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

In the matter of an appeal from the High Court in terms of section 331 of the Code of Criminal Procedure Act

The Democratic Socialist Republic of Sri Lanka.

Complainant

CA/HCC/ 325/18 **VS**

High Court of Panadura
Case No: HC 3024/13

Alegodage Roshan Dhammika

Accused

And now between

Alegodage Roshan Dhammika

Accused– Appellants

VS

The Democratic Socialist Republic of Sri Lanka.

Complainant - Respondent

BEFORE : N. Bandula Karunarathna, J.

: R. Gurusinghe, J.

COUNSEL : Sahan Kulathunga

for the accused-appellant

Anoopa De Silva, SSC

for the Attorney General

ARGUED ON : 12/10/2021

DECIDED ON : 24/11/2021

R. Gurusinghe, J.

The accused-appellant (the appellant) was convicted by the High Court Judge of Panadura for having committed the murder of a person named Udage Dayan Varuna Prabath and hurting two others.

The appellant was sentenced to death for the murder with two years rigorous imprisonment, and a fine of rupees two thousand was imposed on each count.

The grounds of appeal are as follows;

1) The Learned Trial Judge has failed to consider the defense of grave provocation and sudden fight.

2) The Learned Trial Judge has failed to consider that all the lay witnesses in this case are interested witnesses.

3) The Learned Trial Judge has failed to appreciate that the accused admits that this incident occurred and that he was there at the time of the incident.

4) The Learned Trial Judge has failed to consider the evidence of prosecution witnesses in favour of the appellant.

5) The Learned Trial Judge has failed to consider the defense of intoxication.

6) The Learned Trial Judge has failed to consider the omissions, contradictions, and inconsistencies between the evidence of the prosecution witnesses.

The deceased, his friends, and the appellant are all from Walana Village in Panadura. They all attended a wedding function at Gorakana. The function went on till 11.00 p.m.

As per the evidence of PW3 and PW4, the only witnesses called as eyewitnesses, stated that there was a fight between the deceased and Chaturanga at the wedding function. The appellant is a friend of Chaturanga and was known to them for a long time. There was no animosity between the deceased and the appellant. PW2, the aunt of the deceased testified that she had seen the deceased speaking to the appellant, but she did not know whether they were friends. PW3 and PW4 admitted that there was no previous animosity between the deceased and the appellant.

After 11.00 p.m., the deceased and about six others left the wedding function to go home. As there were no buses at that time, they walked to their homes. Among them, there was PW1, PW3, PW4 and Chaturanga. They stopped at a

boutique in Keselwatte to drink water. The appellant also joined them at that point. They had walked up to Cooray Lane and stopped at the Praja Shalawa. They had a fight at that place, and the appellant assaulted the deceased.

Two eyewitnesses had seen a pointed steel stick with the appellant. It is a steel stick with two pointed sides. One was straight, and the other was curved. It had been removed from a wall. PW3 and PW4 had not seen the actual stabbing. However, when PW3 and PW4 tried to take the steel stick from the appellant, their hands were also injured. The deceased ran to his aunt, PW2's house, which was nearby, saying that Roshan (the appellant) stabbed him. PW2 said that she was just falling asleep when she heard the noise of a commotion from the road in front of her house. When she opened the front door, the deceased stood before her and said that Roshan stabbed him. There were about twenty people on the road. The deceased was admitted to the hospital and succumbed to his injuries in few hours. There were two stab injuries on the deceased's body. As per the Judicial Medical Officer's evidence, one of the stab injuries was fatal.

The evidence revealed that the deceased and his companions had consumed liquor for a considerable time. They were not sober at the time of the incident. The appellant and his friend Chaturanga were also in a state of intoxication. There was a fight between Chaturanga and the deceased at the wedding function. The appellant and the deceased had no previous animosity. It is clear that the appellant did not have the intention of killing anyone when he attended the wedding function.

The weapon used by the appellant was a steel stick removed from a nearby place just before the incident. There was no former resentment or threat by the appellant towards the deceased. There was no evidence to show that this incident was a pre-meditated one.

In the case of *The King vs. Punchirala 25 NLR 458*, Bertram CJ stated that;

"drunkenness may be taken into consideration in cases where what the law deems sufficient provocation has been given, because the question is, in such cases, whether the fatal act is to be attributed to the passion of anger excited by the previous provocation, and that passion is more easily excitable in a person when in a state of intoxication than when he is sober."

The deceased, his friends, and the appellant were in a state of intoxication. Furthermore, there was a fight at the wedding function. In his dock statement, the appellant said that the deceased had assaulted his friend, Chaturanga, at the dining table, dropped Chaturanga's plate of food, and the appellant intervened to stop the fight. The appellant's evidence is that the deceased assaulted Chaturanga again when they were going home, and the appellant tried to save Chaturanga. Chaturanga stood as an accused in the Magistrate's Court along with the appellant in the non-summary proceedings. Chaturanga was later discharged on the instruction of the Attorney General.

The appellant did not stab the deceased all of a sudden. There was a fight before the stabbing. The two eyewitnesses are friends of the deceased. The prosecution was allowed to cross-examine PW4 and mark a contradiction. It is possible that the two eyewitnesses omitted to state the facts favourable to the appellant. These facts should be considered in favour of the appellant.

In the case of *Jayathilake vs. Attorney General [2003] 1 Sri LR 107,* Edirisuriya J. stated that; "the intoxication necessary to reduce an offence from murder to culpable homicide not amounting to murder on the ground of absence of murderous intention, need not necessarily be the degree of intoxication referred to in section 78 of the penal code. The effect in section 79 applies to all cases of self-intoxication in any degree when the offence in question specified some definite knowledge or intent as an essential ingredient."

As the appellant was in a state of intoxication, a reasonable doubt would arise as to whether the appellant had the intention to kill the deceased.

For the reasons stated above, it is my view that the appellant should have been convicted of culpable homicide not amounting to murder and not to the offence of murder.

In the circumstances, I set aside the conviction for murder and death sentence imposed on the appellant. I substitute a conviction for culpable homicide not amounting to murder and impose a term of ten years rigorous imprisonment on the accused-appellant to take effect from the date of conviction, namely 07/09/2018. The sentence imposed on counts 3 and 4 is not changed.

The appeal is allowed. The sentence varied.

Judge of the Court of Appeal

N. Bandula Karunarathna, J.

I agree.

Judge of the Court of Appeal