

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

**C.A.218/2010**

H.C. Kandy Case No: Jury 1570/95

Hene Gedara Wijedasa Alias  
Wedikkaraya  
No: 116,  
Weheragalagama,  
Madakandayaya,  
Handungamuwa.

**Appellant**

**Vs.**

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

**Respondent**

C.A. 218/2010      H.C. Kandy Case No: Jury 1570/95

Before : Sisira J. de Abrew,J. (Acting P/CA) &  
P.W.D.C. Jayathilaka,J.

Counsel : Priyantha Deniyaya for the Accused-Appellant.  
Haripriya Jayasundara DSG. for the Respondent.

Argued &

Decided on : 03.12.2013

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Sisira J. de Abrew, J. (Acting P/CA)

Heard both counsel in support of their respective cases. The accused-appellant in this case was convicted of the murder of a man named Pahala Gedara Seeda and was sentenced to death. Being aggrieved by the said conviction and the sentence he has appealed to this Court. Facts of this case may be briefly summarised as follows:

On the day of the incident around 11.00 p.m. the accused-appellant was seen inside the house of the son of the deceased person. He was armed with a gun and a knife. When the son and the nephew of the deceased person saw the accused-appellant in the house of the deceased person, they started talking and walking. The deceased person too woke up

at this time. On being told that the accused-appellant was inside the house of the son of the deceased person which was very close to the house of the deceased person, the deceased person scolded him saying that he was a person who creeps into houses in the night. He also used filthy language and some words relating to certain cast. Thereafter, the accused-appellant challenged the deceased person saying that "come out of the house if you are so smart". The deceased person at this time came out of the house carrying a club. The accused-appellant at this stage, shot at the deceased person. Thereafter, the accused person stabbed the deceased person. The son and the nephew of the deceased person who saw the incident ran away from the place and informed the nearby Police post. The accused-appellant could not be arrested immediately. He was arrested 10 days after the incident. A gun and a knife were recovered by the Police consequent to a statement made by the accused-appellant. The accused-appellant in his dock statement said that the evidence given by the prosecution witnesses was false and he was innocent. The most important question that must be decided in this case is whether the accused-appellant was provoked by the words spoken by the deceased person and whether the accused-appellant in a state of grave and sudden provocation committed the murder of the deceased person. The accused-appellant has gone to the house of the son of the deceased person in the night. The son of the deceased person at this time was a married person. If the accused-appellant behaved in the manner described by the prosecution witnesses, one cannot expect him to suffer from grave and sudden provocation by the above words spoken by the deceased person. Further the accused-appellant does not even, in his dock

statement, admit that he heard the words spoken by the deceased person. The accused-appellant after killing the deceased person had gone to the house of Dingiri Banda and addressed the wife of Dingiri Banda in the following “ I have killed Seeda. Where is Dingiri Banda? I would kill him too”. When we consider the entire evidence led at the trial we are of the opinion that the accused-appellant has not suffered from grave and sudden provocation when he committed the murder of the deceased person. We are therefore of the opinion that the accused-appellant is not entitled to the defence of grave and sudden provocation. We have considered the evidence led at the trial. The fact that the accused-appellant shot the deceased was witnessed by the son and the nephew of the deceased person. There is no reason to disbelieve the two witnesses. We are of the opinion that the prosecution has proved its case beyond reasonable doubt. We therefore refuse to interfere with the judgment of the learned trial Judge. We affirm the conviction and the sentence and dismiss this appeal.

*Appeal dismissed.*

ACTING PRESIDENT OF THE COURT OF APPEAL

P.W.D.C. Jayathilaka,J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/