

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

In the matter of an Appeal in terms of  
Section 331(1) of the CPC read with  
Article 138 of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka.

Jayasinghe Gurunnanselage Pradeep  
Kumara Jayasinghe

**Accused-Appellant**

**C.A Appeal No: CA 186/2010**

High Court Polonnaruwa

**Vs.**

Case No: HC 348/2006

The Hon. Attorney General,

Attorney General's  
Department,

Colombo 12.

**Complainant-Respondent**

**BEFORE** : Deepali Wijesundera J.

L.U Jayasuriya J.

**COUNSEL** : Saliya Peries for the Accused-Appellant

Rohantha Abeysuriya S.D.S.G for the A.G

**ARGUED ON** : 10<sup>th</sup> January, 2017

**DECIDED ON** : 24<sup>th</sup> March, 2017

## **L.U Jayasuriya J.**

The Accused-Appellant (hereinafter sometimes referred to as the Appellant) was indicted in the High Court of Polonnaruwa under section 296 of the Penal Code for the murder of two persons namely Jayalath Balagallalage Lechchemi and Rajapaksha Pathiranalage Lalani Priyanthi Rajapaksa. After trial, the Appellant was convicted and sentenced to death.

This appeal is from the said conviction and sentence.

Facts of the case briefly are that on the day of the incident, the Appellant has brought Priyanthi home in his bicycle. The deceased has suddenly got off the bicycle and started running towards the house where Lechchemi lived. The Appellant has asked Priyanthi to stop but she has proceeded towards the house. Then the Appellant has shot at her and also Lechchemi who had come out of the house by then.

The Appellant in his dock statement stated that he exercised the right of private defence as some people there at home tried to attack him with a knife.

The Counsel for the Appellant argued that Priyanthi had had an extra-marital affair and subsequently the Appellant and the deceased reconciled. He further argued that the learned High Court Judge has not considered the lack of premeditation and the element of suddenness which resulted in the shooting.

He argued that prosecution witness No. 2 has noticed the deceased and the Appellant arguing which sparked off the incident. He submitted that this item of evidence had not been considered by the learned High Court Judge.

The Counsel submitted that the High Court has not considered the lesser culpability on the part of the Appellant.

The learned D.S.G. stated that section 105 of the Evidence Ordinance operates in favour of the prosecution. Section 105 reads thus:

“When a person is accused of any offence, the burden of proving the existence of circumstances bringing the same within any of the general exception in the Penal Code, or within any special exception or proviso contained in any other part of the same code, or in any law defining the offence, is upon him, and the court shall presume the absence of such circumstances.”

The learned S.D.S.G. argued that the Appellant and the deceased were riding on the bicycle without any dispute until they reached home.

The learned S.D.S.G. further submitted that the Appellant in his dock statement failed to say how the shooting sparked off and that this burden has not been discharged by the Appellant.

We find that no explanation was forthcoming from the Appellant as to which led the deceased to run towards the home. Further, there is no evidence to suggest that the Appellant exercised his right of private defence. We find that there is no evidence on the marital disputes between the Appellant and the deceased.

The Appellant who shot at his wife, went on to shoot at the deceased's grandmother as-well. The Judicial Medical Officer stated that both the deceased died as a result of the firearm injuries.

We hold that shooting with an automatic weapon shows the intention of the Appellant.

The Learned D.S.G. referred to **A.G Vs. K.D.J Perera 54 NLR 265** and stated that grave and sudden provocation is clearly analyzed in the said case which fact shows that in this instance, elements of grave and sudden provocation are not found.

For the foregoing reasons, we move to affirm the judgment of the High Court of Polonnaruwa dated 28.10.2010.

Appeal Dismissed.

**JUDGE OF THE COURT OF APPEAL**

**Deepali Wijesundera J. :**

I agree.

**JUDGE OF THE COURT OF APPEAL**