup>nd</sup> accused true? According to her, she grappled with the deceased person on the bed for about five to ten minutes. But according to the police officer the bed was not disturbed. If she grappled with the deceased person on the bed for five to ten minutes how did the investigating officer make this observation? It is difficult to think that they arranged the bed before going to the police station because soon after the incident, according to the 2<sup>nd</sup> accused, they took the iron bar and the katty and went to the police station. When these matters are considered, I have to ask the following question. Is the evidence of the 2<sup>nd</sup> accused true? The observation

relating to the broken bottle lends support to her story. But she had not seen the deceased person attacking the bottle. According to the police officer there were other bottles on the same rack. The other bottles were not broken. The police officer had not observed toffees fallen on the rack or the ground. When I consider all these matters it is difficult to conclude that the deceased person broke the toffee bottle. Although the 2<sup>nd</sup> accused grappled with the deceased person who was having an iron bar which had a pointed end for about five to ten minutes (this was the evidence of the 2<sup>nd</sup> accused), she had not sustained any injury. The 2<sup>nd</sup> accused, in her evidence, does not say that her husband attacked the deceased person. But the deceased had sustained several injuries on his head. There were several fractures on his head. According to the doctor there should have been four separate blows on the head. The 2<sup>nd</sup> accused does not say that she attacked the head of the deceased. She says that when she attacked the deceased person with the katty she carefully gave blows. She says she did so in order to safeguard her husband from her own blows. She had not implicated her husband in the attack on the deceased person although he (the deceased person) had sustained such grievous injuries on his head. If she gave blows with care, how did the deceased person sustain grievous injuries including fractures on his head? When I consider all these matters I hold the view that the evidence of the 2<sup>nd</sup> accused is not true and that it does not create a reasonable in the prosecution case. For the above reasons I reject the version of the 2<sup>nd</sup> accused. In my view, the learned trial judge was right when he rejected the evidence of the 2<sup>nd</sup> accused.

Sunil, in his evidence, says that 1<sup>st</sup> accused gave four to five blows on the head of the deceased person. The doctor says that at least four separate blows had been given to the head of the deceased person. Thus doctor's evidence corroborates Sunil's evidence. Sunil has made a prompt statement to the police. Thus his

evidence satisfies the test of promptness. There are no vital contradictions in his evidence. Thus his evidence satisfies the test of consistency. When I consider all these matters, I hold that the learned trial judge was right when he accepted the prosecution story.

The next question that must be considered is whether the learned trial judge was right when he convicted the accused appellants of the offence of culpable homicide not amounting to murder on the basis of grave and sudden provocation. According to the wife of the deceased person, both of them came from the police station and the deceased person stayed near the boutique of the 1<sup>st</sup> accused. According to her, the incident has taken place one hour thereafter. Sunil says that the deceased person was first seen on the middle of the road. But the incident has taken place little away from the middle of the road. When I consider the facts of the case, it is reasonable to think that the behaviour of the deceased person had provoked the accused appellants. Therefore I am unable to find fault with the decision of the learned trial Judge when he convicted the accused appellant on the basis of grave and sudden provocation.

Learned DSG made an application to enhance the punishment imposed on the accused appellants. When considering this application, I have to note here that the Attorney General has not filed an appeal against the punishment. All three accused appellants had been given custodial sentences. When I consider all these matters I refuse to interfere with the punishment imposed by the learned trial Judge.

When I consider the evidence led at the trial, I hold that the prosecution had proved the case beyond reasonable doubt and that the evidence of the 2<sup>nd</sup> accused had not created any reasonable doubt in the prosecution case. For the above

reasons, I affirm the convictions and the sentences imposed on the accused appellants and dismiss the appeal.

Appeal dismissed

Judge of the Court of Appeal.

PWDC Jayatilake J

I agree.

Judge of the Court of Appeal.