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

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

Case No. CA 218/15

Rajapaksha Durayalage Kularatna
alias Nimal,
Pahala Kottomulal, Weuda,
Kurunegala.

High Court Kurunegala
Case No. 130/2002

ACCUSED – APPELLANT

-Vs-

Hon. Attorney General,
Attorney General's Department,
Colombo.

RESPONDENT

Before : P.R. Walgama, J
: K.K. Wickremasinghe, J

Council : Neranjan Jayasinghe for the Accused – Appellant.
: H.I. Peiris DSG for the A.G.

Argued on : 07.11.2016

Decided on : 07.02.2017

CASE-NO- CA /218/2015- JUDGMENT- 07.02.2017

P.R. Walgama, J

In this appeal the Accused – Appellant has called in question the acceptability of the judgment passed by the Learned High Court judge dated 09.11.2015, by the Provincial High Court holden at Kurunegala. In effect as per judgment the said High Court passed death sentence on the Accused – Appellant.

The Accused – Appellant was tried on an indictment charging him with having committed murder by causing death of one Rajapaksa Durayalage Bandu an offence punishable under section 296 of the Penal Code.

The trial Court on a scrutiny of evidence adduced, held the appellant herein, to be guilty of the charge levelled against him and awarded him the sentence as hereto before mentioned.

The background facts to this appeal can be summarised as follows;

It is salient to note before the commencement of the trial the counsel for the Accused – Appellant indicated

to court that the matter could be resolved by the accused pleading for a lesser culpability.

As per testimony of the witness Nirmala Rajapaksa the deceased was her mother-in-law. According to her there had been a rivalry between these two families and on this fateful day the deceased had gone to the house of the accused to find out as to why he has put some glass particles to the paddy field. There the scuffle has ensued and the accused had assaulted the deceased with the blunt side of the mammoty as he was provoked by the deceased.

In the above setting it is urged by the counsel for the Accused – Appellant that the Learned Trial Judge should have imposed a sentence for culpable homicide not amounting murder on the basis of grave and sudden provocation.

The Accused – Appellant in his dock statement had stated that the deceased came to his house and abused him for having put the glass particles to the deceased's paddy field. It was his position that in order to chase the deceased from his compound that he had brandished the axe which struck on the deceased.

It is contended by the counsel for the Accused – Appellant that the Learned High Court Judge had failed to consider the said extenuating circumstances viz a viz a sudden provocation caused by the deceased.

To buttress the above position the Learned Counsel for the Accused – Appellant has adverted this court to the case of PUNCHI BANDA .VS. QUEEN- 74 NLR-494- which was held thus;

"our courts have repeatedly 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 provocative incident deducible from the narration above it abundantly clear that it was the deceased who went to the house of the Accused – Appellant and abused him and provoked him.

The above proposition was also recognised in the case of MALIMAGE SARATH GNASIRI PERERA .VS. REPUBLIC OF SRI LANKA. Decided on 28.09.98. and was of the view that the attended circumstances transpired thereto has established a sudden provocation by the deceased and Their Lordships were of the view that the sentence imposed on the Accused – Appellant was grossly excessive and the sentence for murder was set aside and convicted for culpable homicide not amounting to murder.

In the instant appeal the counsel for the Respondent urges in confutation that the attended circumstances viz a viz do not merit the Accused – Appellant to get shelter under 293 of the Penal Code on the ground that the Accused – Appellant had only knowledge, but

has contended that accused could be convicted and sentenced to culpable homicide not amounting to murder on the basis of sudden provocation punishable under Section 297 of the Penal Code.

For convenience and brevity the above section is mentioned here under;

Section 297

"Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment of either description for a term which may extend to twenty years, and shall also be to fine if the by which the death is caused is done with the intention of causing death, or to cause such bodily injury as is likely to cause death."

OR

"With imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, or to cause such bodily injury as is likely to cause death."

Therefore it is contended by the Learned Counsel for the State that the Accused – Appellant had intended to cause the death or of causing such bodily injury as is likely to cause death of the deceased.

In the said back drop this court is inclined to hold that the sentence is grossly excessive. In the above

setting we affirm the finding and conviction in respect of the offence of culpable homicide not amounting to murder and set aside the conviction for murder. Further the Accused – Appellant is sentenced for 10 years Rigorous Imprisonment, and the said jail term will be operative and take effect from the date of conviction viz. 04.11.2015. Subject to this variation in sentence the appeal is dismissed.

Accordingly appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

K.K. Wickremasinghe, J

I agree.

JUDGE OF THE COURT OF APPEAL