

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

In the matter of an Appeal made under
Section 331(1) of the Code of Criminal
Procedure Act No.15 of 1979, read with
Article 138 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

**Court of Appeal No:
CA/HCC/0055/2023**

**High Court of Hambantota
Case No. HC/64/2007**

The Hon. Attorney General
Attorney General's Department
Colombo-12

COMPLAINANT

Vs.

1. Danushka Chamara Sellaheva
2. Mahamadakalapuwage Thushan
Dulantha
3. Sabhapathi Ranhoti Gamage
Nandasena alias Alinande
4. Andaraweera Arachchige Nalin
Kumara
5. Lal Kumara Ediriweewa alias Pol
Sambolaya

ACCUSED

NOW AND BETWEEN

Danushka Chamara Sellaheva

ACCUSED-APPELLANT

Vs.

The Hon. Attorney General
Attorney General's Department
Colombo-12

COMPLAINANT-RESPONDENT

BEFORE : **P. Kumararatnam, J.**
R.P. Hettiarachchi, J.

COUNSEL : **Saliya Peiris, PC with Amila**
Egodamahawatta and Nisal Hennadige for
the Accused-Appellant.
Hiranjana Peiris, SDSG for the Respondent.

ARGUED ON : **13/06/2025**

DECIDED ON : **23/07/2025**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) with four others were indicted by the Attorney General on following charges:

1. That on or about the 08.08.2005 at Amblantota, the accused named in the indictment were members of an unlawful assembly with the common object of causing hurt to Weligamage Shantha thereby committing an offence punishable under Section 140 of the Penal Code.
2. At the same time and same place and in the course of the same transaction the accused by being a member of an unlawful assembly caused the death of the abovenamed Mahamadakalapuwage Premadasa and thereby committed an offence punishable under Section 296 read with Section 146 of the Penal Code.
3. At the same time and same place, and in the course of the same transaction the accused being a member of an unlawful assembly attempted to commit the murder of Weligamage Shantha and thereby committed an offence punishable under Section 300 read with Section 146 of the Penal Code.
4. At the same time and same place, and in the course of the same transaction the accused caused the death of the afore named Mahamadakalapuwage Premadasa and thereby committed an offence punishable under Section 296 read with Section 32 of the Penal Code.
5. At the same time and same place, and in the course of the same transaction the accused attempted to commit murder of Weligamage

Shantha and thereby committed an offence punishable under Section 300 read with Section 32 of the Penal Code.

As the Appellant and other Accused opted for a non-jury trial, the trial commenced before a judge and the prosecution had led eight witnesses and marked production P1 to 3 and closed the case. Learned High Court Judge having satisfied that the evidence presented by the prosecution warrants a case to answer, called for the defence and explained the rights of the accused.

The Appellant and the Accused had made dock statements on their behalf and closed their case.

The Learned High Court Judge after considering the evidence presented by both parties only convicted the Appellant under Section 297 of Penal Code for the 4th count and under Section 300 of Penal Code for the 5th count and acquitted him from 1st, 2nd, and 3rd charges. The rest of Accused were acquitted from all the charges.

After considering the sentencing submissions of both parties, the Learned High Court Judge imposed 10 years rigorous imprisonment for 4th count with a fine of Rs.50,000/- against the Appellant and in default, one year jail sentence was imposed. For the 5th count the Appellant was sentenced to 10 years rigorous imprisonment with a fine of Rs.50,000/-. In default one year jail sentence was imposed. Additionally, a compensation of Rs.500,000/- imposed on the Appellant. In default, two years jail sentence was imposed. Further, the learned High Court Judge ordered that the sentences on count 04 and count 05 to run concurrent to each other.

Being aggrieved by the aforesaid sentence the Appellant preferred this appeal to this court.

The Learned President Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence. At the hearing, the Appellant was connected via Zoom platform from prison.

Although the Appellant in his written submission has raised ten grounds of appeal, but has restricted to one appeal ground during the argument of this case. The sole appeal grounds states;

- The learned High Court Judge has failed to consider the evidence of sudden fight in his judgment.

The background of the case *albeit* briefly is as follows:

According to PW1 and PW2, who are husband and wife, a dispute arose regarding cattle owned by the 2nd Accused damaged the crop of PW1. As the 2nd Accused not taken proper action to prevent the damage, he had a confrontation with the 2nd Accused which led him to assault the 2nd Accused twice. As a result, the 2nd Accused had come with the 4th Accused and had a fight with PW1. During the fight one of the Accused fell in to a canal in front of PW1.

Due to this fight a group of 15 people including the Accused named in the indictment entered the house of PW1 and had a fight with PW1. Although PW2 tried to settle the dispute but she could not. At that time the Appellant had entered PW1's house armed with a gun. Seeing the gun PW1 had grappled with the Appellant to take the gun out of the Appellant possession, but it went off causing serious injury in PW1's hand. At the same time the deceased who came with the Appellant and his group sustained serious gun shot injurious on his chest. The deceased was pronounced dead on admission. Further, the evidence revealed that the gun was brought by the deceased to the place of incident.

Although the learned High Court Judge had convicted the Appellant under Section 297 of the Penal Code, it is not clear under what exception of 294 of

the Penal Code he had placed his decision. Therefore, it necessary to identify the exception under which the learned High Court Judge placed his decision.

Learned President's Counsel has submitted that the incident had happened due to a sudden fight. He has substantiated by drawing our attention to page 188 of the brief. Hence, it is very clear that the incident pertaining to this incident had happened due to a sudden fight.

Learned Senior Deputy Solicitor General in keeping with the highest tradition of the Attorney General's Department conceded the stance taken by the learned President's Counsel.

The exception 4 to Section 294 (Murder) of the Penal Code states as follows:

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

Section 297 of the Penal Code states as follows:

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment of either description for a term which may extend to twenty years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

The learned President's Counsel drew our attention that the Appellant was only 19 years when this unfortunate incident had happened. This position was conceded by the learned Senior Deputy Solicitor General. Although the incident happened in the year 2005, this matter was concluded in the year 2023, after about 19 years.

Hence, considering all the circumstances of this case, I set aside the sentence imposed on the Appellant on the 4th and the 5th counts and substitute with a term of 05 years rigorous imprisonment for the 4th count and 05 years rigorous imprisonment for the 5th count. I order the sentences to run concurrent to each other. The fine and the compensation imposed by the learned High Court Judge to remain same.

As the Appellant is in prison since the date of conviction by the Learned High Court Judge, I order the sentence imposed by this Court be operative from the date conviction, i.e. 27/01/2023.

Subject to the above variation the appeal is dismissed.

The Registrar of this Court is directed to send a copy of this judgment to the High Court of Hambantota along with the original case record.

JUDGE OF THE COURT OF APPEAL

R.P.Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL