

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

Somalatha Kulasinghe

Padmasiri Kulasinghe alias Baby

Accused-Appellants.

C.A.No.130/-131/09

H.C.Galle 3022-2007

Vs.

The Hon. Attorney General

Complainant-Respondent

Before : M.M.A. Gaffoor, J. and
K.K.Wickremasinghe,J.

Counsel : Amila Palliyage for the 1st Accused- Appellant.
Indika Mallawarachchi for the 2nd Accused-
Appellant.
Harippriya Jayasundara DSG for the Respondent

Argued on : 04/07/2016 and 27/09/2016

Decided on : 17/07/2017

M.M.A.Gaffoor,J.

The 1st and 2nd accused-appellants were indicted, on a count of murder in the High Court of Galle, for having committed the murder of one Pilana Gamage Siripala, on 12/04/2006. After the conclusion of the trial, the learned trial Judge convicted both appellants on the count of murder and sentenced them to death on the 06/5/2009.

The 1st appellant and the deceased were husband and wife. The 2nd appellant was their neighbour with whom the 1st appellant is alleged to have has an affair. The incident in question took place around 9.15pm at the residence of the deceased ‘ Sampath Chaminda’ was the sole eye witness to the incident in question, who is a cousin of the 2nd appellant.

Modern Criminologists agree that a large majority of homicides occur among persons who stand in a close emotional relationship to each other.

The studies of **MC Clintock** on “ **Crimes of Violence**” (London 1963) page 217 and Gibson and Klein on “Murder” (Home Office Research Unit Report, 1961) substantiate the proposition that it is universally true that the larger proportion of Homicides occur as a result of persons resorting of homicide as an ultimate release from the strain imposed by the emotional relationship they had formed with their victims. Such Homicides present a contrast to homicides which result from motives of gain or lust, as the victims in such case are innocent strangers who would in no way have contributed to their own demise. The latter types of Homicides are more reprehensible and evoke greater feelings of insecurity. The former types of Homicides are “Victim precipitated” in that if not for the participation in the interaction by the victim and his contribution to the exacerbation of the relationship between him and the offender, the Homicide may not have occurred. Indeed, there is room for belief that the victim may himself have chosen Homicide of the offender as release from the strain which he too suffers as a result of the relationship if the offender had not moved first. (See **H Von Henting, The Criminal and his victim**, New Haven, 1948 page 383 and **M. E Wolfgang, “Victim Precipitated Homicide”** 48, Journal of Criminal law, Criminology and Police science 1.1957.)

With all that in my mind let me now turn to the facts and circumstances of this case to consider whether there was any basis for the learned trial judge to consider a plea of “ Sudden Provocation or Cumulative provocation”.

According to the testimony of “ Sampath Chaminda” he and the deceased have purchased goods from the boutique and proceeded to go to the house of the deceased. On the way, the witness has left his motor cycle and the goods he purchased at the house of “ Dayalatha” to be collected later. Thereafter, they have proceeded on foot.

When they reached the house of the deceased, the witness has remained outside. The deceased has opened the door and gone inside. At that time the deceased has found two appellants, his legal wife and her paramour in a compromising position. When the deceased confronted the second appellant as to what he was doing, the second appellant has pulled out a knife and stabbed him.

The first appellant made a dock statement and she stated,

1. The deceased came home that day drunk , with a head injury.
2. That she was assaulted by him, therefore, she went to her mother's house with the child
3. That when she came back, she saw the deceased lying on the ground with a bleeding injury.
4. That she went to the police with her mother and she handed over the axe as the police asked for it.

The second appellant gave evidence on oath. He denied any involvement with the commission of the offence and denied the alleged affair with the first appellant.

“ Kanthi’ is the mother of the first appellant who made the first complaint in this case. It was her evidence that;

1. The deceased after the influence of liquor had been having frequent quarrels with the first appellant for about four or five years .
2. In the night on the date in question, around 10.00 to 10.30 p.m., she has heard her daughter raising cries to the effect that her husband was assaulting her and when she had stepped to the compound the deceased had chased after her with a crow bar at which point the witness had run to escape from the clutches of the deceased and she has fallen.
3. She had carried the younger child of her daughter who was living with her and escaped.
4. She further testified that subsequently her daughter, the first appellant had come to her house and made a confession to the effect that she has attacked the deceased.

As per the testimony of prosecution witness “ **Sampath Chaminda**” when the deceased returned home, the deceased found his wife, the first appellant committing adultery with her paramour, the second appellant.

The sight of adultery of the deceased’s wife, the first appellant is the highest form of provocation that the deceased could have (**see; R V Maddy 1672 (1) Ventiries 158 DPP v Holmes 1964 AC 588**). The learned trial judge has properly considered the mental picture of the adultery reviled in the deceased by the sight of his wife, the first appellant having sex with her paramour, the second appellant. Therefore, the deceased’s confrontation with the second appellant as to what he was doing is not provocation to consider a lesser culpability. There is absolutely no evidence to establish that the deceased provoked either of the appellants at any stage.

The first appellant made a dock statement and she stated, that the deceased came home that day drunk, with a head injury. That she was assaulted by him, therefore, she went to her mother’s house with the child. That when she came back, she saw the deceased lying on the ground with a

bleeding injury. That she went to the police with her mother and she handed over the axe as the police asked for it.

“Kanthi” is the mother of the first appellant who made the first complaint in this case. It was her evidence that; the deceased after the influence of liquor had been having frequent quarrels with the first appellant for about four or five years. In the night on the date in question, around 10.00 to 10.30 p.m., she had heard her daughter raising cries to the effect that her husband was assaulting her and when she had stepped to the compound the deceased had chased after her with a crow bar at which point the witness had run to escape from the clutches of the deceased and she had fallen. She had carried the younger child of her daughter who was living with her and escaped.

She further testified that subsequently her daughter, the first appellant had come to her house and made a confession to the effect that she has attacked the deceased. The Judicial Medical Officer has observed 17 cut injuries and two stab injuries on the dead body. Therefore, the retaliation is so brutal as to show that it proceeded from a murderous intention. Therefore, the plea of

cumulative provocation would not be successful. The basis is that the extreme brutality of the retaliation act leads to the inference of precedent malice. (**See; R V Holloway, 1628, Cro Car 131, All ER 1979 at page 131.**) Moreover, the dead body was found 12 meter away from the house of the deceased in a shrub jungle. This is clearly shows that the homicidal act is though upon and brooded over.

There is absolutely no basis for the learned trial Judge to consider the plea of “Grave provocation” or “cumulative Provocation ”. We see no reasons to interfere with the finding of the learned Trial Judge. Conviction and death sentence affirmed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

K.K.Wickremasignhe,J.

I agree.

JUDGE OF THE COURT OF APPEAL