

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

Pinkanda Aratchilage Nimal

ACCUSED-APPELLANT

C.A 88/2011

H.C. Anuradhapura 257/2004

Vs.

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

COMPLAINANT-RESPONDENT

BEFORE: Anil Gooneratne J. &
P. R. Walgama J.

COUNSEL: Srinath Perera P.C. with S.L. Bulathsinghalage
for the Accused-Appellant

Hiranjan Peiris S.S.C. for the Complainant-Respondent

ARGUED ON: 02.12.2014

DECIDED ON: 09.12.2014

GOONERATNE J.

The Accused-Appellant was a Soldier attached to the Sri Lanka Army. Deceased was also a Soldier but somewhat higher in rank. Accused-Appellant was indicted for the murder the deceased namely Ulagoda Mudiyanseelage Upul Padmashantha Seneviratne on 21.8.1998. The incident of shooting took place inside the Mihintale Army Camp. The undisputed facts very briefly are as follows.

Both the Accused and the deceased had been soldiers of a platoon who were involved in an operation to wipe out terrorism from the Trincomalee area, and which operation was described as 'Jayasikuru'. Having been involved in the task described as above (Jayasikuru) the platoon consisting of both the deceased and Accused-Appellant returned to the Army Camp at Mihintale, on the day in question. It is in evidence that the soldiers in the camp had their dinner at about 7.00/7.30 p.m. and a platoon of about 30/40 had no facilities to sleep inside the camp and as such, said numbers of soldiers were given orders to go to a nearby school to spend the rest of the day. The deceased Army personnel just prior to leaving to the nearby school

ordered the Accused-Appellant soldier to carry some water cans and mattresses to the bus which was awaiting to take the soldiers to the said school. At that moment itself the Accused-Appellant had scolded the deceased in very bad language which need not be reproduced in this Judgment. The deceased had, by the words uttered by the Accused squeezed both ears of the Accused-Appellant. The eye witnesses describes in evidence as. '.... එක ඇහුණ ලාං කො. සෙනවිරත්න ඔබ මට මොකක්ද කිව්වේ කියල නිමල්ගේ ලගට ගිහින් කන් දෙක පොඩි කරා'.

It was suggested by both learned counsel that immediately after the Accused's ears were squeezed by the deceased Soldier, the Accused had fired at the deceased with a rifle in close range. Only one gun shot was fired with the rifle but depending on the gun that was used 2 entry wounds were found in the body of the deceased. The deceased had been rushed to hospital and the material disclosed to this court indicates that an emergency operation had to be performed.

The medical evidence reveal that the death would have been instantaneous but for the emergency operation. However the deceased died 4 days after the incident. Medico Legal Report suggest the setting in of

'septicaemia'. It is possible to argue that death was caused due to a supervening condition.

I state that as submitted by learned President's Counsel and learned Senior State Counsel the attendant circumstances warrant a substitution for the conviction for murder, of a conviction of culpable homicide not amounting to murder on the basis of grave and sudden provocation. The words uttered by the Accused with anger may be due to previous enmity or otherwise. In the Army the military regulations may require an officer of an high rank to give orders to soldiers of a lower rank. It need to be obeyed. In any event all the factual matters gathered does favour a plea of grave and sudden provocation. I wonder why! The learned State Counsel who conducted the prosecution in the High Court was not amenable to accept a plea on the basis of provocation.

In the circumstances, before I conclude it is prudent to refer to *Premal vs. A.G 2000(2) SLR 403*

Held: per Kulatilaka J.

"Our Judgments interpreted the phrase "sudden provocation" to mean that provocation should consist of a single act which occurred immediately before the killing so that there was no time for the anger to cool and the act must have been such that it would have made a reasonable man to react in the manner as the accused did."

Therefore, we set aside the finding and conviction of murder and the sentence of death are substitute a conviction for culpable homicide not amounting to murder on the basis of grave and sudden provocation. We impose a term of 15 years rigorous imprisonment. We also direct that the said term of imprisonment will run from the date the Accused was convicted by the learned High Court Judge (15.11.2011). This appeal is partly allowed.

Appeal partly allowed.

Sentence varied.

JUDGE OF THE COURT OF APPEAL

P. R. Walgama J.

I agree.

JUDGE OF THE COURT OF APPEAL