

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

J.M. Anura,

Accused-Appellant

Vs.

The Attorney General

Respondent

C.A. 57/2011

H.C. Puttalam Case No: 66/2004

Before : Sisira J. de Abrew, J. &
P.W.D.C. Jayathilaka, J.

Counsel : Neranjan Jayasinghe for the Accused-Appellant.
Dappula de Livra DSG. for the A.G.

Argued &

Decided on : 31.01.2014

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

Heard both counsel in support of their respective cases. The accused-appellant in this case was charged of the murder of a man named Sarath

Weerasinghe and of the murder of a man named Kurunapedilage Alwis. After trial the learned trial Judge acquitted the accused-appellant of the charge of murder relating to Sarath Weerasinghe but convicted of the murder of Karunapedilage Alwis. The accused-appellant was sentenced to death. Being aggrieved by the said conviction and the sentence he has appealed to this Court. The facts of this case may be briefly summerized as follows:

Sarath Weerasinghe was the son of Karunapedilage Alwis who was the 2nd deceased person in this case. Sarath Weerasinghe was having a love affair with the daughter of the accused-appellant. There is evidence that Sarath Weerasinghe and the daughter of the accused-appellant, as a result of the love affair, engaged in sexual intercourse. But Sarath Weerasinghe had refused to marry the daughter of the accused-appellant. Accused-appellant lodged a complaint in the Police Station over the refusal to marry his daughter by Sarath Weerasinghe. On the day of the incident there was an inquiry at the Police Station on the said complaint. At the conclusion of the inquiry, Police officer informed the parties to seek remedy by way of civil action in the District Court. Thereafter the accused party left the Police Station and came to the village. It is only after they left the Police Station, the deceased party came to the village. In the village the accused-appellant and some crowd chased after Sarath Weerasinghe. The crowd and the accused chased after Sarath Werasignhe for about half a mile. Chamila Nishanthi who was a relation (daughter-in-law of the 2nd deceased) of the deceased party was watching the incident. After the accused-appellant and

the crowd chased after the deceased person Sarath Weerasinghe, Chamila Nishanthi heard cries of Sarath Werasinghe to the effect he was being killed. On hearing the said cries, the 2nd deceased person Karuna Pedilage Alwis and Chamila Nishanthi started proceeding towards the direction where the cries emanated. At this time the accused-appellant came and addressed the 2nd deceased person in the following language. ' I will kill you too '. The accused-appellant thereafter stabbed the deceased person. It has to be stressed here that the deceased person Karunapedilage Alwis did not, at this time, do anything to the accused-appellant. The only point raised by learned counsel appearing for the accused-appellant was that the accused-appellant should have been convicted of the offence of culpable homicide not amounting to murder on the basis of grave and sudden provocation. He also tried to advance an argument that he should have been convicted of the offence of culpable homicide not amounting to murder on the basis of cumulative provocation. The first exception to Section 294 of the penal Code reads as follows:

' Culpable homicide is not murder if the offender whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident'. Learned counsel for the accused-appellant contends that the accused-appellant was suffering from provocation as a result of the refusal by Sarath Weerasinghe to marry his daughter although they were having a love affair and had had sexual intercourse. He further tried to contend that since the accused-appellant was not successful at the

inquiry conducted by Police, he was suffering from provocation. The accused-appellant has not taken such a position. It may be that he was suffering from a ruffled mind. It may be that he was angry over the entire incident between Sarath Weerasinghe and his daughter. 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 lose his power of self-control, by an act of the 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 individual namely the deceased person must do some kind of act towards him. If the deceased person did not do any act, it cannot be said that the accused-appellant got provoked and lost his power of self-control although he was having a ruffled mind. If the accused person who was having a ruffled mind as a result of the simmering dispute between him and the deceased person, causes the death of the deceased person without any act being done towards him by the deceased person, then what was boiling in his mind can be considered as the motive for the killing. Therefore for him to get the benefit of the plea of grave and sudden provocation there must be some act done towards him by the deceased person. If there is such evidence he can claim the plea of cumulative provocation. In the case of E. Samithambi Vs. The Queen 75 NLR 49, the accused-appellant was charged with the murder of his wife. On the day of the incident, the deceased woman abused the accused-appellant who was having a ruffled mind over

his wife's affair with her brother-in-law. Little later he stabbed her. Court of criminal appeal held that the accused-appellant was entitled to the plea of grave and sudden provocation although there was an interval of time between the giving of the provocation and the time of killing. It is therefore seen in the said case that the deceased woman had done some act towards the accused. But in the present case, when the deceased Karunapedilage Alwis and Chamila Nishanthi were going towards the direction from where the cries of Sarath Weerasinghe emanated, the accused-appellant came and stabbed said Alwis. There is nothing to suggest that Alwis did any act towards the accused-appellant. Learned counsel for the accused appellant tried to contend what happened at the Police Station has given rise to the plea of grave and sudden provocation. At the Police station it was only an inquiry by a peace officer who was trying to settle the dispute between the two parties. Therefore refusal by the deceased party to marry the daughter of the accused-appellant at the Police station cannot be considered as an act done by them to get the benefit of the grave and sudden provocation. Therefore the decision in Samithambi's case has no application to this case. Considering all these matters we hold the view that the accused-appellant is not entitled to claim the benefit of cumulative provocation or of grave and sudden provocation. It appears that refusal to marry his daughter by Sarath Weerasinghe has worked as the motive for the killing. Under these circumstances, we hold that the accused-appellant is not entitled to claim the benefit of cumulative provocation and grave and sudden provocation. We have considered the evidence led at the trial and are of the opinion that we should not interfere with the judgment of the learned trial Judge.

For the above reasons, we affirm the conviction and the death sentence and dismiss the appeal.

Appeal dismissed.

Acting President of the Court of Appeal

P.W.D.C Jayathilake,J.

I agree.

Judge of the Court of Appeal

Jmr/-