

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

Yaseek Ayoob

C.A. No:99/2009

Accused-Appellant

H.C. Trincomalee

Case No:HCT/232/07

Hon. The Attorney General

Respondent

BEFORE : **SISIRA J. DE ABREW, J. (ACTING P/CA) &
P.W.D.C. JAYATHILAKA, J.**

COUNSEL : Barana Gayan Perera with Prabha Perera
for the Accused-Appellant.

Shanil Kularatne, SSC, for the A.G.

**ARGUED AND
DECIDED ON** : 21.02.2014.

SISIRA J. DE ABREW, J. (ACTING P/CA)

Accused-appellant is present in Court produced by the
Prison Authorities.

Heard both Counsel in support of their respective cases. The accused-appellant in this case was convicted of the murder of his own wife Fawsiya Umma 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 10.30 in the morning the wife of the accused-appellant who was living in separation from her husband came to the house of the accused-appellant in order to take her belongings. She came with Pakeer Mohideen who is the Chairman of the Board of Trustee of the Mosque, Mohideen Kachchi Mohideen, who is the Secretary of the Mosque, the daughter of the accused-appellant, Ayoob Munahira and the son whose name was not revealed in the evidence. In compound of the accused-appellant's house, the deceased woman requested the accused-appellant to give her belongings. The accused-appellant at this stage requested the deceased woman to give the outstanding balance of the loan which had been taken by both of them. The deceased woman agreed to pay her portion (Rs.25,000/-). However, over this, they both argued and quarreled. During the course of the argument the accused-appellant got angry. It is pertinent to state what

witness Mohideen Kachchi Mohideen stated in his evidence on this point. He has said the following words.

“Suddenly Ayoob got angry. He lost his humanity and he became like an animal.”

He ran inside the house and brought a shovel which is used to make Musket by Muslim people. The accused-appellant thereafter hit his wife twice with the said shovel. Then the deceased woman ran to the neighbouring house of Fareed. The accused-appellant armed with a knife, went inside Fareed’s house and stabbed his wife. He stabbed only once. The depth of the injury was 2cm. It appears from the evidence that he was having a ruffled mind over the separation and the repayment of the loan taken by both of them. When the mind of a person is ruffled and a problem caused by an individual is simmering such a person can easily be provoked and loose his power of self-control by an act of an individual which may sometimes not provoke a normal man. In such a situation if he causes the death of the said individual especially, when he was suffering from the loss of his power of self-control, he is entitled to claim the benefit of the plea of grave and sudden provocation. But for him to get the benefit of the plea of grave and sudden provocation, the other person must do some kind of act towards him. In this case the deceased woman argued and quarreled with the accused-appellant over the

outstanding balance of the loan taken by both of them. When I consider these matters, I feel that he is entitled to the defence of grave and sudden provocation. In this connection I would like to consider the judgment of His Lordship H.N.G. Fernando, Chief Justice in ***E. Samithamby vs. The Queen*** (75 NLR 49). In the said case the accused-appellant killed his wife who was having an affair with her brother-in-law. The accused-appellant who was ruffled over this problem, consumed poison, but he did not die. After he consumed poison, one day the wife of the accused-appellant abused him and used the following words, "you cursed fellow. You did not die even after drinking poison." Thereafter the accused-appellant in that case took a knife and stabbed the wife. These were the facts of the case of ***E. Samithamby vs. The Queen***. His Lordship Justice H.N.G. Fernando remarked thus –

"An offender may be said to have been deprived of his power of self-control by grave and sudden provocation within the meaning of Exception 1 to section 294 of the Penal Code even though there was an interval of time between the giving of the provocation and the time of the killing, if the evidence shows that, all the time during the interval, the accused suffered under a loss of self-control."

In said case the accused-appellant was convicted of the offence of culpable homicide not amounting to murder on the basis of grave and sudden provocation. When I consider the facts of the present case as narrated by the prosecution witnesses, I feel that the accused-appellant has acted when he was suffering from loss of power of self-control and acted under grave and sudden provocation. Learned trial Judge has failed to consider this aspect. I therefore hold that the accused-appellant is not guilty of the murder, but he is guilty of the offence of culpable homicide not amounting to murder on the basis of grave and sudden provocation. I therefore set aside the conviction of murder and substitute a conviction of the offence of culpable homicide not amounting to murder on the basis of grave and sudden provocation which is an offence punishable under Section 297 of the Penal Code. I sentence the accused-appellant to a term of 16 years rigorous imprisonment and to pay a fine of Rs.10,000/-, carrying a default sentence of 3 months simple imprisonment. I direct the Prison Authorities to implement the sentence from the date of the conviction.

Learned trial Judge is directed to issue a fresh committal indicating the conviction and the sentence imposed by this Court.

Verdict altered.

ACTING PRESIDENT OF THE COURT OF APPEAL

P.W.D.C. JAYATHILAKA, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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