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

In the matter of an appeal against an order of the High Court under Sec. 331 of the Code of Criminal Procedure Act No. 15 of 1979.

Court of Appeal Case No: CA /HCC/0186/17
High Court Avissawella Case No: HC/06/2006

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

Complainant

Vs.

Kattadige Ranjith alias Ranjith Amarasinghe

Accused

And Now Between

Kattadige Ranjith alias Ranjith Amarasinghe

Accused-Appellant

Vs.

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

Complainant-Respondent

Before: **N. Bandula Karunarathna J.**

&

R. Gurusinghe J.

Counsel: Shavindra Fernando PC with Ranjith Rajapathirana AAL, Sajith Weerasuriya AAL and Nipun Senaratnege AAL for the accused-appellant

Chethiya Gunasekara ASG for the Complainant-Respondent

Written Submissions: By the accused-appellant on 21.02.2018

By the complainant-respondent 08.02.2019

Argued on : 09.09.2022

Decided on : **20.09.2022**

N. Bandula Karunarathna J.

This appeal is from the judgment, delivered by the learned Judge of the High Court of Avissawella, dated 06.04.2017, by which, the accused-appellant, who is before this Court, was convicted and sentenced to death for having murdered one Kirigalage Daya Swarnalatha (the deceased) on or about 18.08.1996.

The accused-appellant had been indicted on 28.11.2005 in the High Court of Avissawella for murdering Kirigalage Daya Swarnalatha on or about 18.08.1996, which is punishable in terms of section 296 of the Penal Code.

The trial commenced on 18.11.2009 after the accused-appellant opted for a non-jury trial. The prosecution had, led evidence of 9 witnesses and marked the productions පැ - 1 and පැ - 2. Once the prosecution had closed its case the accused-appellant gave evidence from the witness box. After the trial, the accused-appellant had been found guilty of the murder charge and sentenced to death. Aggrieved by the said decision the accused-appellant preferred this appeal.

The grounds of appeal are as follows;

(i) The learned Trial Judge erroneously ascribed a murderous intention to the appellant contrary to the evidence deposed.

(ii) The learned Trial Judge misdirected himself about the medical evidence and came to an erroneous finding that the appellant delivered the blows with a murderous intention.

(iii) The learned Trial Judge had failed to consider the defence of grave and sudden provocation, although it was not expressly pleaded by the appellant.

(iv) The learned Trial Judge had failed to appreciate the effect of voluntary intoxication although it was not expressly pleaded.

(v) The learned Trial Judge had drawn the following artificial and unwarranted inferences with regard to the testimonial credibility of the appellant.

The prosecution case relies mainly on eyewitness testimony.

Ruwan Chameera (PW 01) is a nephew of the deceased and he is the main eyewitness to this case. On the day of 18.08.1996, the witness was at the deceased's home. He testified that at about 5.45 pm the deceased was cooking in the kitchen at which point PW 02 had come. At that time there were some curry leaves, onions, and chillies in the deceased's hand. At this

point, the accused had come to the house of the deceased uttering filth and demanding the deceased untie the clothesline. Then the accused scolded the PW 02 in filth and chased her away. The witness goes on to state that the accused assaulted the deceased's legs, hands and head. The deceased had begged the accused, "රංජී ගහන්න එපා" Yet the accused had stricken the deceased.

Then one Rathnasiri (who is not a witness) had taken the accused away. After that, the witness and the deceased had gone into the house and then they had closed the door. In evidence in chief, he had stated that.

According to the witness's evidence then the deceased had left the hospital with him. Then they had gone to the witness's house by a three-wheeler which had belonged to Pathmasiri (PW 06). After that, the witness had spoken to his mother and described the incident to her. He testified that then his mother and the deceased had left for the hospital. Further, he testified under cross-examination he will never forget this incident.

Sriyani (PW 02) is a neighbour and another eyewitness of this case. She testified that on 18.08.1996 she had gone to the deceased's home to ask for some coconut leaves. When the witness had gone to the deceased home, while the deceased was cooking in the kitchen. The witness too had seen that there were onions and curry leaves in her hand. Then she asked the deceased for some curry leaves. Thereafter, the deceased had asked Ruwan (PW 01) to pluck curry leaves and had given them to the witness. Then the accused came to the deceased's home with a club and then he scolded the deceased in filth to untie the clothesline on the king coconut tree. Thereafter the accused scolded the witness in filth and chased her away. Then the deceased had gone inside her home and the accused also had gone behind her. The witness testified that she heard the deceased had bewailed.

Sumanawathi (PW 03) is the mother of the PW 01. She testified that on 08.18.1996 at about 6.00 or 6.30 p.m his son (PW 01) had come with the deceased in a three-wheeler. Then the son said that "අම්මේ නැන්දට ගැහුවා". Then the witness asked the deceased about the incident." According to her evidence she said that the deceased had expressed as below. "උඩහගෙදර රංජී මට අත්වලට කකුල්වලට ඔලුවට ගැහුවා". Further, she testified that at the time the deceased was whispering and her hand was broken. Then the witness admitted the deceased into the hospital. However, then the deceased had been sent to Colombo in an ambulance straight away. Although at the cross-examination the attorney-at-law for the accused suggested that there had been the previous provocation by the deceased. But the witness had accepted it without knowing the meaning of the word "Provocation".

Pathmasiri (PW 06) is the person who brought the deceased into the hospital in his three-wheeler. In considering the evidence of this witness he testified to a dying deposition made by the deceased. The witness testified under the cross-examination mentioned below. "මුදලාලි මට රංජිත් ගැහුව්වා" (P. 242)

Murugapille Sivasubramaniyam (PW 07) is the Judicial Medical Officer (JMO) and he performed the post-mortem of this case. He testified that there were 09 injuries of the body of the deceased. Among them injury No 1 is an injury to the skull which caused bleeding into the brain. Further, He stated that this injury would have caused death in the ordinary course.

2nd injury is a surgical wound. Yet, the 3rd injury is also an important injury, which is a tramline injury. Injury No. 4 is also a serious injury on the hand. 5th injury is an injury to the left hand. Also, the JMO has testified that injury No. 3, 4, and 5 all can occur from the use of a club. Further, he testified that injuries No. 4 and 5 are defence injuries. Injury No. 6 is an injury to the right elbow. JMO testified that injury No. 7 is an injury which can be classified as a defence injury.

Don Royal (PW 08) is the Investigation Officer in this case. On 20.08.1996 at about 9.10 am he has gone to investigate the scene of the crime. He testified that when he was investigating the scene of the crime, he had seen some curry leaves and an onion which were on the ground near the kitchen door.

The accused-appellant testified under oath at the trial and stated that on the day of 18.08.1996, some friends visited him around 12.00 noon and thereafter his friends drank arrack. Around 4.30 pm his friends played music from a musical set-up fixed to a three-wheeler which annoyed the deceased.

Around 5.00 pm his friends had left his home and he had then proceeded to land on which a house was being constructed. According to his evidence when he was passing close to the deceased's house, she scolded him for playing music with his friends and started assaulting him with a rice pounder. He had grabbed the rice pounder and thereafter the deceased picked up a piece of firewood and started assaulting him. He waived the rice pounder to shield the blows and the deceased had fallen. Thereafter he left the place. On the day of 23.08.1996, he was surrendered to court through a lawyer.

The accused-appellant had given evidence on oath embarking upon a plea of a grave and sudden provocation and exercising the right of private defence. The learned Trial Judge had rejected the defence evidence on the footing that although the appellant had testified there was a fracas between him and the deceased.

It warrants mentioning that the position taken up by the accused-appellant is consistent and the following factors are placed before the court to consider lesser culpability based on a grave and sudden provocation or sudden fight of exceeding the right of private defence.

(i) The incident had taken place near the appellant's residence which negates any pre-planned or premeditation on the part of the appellant;
(ii) It is an admitted fact that the deceased had sought after the appellant;
(iii) Eyewitnesses have testified that there was an exchange of words between the deceased and the accused-appellant.
(iv) The fact that the appellant too had sustained injuries is indicative of the fact that the incident had taken place in the course of a sudden fight.

When this matter was taken up for argument both parties agreed that there is a possibility for a shortcut considering a sudden fight. It is our view that the learned Trial Judge has failed to address his judicial mind to the afore-mentioned factors which necessarily gives the right to the pleas embarked upon by the appellant.

The appellant had not denied his complicity in the commission of the crime and has embarked upon a plea of a grave and sudden provocation and sudden fight and exercising the right of private defence.

The learned Trial Judge after the case for the prosecution was closed called for defence and the appellant testified under oath. But the defence version was not considered by the Trial Judge.

The Trial Judge should give proper attention when he finally decides whether the accused is guilty or not for the offence he was charged with. According to the prosecution witnesses, it reveals that the deceased was an aggressor. According to prosecution evidence on that fateful day, the deceased fought with the appellant.

It is a settled principle under criminal law that the prosecution should prove their case beyond a reasonable doubt. The learned counsel for the accused-appellant further argued that it is a cardinal principle that unreliable and unacceptable evidence cannot be rendered credible, simply because there is some corroborative material. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The benefit of the doubt, to which the accused is entitled, is reasonable doubt; the doubt which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind.

It is our view that the evidence of the accused-appellant attracts the plea of a grave and sudden provocation and self-defence. This court came to the said conclusion of the present appeal, considering the behaviour of the deceased before this unfortunate incident. The appellant has further testified that the scuffle between him and the deceased had accidentally resulted in the deceased causing his death thereby attracting the plea of a grave and sudden provocation and self-defence as embodied in special exceptions 1 and 3 to section 294 of the Penal Code.

However, had the Trial Court considered the above-mentioned factors in its correct judicial perspective, the trial court would have come to an accurate factual finding that the accused-appellant caused the death of the deceased by accident upon being provoked by the deceased consequently affording the plea of a grave and sudden provocation to the accused-appellant. I wish to say that the failure to take into account the afore-cited extenuating circumstances amounts to a non-direction resulting in a miscarriage of justice.

In this case, the appellant had proved the right of private defence and grave and sudden provocation and sudden fight. Even though the accused had acted excessively when inflicting the said injury using a club, the matters already discussed above indicate a sudden fight without premeditation and without taking any undue advantage in the heat of passion.

The learned Additional Solicitor General who appeared for the respondent is of the view that the accused-appellant should have been convicted for a lesser offence namely section 297 of the penal code and not for the offence under section 296 of the penal code.

For the reasons set out above, I conclude that the learned Trial Judge had misdirected himself by failing to evaluate the said material in favour of the accused-appellant. I, therefore, decide to set aside the conviction and sentence imposed by the learned High Court Judge of

Avissawella on 06.04.2017 and replace it with a conviction for culpable homicide not amounting to murder under section 297 of the Penal Code based on sudden fight and self-defence and impose a sentence of rigorous imprisonment for 7 years.

Further, we impose a fine of Rs. 10,000/- and in default 6 months simple imprisonment. Also, we wish to impose Rs. 50,000/- as compensation to the immediate family members of the deceased person, in default another 6 months of simple imprisonment.

We direct that the sentence should take effect from the date of imposition. Therefore, the sentence imposed should take effect from 06.04.2017.

The fine and the compensation if not paid by the accused-appellant, the default terms ordered by this court should run concurrently.

The appeal is allowed.

Registrar is directed to send a copy of this judgment along with the main case record to the High Court of Avissawella and a copy of the Judgement to the prison authorities forthwith.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree.

Judge of the Court of Appeal