



**A**PP<sup>E</sup>AL, with application for leave to appeal, against a conviction in a trial before a Judge and Jury.

*S. Saravanamuttu*, with *D. W. F. Jayasekera* and *S. Sharvananda*, for the accused appellant.

*R. A. Kannangara*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

August 30, 1949. JAYETILEKE S.P.J.—

The only point of substance taken at the hearing of the appeal was that the learned Judge had failed to direct the jury to consider whether on the evidence the accused was entitled to the benefit of the exception relating to grave and sudden provocation. The evidence of Sinnadurai shows that the accused left the house in a temper at about noon because the deceased did not prepare the midday meal and that when he returned home at about 6 or 6.30 p.m. he was still in a temper. At that time dinner had been prepared by the deceased but she did not ask the accused to take it. At about 7.30 p.m. the accused bought half a bottle of arrack and shared it with sinnadurai. A little later the deceased asked the accused to take his dinner and the accused replied:—

“ When we came back at 6.30 p.m. hungry you prostitute did not call me for my meals. Therefore I am not going to eat the meals cooked by you. I do not want the meals that were not available to me at that time. Therefore do not ask me to eat thereafter.”

The deceased then complained to Sinnadurai about what the accused said whereupon the accused gave the deceased two hard slaps. The deceased then raised cries and ran in the direction of the temple and the accused ran after her fearing that she would fall into a well and brought her back. After some time the deceased asked the accused to take his dinner and the accused replied:—

“ You prostitute, I told you not to ask me to eat ”.

At this stage the deceased seems to have lost her temper and said that the accused was married before, that he had two children who were on the streets, and that he was arranging to marry again. Then the accused rushed up to the deceased saying “ What did you say?” and picked up a katty that was on the wall and cut her with it. The evidence does not show that the accused made any attempt to do any harm to the deceased before she uttered those words. The question whether the words uttered by the deceased provoked the accused and whether they provoked the accused gravely and suddenly was one for the jury to decide. In the opinion of the majority of us had, the jury been invited to consider the applicability of exception 1 to the evidence in the case they may have found, as it was open to them to find, that the accused was not guilty of the offence of murder. As they were not so invited, we think that the accused must have the benefit of the lesser verdict.

We would set aside the verdict and sentence and substitute a verdict of culpable homicide not amounting to murder and a sentence of 15 years' rigorous imprisonment.

*Conviction altered.*