

**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, read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The Democratic Socialist Republic of Sri Lanka

**Complainant**

**Court of Appeal Case No.**  
**HCC/0112/2019**

V.

**High Court of Hambantota**  
**Case No. HC/244/2006**

1. Loku Baduge Dhammika Priyantha Jayasuriya alias Tiddy
2. Peduruge Somadasa alias Suwanda Hannadige Somadasa alias Rathee

**Accused**

AND NOW BETWEEN

Loku Baduge Dhammika Priyantha Jayasuriya alias Tiddy

**Accused – Appellant**

V.

Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Complainant - Respondent**

**BEFORE** : **K. PRIYANTHA FERNANDO, J. (P/CA)**  
**SAMPATH B. ABAYAKOON, J.**

**COUNSEL** : Nihara Randeniya for the Accused-Appellant.  
R. Bary, Senior State Counsel for the Respondent.

**ARGUED ON** : 12.11.2021

**WRITTEN SUBMISSIONS**

**FILED ON** : 29.01.2020 by the Accused Appellant.

19.06.2020 by the Respondent.

**JUDGMENT ON** : 17.12.2021

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**K. PRIYANTHA FERNANDO, J.(P/CA)**

1. The accused-appellant (hereinafter referred to as the appellant) was indicted in the High Court of *Hambanthota* with another (2<sup>nd</sup> accused) for committing the murder of one *Hettiarachchige Thilaka* and causing grievous hurt on one *M.B. Himali Asanka* punishable in terms of sections 296 and 316 of the Penal Code respectively. After trial, the learned High Court Judge convicted the appellant for murder on count No. 1 and sentenced him to death. Being aggrieved by the said conviction, the appellant preferred the instant appeal.
2. The learned Counsel for the appellant preferred the following grounds of appeal in his written submissions;
  - I. That the learned trial Judge failed to appreciate the defence evidence.
  - II. That the learned trial Judge failed to consider that the appellant exercised his right of private defence.

- III. That the prosecution has failed to prove the murderous intention or knowledge on the part of the appellant in order to convict him for murder.
  - IV. That the learned trial Judge has failed to consider the contradictions and omissions of the prosecution case.
3. However, at the argument stage the learned Counsel for the appellant moved to reframe the ground of appeal No. 2 to read as follows;
- II. That the learned trial Judge failed to consider that there had been grave and sudden provocation which provoked the appellant.
4. Facts of the case as per the evidence of the eye witness *Hemamali Anuruddhika* (PW3) are as follows;

She is the daughter of the deceased. She had been living with her mother and the three sisters in the same house at the time of the incident that caused the death of the deceased. On the day of the incident, all five of them had been watching television by about 9.30 pm. After switching off the TV, they had come out to brush their teeth as they had water outside the house. The deceased mother had gone to close the gate (*Kadulla*) in front of the house. A *Bhikkuni* by the name of *Kusumawathie* had been living on the other side of the road right in front of their house. The appellant and the 2<sup>nd</sup> accused from the said *Bhikkuni*'s land had held the torch on to the face of the deceased scolding her in filth. After closing the *Kadulla*, the deceased had turned back to come towards the house. The appellant and the 2<sup>nd</sup> accused had broken the *kadulla*, come inside their garden and the appellant had hit the deceased on her head with a *katty* knife. When her sister came in front of the mother, the 2<sup>nd</sup> accused had hit her sister with a club. The mother had succumbed to her injuries upon admission to hospital.

5. The appellant giving sworn evidence has said that he was waiting in front of the *Bhikkuni*'s house at about 6.30 pm for the 2<sup>nd</sup> accused to come to go with him to play cards. Then the deceased had mocked at him saying that he had sent the wife abroad for the white men to use. Without getting involved they had gone to play cards. At about 8.30 pm when they were coming back, he has felt chilli powder thrown into his eyes. When the 2<sup>nd</sup> accused alarmed him, he has seen a club coming towards him. He had held the club and swerved it, to

realize that it had been a *katty* knife but not a club. He had said that he did not have any intention to kill anyone but swerved the club in his self defence.

6. It is the contention of the learned Counsel for the appellant that the words the deceased used mocking at him provoked the appellant. The learned Senior State Counsel for the respondent submitted that the said mocking if at all happened, had been at about 6.30 pm and the incident of assault has taken place at about 8.30-9.00pm. Thus, it cannot be sudden provocation as submitted by the learned Counsel for the appellant.

7. The exception 1 to section 294 of the Penal Code provides;

*“Culpable homicide is not murder if the offender whilst deprived of the power of self-control by grave and sudden provocation, cause the death of the person who gave the provocation or causes the death of any other person by mistake or accident.”*

8. As submitted by the Senior State Counsel for the respondent, the words used if at all by the deceased mocking at the appellant had been by 6.30 in the evening. The assault had taken place at about 8.30-9.00pm. Thus, the appellant cannot rely on sudden provocation. The learned High Court Judge has extensively dealt with the defence taken by the appellant at page 17 of his judgment (page 368 of the appeal brief). Although the appellant suggested grave and sudden provocation to the witness No. 4 in cross examination, he has suggested to PW1 and PW3 that in self defence he grabbed the *katty* from the deceased and swerved. His defence has not been consistent. As rightly mentioned in his judgment by the learned High Court Judge, the medical evidence shows that the cut injury to the top of the head could not have been caused by swerving the *katty* as testified by the appellant. It had been a hard cut injury caused intentionally on top of the head. The learned High Court Judge has carefully considered the evidence and rightly concluded that the appellant intentionally caused the death of the deceased. The learned High Court Judge also has given good and sufficient reasons for rejecting both the defences of grave and sudden provocation and right of self defence taken by the appellant on different instances during the trial.

9. The learned Counsel for the appellant submitted that the contradictions marked as 1V1 and 1V2 were not considered by the learned High Court judge. As mentioned by the learned High Court judge at page 6 of his judgment, both those contradictions although marked, had not been proved by the defence at the trial. However, at page 7 of his judgment the learned High Court judge has

carefully considered those contradictions, to find that they do not go to the root of the matter that affects the credibility of the witness. Those contradictions were on the identity of the weapons.

10. In the above premise, I find that the grounds of appeal urged by the appellant are devoid of merit. Hence, the conviction of the appellant and the sentence imposed by the learned High Court Judge affirmed.

Appeal dismissed.

**PRESIDENT OF THE COURT OF APPEAL**

**SAMPATH B. ABAYAKOON, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**