

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

**In the matter of an application under section
331(1) of the Code of Criminal Procedure Act
No.15 of 1979.**

Democratic Socialist Republic of Sri Lanka.

Complainant

Court of Appeal Case No.:
CA HCC 196-197/2019

Vs.

High Court of Colombo
Case No.
HC 7748/2015

- 1) W. A. Sudesh Ranjith Priyadarshana
- 2) W. D. Wijerathne alias Syril alias
Appachchi
- 3) Wederalalage Sampath Wijeratne
- 4) W. Roshan Priyadarshana Wijeratne
- 5) Koisinge Don Nalini Sumithra
- 6) W.Prasad Kelum Kumara Wijeratne
- 7) Wedaralalage Sanjaya Kumara Wijeratne
- 8) K. Don Kumudu Sandhya Premakantha

Accused

AND NOW BETWEEN

- 1) W.A.Sudesh Ranjith Priyadaeshana
- 2) W.Dharmasiri Wijeratne alias Cyril

1st and 2nd Accused-Appellant

Vs.

The Hon. Attorney General,
Attorney General's Department,

Colombo 12.

Complainant-Respondent

Before: **B. Sasi Mahendran, J.**
 Amal Ranaraja, J.

Counsel: I.B.S.Harshana for the 1st Accused-Appellant.

Indika Mallawaratchy for the 2nd Accused-Appellant.

Disna Warnakulla, DSG for the Respondent.

Argued on: 18.07.2025

Decided on: 29.08.2025

JUDGMENT

AMAL RANARAJA, J.

1. The first and the second Accused-Appellants (hereinafter referred to as the “Appellants”) together with six others have been indicted in the *High Court of Colombo* in High Court of Colombo case no. HCC 7748/15.
2. The charges in the indictment are as follows;

Charge 01

On or about August 25, 2009, the accused named in the indictment were members of an unlawful assembly with the common object of causing hurt to one *Witiyala Jayasinghelage Sirisena*, and have thereby committed an offence punishable under and in terms of section 140 of the Penal Code.

Charge 02

On the same date and time as the above, the accused were indicted for committing murder of one *Witiyala Jayasinghelage Sirisena*, and have thereby committed an offence punishable under and in terms of section 146 of the Penal Code read with section 296 of the Penal Code.

Charge 03

On the same date and time as the above, the accused were indicted for causing the murder of one *Witiyala Jayasinghelage Sirisena*, and have thereby committed an offence punishable under and in terms of section 32 read with section 296 of the Penal Code.

Charge 04

On the same date and time as the above, the first accused was indicted for the offence of retention of stolen property of three mobile phones belonging to one *Witiyala Jayasinghelage Sirisena*, and have thereby committed an offence punishable under and in terms of section 394 of the Penal Code.

3. At the conclusion of the trial, the learned High Court Judge has convicted the appellants of the third charge in the indictment and sentenced them as follows;

The appellants have been sentenced to death.

The rest of the accused have been acquitted of all charges in the indictment.

4. The appellants aggrieved by the conviction, the disputed judgment and the disputed sentencing order have preferred the instant appeal to this Court.

Case of the prosecution

5. The deceased has been engaged in operating a bakery, where the second appellant was an employee.

6. The incident referred to in the charges have occurred on August 25,2009, at a location adjacent to the kitchen of the deceased's home. At approximately 09.30 pm, the deceased has been in the midst of his dinner when the first appellant had jumped over the parapet wall surrounding the deceased's property and challenged him to step outside and confront him.
7. The first appellant has thereafter, approached the deceased and insisted on moving to a location near the kitchen of the deceased's house to talk. When the first appellant attempted to place his hand on the deceased's shoulder to guide him, the deceased has resisted, jerking the appellant's arm away. In response, the first appellant has assaulted the deceased with a clenched fist.
8. Following this initial altercation, the third accused named in the indictment has jumped over the parapet wall, soon followed by the second appellant. The fourth, fifth, sixth, seventh and the eighth accused have also allegedly gathered at the scene.
9. During the attack, the second appellant has returned towards his house and re-emerged shortly after, armed with a knife. He has then stabbed the deceased while the first appellant encouraged him to commit the act.
10. After the incident, PW01 has sought help from the neighbours and subsequently made a complaint to the *Police*, prompting the commencement of an investigation. On August 26,2009, PW04, *Dr. N. A. S. U. Wijerathne* has conducted a post-mortem examination on the deceased. The doctor has observed 19 external injuries on the body; 13 of these have been cut injuries, while the remaining 6 have been contusions. *Dr. Wijerathne* has opined that the cut injuries where the cause of death. The post-mortem report has been marked as B-4.

Case of the appellants

11. The first appellant has chosen to remain silent and has not called any witnesses to support his case.
12. The second appellant has chosen not to call any witnesses in his defence. However, he has made a statement from the dock asserting that he was not involved in the incident referred to in the charges in the indictment.
13. The second appellant has also stated that the deceased had offered him a block of land, which he accepted and developed. After the development, the deceased, proposed to buy back the land from the second appellant. when the appellant failed to vacate the property, the deceased allegedly threatened him through third parties.
14. When the appeal was taken up for argument, the following grounds of appeal were urged by the respective learned counsel;

On behalf of the 1st appellant;

- i. Does the evidence lead at the trial warrant the consideration of the exception of sudden fight within the ambit of exception 4 to section 294 of the Penal Code?

On behalf of the 2nd appellant;

- i. The judgment of the learned Trial Judge is legally and factually flawed and untenable, and is also in total violation of section 283 of the Code of Criminal Procedure Act No. 15 of 1979 for the reason enumerated below;

- a. Non-compliance with section 283(2) of the Code of Criminal Procedure Act.

15. Section 294 of the Penal Code provide for conditions where a homicide can be mitigated from murder to culpable homicide. It lays out several exceptions that may not exonerate the offender but can lessen the offence.
16. Exception 4 to section 294 of the Penal Code provides that,

“Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon sudden

quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation – It is immaterial in such cases which party offers the provocation or commits the first assault.

17. When involving the sudden fight exception, certain elements needs to be established;

- i. *Sudden fight:*
the incident must be unexpected and arise suddenly, without any prior planning,
- ii. *Absence of pre-meditation:*
the offender must not have deliberated or planned the homicide beforehand, the action should occur in the heat of the moment,
- iii. *No undue advantage:*
the offender should not exploit the situation or have an unfair advantage over the victim, ensuring a degree of evenness in the confrontation or,
- iv. *The offender should not act in a cruel or unusual manner.*

18. Initially, the first appellant has jumped over the parapet wall surrounding the property of the deceased and called out the deceased in a crude manner “අබ්බේ කිරි මහත්තයා බැහැපන් ඉලියට්” demanding that he come out of his house. He has then approached the deceased, insisting that they move further away for a discussion. When the deceased resisted, the first appellant has attempted to drag him away. In response, the deceased has jerked the first appellant’s arm. Consequently, the first appellant has struck the deceased in the abdomen.

19. At this point, the third accused named in the indictment, along with the second appellant have also jumped over the parapet wall and joined the appellant in assaulting the deceased. After a short while, the second appellant has returned to his house and come back with a knife. He has warned PW01 that he intended to “finish” the deceased and thereafter proceeded to inflict injuries on him with the knife. Throughout this

attack, the first appellant has encouraged the second appellant to continue his assault.

20. The events referred to above, suggests that the exchange of blows was pre-arranged and pre-planned. The fight has not been an unexpected occurrence; there has been a significant lapse of time between the gathering of the individuals involved and the onset of violence which caused the fatal injuries. It appears that a sufficient time has passed for any initial passion to subside, indicating that the actions leading to the fatal injuries inflicted on the deceased can be considered premeditated.
21. Further, in light of the evidence provided, it seems clear that the actions of the appellants were not only unjust but also ruthless. The fact that the deceased was unarmed, underscores the imbalance in the confrontation suggesting the appellant's premeditated actions and exploited the deceased's vulnerable state.
22. In *Amaranath Singh AIR 1928 OUD 282*, the Supreme Court of India has observed as follows;

"If two men were fighting and one of them unarmed while the other uses a deadly weapon. The one who use such a weapon must be held to have taken an undue advantage and not entitled to the benefit of this exception".
23. The learned counsel for the second appellant has complained that the impugned judgment is not according to law, hence it should be set aside.
24. Provisions concerning judgments of courts other than the Supreme Court and the Court of Appeal are outlined in section 283 of the Code of Criminal Procedure Act No.15 of 1979.

Section 283 is as follows;

"The following provisions shall apply for the judgments of courts other than the Supreme Court or Court of Appeal:

(1) The Judgment shall be written by the Judge who heard the case and shall be dated and signed by him in open Court at the time of pronouncing it, and in a case

where appeal lies shall contain the point or points for determination, the decision thereon, and the reasons for the decision.

(2) It shall specify the offence if any of which and the section of the law under which the accused is convicted and the punishment to which he is sentenced.

(3) If it be a judgment of acquittal, it shall state the offence which the accused is acquitted.

(4) When a judgment has been so signed it cannot be altered or reviewed by the court which gives such judgment:

Provided that a clerical error may be rectified at any time before the court rises for the day.

(5) The Judgment shall be explained to the accused affected thereby and a copy thereof shall be given to him without delay if he applies for it.

(6) The original shall be filed with the record of proceedings.

25. In *Chandrasena and Others vs. Munaweera* [1998] 3 SLR page 94, at 96, Jayasuriya J has stated as follows;

“In Ibrahim vs. Inspector of Police 59 NLR 235, the Supreme Court emphasized that the mere outline of the prosecution and the defence without reasons being given for the decision but embellished by such phrases as “I accept the evidence of the prosecution and I disbelieve the defence” is by itself an insufficient discharge of duty cast upon the Judge by section 306(1) of the Criminal Procedure Code. vide also the decision in Thusaiya vs Pathihamy 15 CLW 119 by Nihill, J. According to the presently applicable section 283(1) of the Code of the Criminal Procedure Act No.15 of 1979, the Judgment shall contain the point or points for determination, the decision thereon and the reasons for the decision. The Supreme Court stressed that the object of the statutory provision is to enable the Supreme Court to have before it the specific opinion of the Judge in the lower Court on the question of fact, so that it may enable the Court to ascertain whether the finding is correct or not. The weight of authority is to the effect that the failure to observe the imperative

provisions of the section is a fatal irregularity and that even in a simple case that the provisions of this statute must be complied with”.

26. In *James Silva vs. the Republic of Sri Lanka* [1980] 2 SLR Pg 167, Rodrigo J has stated as follows;

*“A satisfactory way to arrive at a verdict of guilty or innocence is to consider all the matters before the Court adduced whether by the prosecution or by the defence in its totality without compartmentalizing and, ask himself whether as a prudent man, in the circumstances of the particular case, he believes the accused guilty or not guilty. – See the Privy Council Judgment in *Jayasena vs The Queen* 72 NLR 313.”*

27. In analysing the learned High Court Judge’s approach to the judgment in dispute, the following is clear.

28. The learned High Court Judge has begun his judgment with a clear outline of the charges against the appellant’s and the other accused parties, establishing the context for the evaluation. Following this, a list of witnesses whose evidence was presented as the trial had been complied. This structured approach has helped to understand the case’s framework.

29. In evaluating the evidence, the learned High Court Judge has taken a holistic approach, meaning that the evidence has been assessed in its entirety rather than in isolated sections. This method, has provided a more comprehensive understanding of the facts and their interrelations.

30. The learned High Court Judge has applied the tests of credibility, corroboration and related criteria. In conducting the analysis, the learned High Court Judge has methodically examined the witness testimonies alongside the physical evidence presented. This evaluation also includes cross-referencing the testimonies with documented evidence to assess the motivations and potential biases of the witnesses.

31. The learned High Court Judge has found that the evidence presented by the prosecution to be convincing, logical and compelling enough to support the case against the appellants. The learned High Court Judge has stated reasons for disregarding the evidence of the second appellant. The first appellant as stated earlier, has decided to remain silent and also not call witnesses on his behalf.
32. The learned High Court Judge has ultimately concluded that the prosecution has met its burden of proof regarding the third charge against the appellants. This conclusion has been based on facts elicited from credible prosecution evidence that aligned with the ingredients of the offence convicted of. The sentence imposed afterward is not perverse.
33. In such circumstances, the ground of appeal urged on behalf of the second appellant must fail.
34. Due to the facts discussed above, I am not inclined to interfere with the conviction, the disputed judgment together with the sentencing order. I dismiss the appeal.

Appeal dismissed.

35. The Registrar of this Court is directed to send this judgment to the *High Court of Colombo* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree.

Judge of the Court of Appeal