

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

In the matter of n appeal in terms of
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.

CA HCC 0070/2023

HC Kegalle No: HC 3139/2012

Democratic Socialist Republic of Sri Lanka

Complainant

v.

Palamura Hewage Harishchandra
Kumarasinghe

Accused

AND NOW

Palamura Hewage Harishchandra
Kumarasinghe

Accused-Accused

V.

Hon. Attorney general

Attorney general's department

Colombo 12

Complainant-Respondent

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

Counsel: Nihara Randeniya for the Accused-Appellant
Sudarshana De Silva, S.D.S.G for the Respondent

Written

Submissions: 03.11.2023 (by the Accused-Appellant)

On 21.12.2023 (by the Respondent)

Argued On: 29.01.2025

Judgment On: 05.03.2025

JUDGMENT

B. Sasi Mahendran, J.

The Accused-Appellant (hereinafter referred to as the Accused) was indicted before the High Court of Kegalle on the charge of committing the offence of murder of one Balasooriya Arachchilage Priyantha Balasooriya on 28.09.2010 punishable under Section 296 of the Penal Code.

The Prosecution led the evidence through twelve witnesses and marking productions from P1 to P4 and thereafter closed its case. The Accused in his defence gave evidence under oath. At the conclusion of the trial, the Learned High Court Judge by his judgment dated 30.11.2022 found the Accused guilty of murder and imposed the death sentence.

Being aggrieved by the afore-mentioned conviction and the sentence, the Accused has preferred this appeal to this Court.

The following are the grounds of appeal as set out in the written submission of the Accused filed on 03.11.2023.

1. The Learned Trial Judge failed to consider that evidence of a sudden fight emanated from the prosecution case.
2. That the Learned Trial Judge failed to consider and evaluate the prosecution case properly.
3. That the Learned Trial Judge erred in law by his failure to consider that the prosecution has not proved its case beyond reasonable doubt.
4. That the Learned Trial Judge failed to consider the favourable evidence for the defence.
5. That the Learned Trial Judge did not evaluate the defence evidence from the correct perspective and rejected the same in the wrong premise.

During the argument stage, the main ground urged by the Counsel for the Accused was that from the evidence led before the Learned High Court Judge, he had failed to evaluate the possibility of a sudden fight that spontaneously occurred between the deceased and the Accused. According to him, it is the duty of the trial judge to consider the plea of a sudden fight if the evidence indicates that the accused had caused the death in a sudden fight.

The Exception 4 to Section 294 of the Penal Code reads 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.”

Accordingly, the particular exception will apply where the injury which caused the death has been inflicted by the Accused on the deceased without premeditation in a sudden fight.

This Section was considered by His Lordship Moseley S.P.J in The King v. Vidanalage Lanty, 42 NLR 317 at page 319, held that;

“Is there then in the present case any basis for a finding that the injury which the jury have found to have been inflicted by the appellant on the deceased, was inflicted without premeditation in a sudden fight within the meaning of exception 4 to section 294 of the Penal Code? There is the evidence of the appellant to the effect that he was seized by the deceased and that he held the deceased by the waist, and that, when he asked the deceased for an explanation, the latter replied " Wait and I'll tell you the reason " and called upon Kanagan to stab. This is to some extent corroborated by William Silva. There is, as well, the evidence of Martin to the effect that the appellant ran into his house saying: " Sinhalese people are coming to assault me", and that the appellant said he was afraid to go back to the road. Some of these matters were referred to by the learned Judge, but only in setting out the defence story and not as evidence upon which a lesser verdict might possibly be based.”

This concept was further discussed by her Ladyship Chief Justice Dr. Shirani A. Bandaranayake, in Bandara v. The Attorney General, SC Appeal No. 62/5008, Decided on 12.10.2011, (2011 (2) BLR, 397 at page 399), held that;

“The necessary requisites that should be satisfied by a person who intends to come within the Exception 4 were clearly discussed with reference to several decided cases (*Surinder Kumar v. Union Territory Chandigarh* (AIR (1989) SC 1094), *Kikar Singh v. State of Rajasthan* (AIR (1993) SC 2426) by Ratanlal and Dhirajlal, (Law of Crimes, 24th Edition, 1998, page 1339) on the basis of Section 300 of the Indian Penal Code, which section and the Exceptions are identical to section 294 of our Penal Code. Accordingly, in terms of the said section of the Indian Penal Code, the following requisites must be satisfied:

1. it was a sudden fight;
2. there was no premeditation;
3. the act was committed in a heat of passion; and
4. the assailant had not taken any undue advantage or acted in a cruel manner.

However as clearly held in *Bhagwan Munjaji Pawade* (AIR (1979) SC 133) and *State of Himachal Pradesh v. Wazir Chend and Others* (AIR (197) SC 315), all the above conditions must exist in order to invoke this exception.”

The plea of sudden fight was discussed by Prof. G.L. Peiris, *Offences under the Penal Code of Sri Lanka*, 1998, 2nd edn., page 129:

“The word "premeditation" in the context of this Exception, does not have the same meaning as "intention". The accused is entitled to the benefit of the Exception of sudden fight, although he intended to cause death, so long as he acted in anger during the quarrel and the other elements of the Exception are capable of being established. In N. A. Fernand Soertsz S.P.J., delivering the judgment of the court of Criminal Appeal, made the following criticism of the summing-up in the case: "The trial judge explained 'premeditation' as if it was synonymous with 'intention'. There was, then, misdirection in that respect. The jury, in view of that misdirection and also

in view of the observation made by the judge that if they were not satisfied that the condition 'without premeditation' was present on the evidence, they need not consider that exception any further, probably refrained from such further consideration. A conviction of murder was therefore set aside and one of culpable homicide not amounting to murder substituted.”

In order to ascertain whether there was a sudden fight, we have to consider the events that had taken place on the day in question.

The PW1, namely Wijesinghe Mudalige Malani who is the mother of the deceased has stated that the wife of the deceased eloped with the Accused. On the previous day, the deceased, his father, and PW1 herself visited the place where the deceased's wife was residing with the Accused, and the deceased said to his wife that there was no need for her to come and that he would look after their daughter. On the day in question, while PW1 was in Karawanella, the deceased called her and asked her to come home immediately as Harischandra, the Accused had come there. When the PW1 came to PW2's house, where the incident happened, the Accused was in the rubber estate and the deceased was near the window speaking through his phone to the Accused and then the deceased had told the PW1 that the Accused was here. Later, the Accused has sat in the 'ගල් වැටිය' and has stated that 'අද දෙකෙන් එකක් කරලා යන්න ආවේ' when the PW1 has told the Accused not to do anything to her son.

After some time, the Accused went to his house and returned after some time with an iron rod and a sickle.

On page 77 of the brief;

ප්‍ර : ඔය විදියට කොච්චර වෙලාවක් හිටියද?

උ : ටිකක් වෙලා ඒ විදියටම හිටියා ඉඳල ඉවර වෙලා ගෙදර ගිහිල්ලා යකඩ පොල්ලයි, කැත්තයි අරගෙන ආවා.

ප්‍ර : කවිද යකඩ පොල්ලයි කැත්තයි අරගෙන ආවේ.

උ : හරිස්චන්ද්‍ර

ප්‍ර ; හරිස්චන්ද්‍ර කොහෙන්ද්‍ර යකඩ පොල්ලයි, කැත්තයි අරගෙන ආවේ.

උ : ඒ ගොල්ලන්ගේ ගෙදරින්.

According to her, the deceased was in the kitchen during the time when the Accused tried to enter the house where he was stopped by neighbours. The PW1 has stayed at the door of the house to prevent the deceased from coming out. While PW1 went inside the house to check on the deceased's daughter, the deceased had gone out of the house, and by the time PW1 saw the deceased, he was stabbed and some internal parts from his abdomen were out. The deceased had fallen near the water tank and the Accused was holding the deceased from his neck. According to PW1, there was a knife in the Accused's hand which was around 8 inches long.

When PW1 made the Accused leave the deceased's neck, the deceased stood up and ran for some distance and fell down. In the meantime, the Accused had removed his shirt and wore the shirt of someone who was there and went from the scene. Later, the deceased was admitted to Karawenalla Hospital and the PW1 got to know that on the way to the Awissawella hospital, the deceased had passed away.

During the testimony, the PW1 identified the production marked P1 as the murder weapon and informed that PW1 identified the body of the deceased during the post-mortem at the Awissawella Hospital.

During the cross-examination, the counsel for the defence suggested that the PW1 scolded the Accused in filthy language when he went passing the deceased's house which was denied by PW1. They proposed that she was the one who initiated the said fight. Further, they suggested that because of her direct involvement in her son's death, PW1 cannot give evidence before the Court. In the cross-examination, she continuously stated that she prevented her son, the deceased from going out of the house. Further, she has seen the Accused confronting the neighbours and she confirmed that one Peiris came to stop the fight and later the Accused wore

this Peiris's shirt. The defence suggested that when she was questioned, she could not remember as she was not in her proper senses on that day.

She further states that while the deceased was inside the house, there was a quarrel between the Accused and the neighbours. According to her, the deceased had come out of the house when she went in search of her granddaughter. Further, it was suggested that the deceased had a knife in his hand during the incident which was also denied by the PW1. She had not seen her son coming out of the house. She further stated that she did not know what she said in the Police statement. She further stated that she was not stable as she witnessed her son's murder. She had further stated, the reason for the Accused to change the shirt was that the shirt contained blood stains. It was further suggested by the Counsel for the defence that the deceased and PW1 threw acid at the Accused where she questioned 'who'. She had flatly denied claiming it to be a false allegation.

As stated by PW2, Palamura Hewayalage Ariyawathie, the Accused is her brother's son. The incident happened on 28.09.2010 around 9.30 to 10 AM at her houseyard. According to this witness, on the day in question when the Accused was going on the road, she overheard the PW1 telling him not to attack her son and the incident started with that. The Accused slowly came towards the house and later left the place saying he would return. He came back after 10 minutes with a knife, a Sickle and an iron rod. In the meantime, the deceased and his mother were inside her house. When the Accused tried to enter the house with the said weapons, the PW2 and some others prevented him thinking that there would be a fight between the Accused and the deceased. While she was trying to prevent the Accused, the Accused hit the PW2 near her right eye with the iron rod and attacked her left shoulder with the Sickle. Then the PW2 went inside the house and later saw the Accused and the deceased fighting near the water tank and later she saw the deceased running away from the scene holding his stomach which was bleeding. Later the deceased was taken to the hospital and PW2 had come to know that he had passed away. After the incident, the PW2 had seen the Accused changing his shirt.

During the cross-examination, it was suggested by the Counsel for the defence that, the incident started when everyone in PW2's house poured acid on the Accused which was denied by PW2. Further, it was proposed that there was no need for the Accused to start a fight. Further, she confirmed that she and some other people prevented the Accused from entering the house. She flatly denied that the deceased had a weapon in his hand. She further confirmed that the Accused had an iron rod and a sickle which were brought by him from his house. They suggested that the Accused picked the Sickle from there to prevent him from attacking. Further, according to PW2, she did not see the Accused stabbing the deceased.

According to the testimony of PW3, Maliyange Nilanga Ruwan Kumara, on the day in question, he was working at the rubber plantation and the incident happened at around 9.30 to 10 AM at PW2's house. He saw that when the Accused came to the main road, PW1, the deceased's mother had shouted at him and PW3 had seen the Accused saying something but had not heard what was said. According to PW3, when this incident happened, the deceased was inside the house. Then the Accused went towards his house. After around 15 minutes, the Accused returned with a Sickle and an iron rod in hand. According to PW3, the iron rod was 3 feet long and the sickle was with a wooden handle. And he had identified both the weapons. According to PW3, the Accused had not used the usual path but a footpath that goes to his house when coming back to the scene. Then PW3 heard a noise and he rushed to the scene, the PW2's house. When he reached there, he saw the Accused with the said weapons while the PW1, PW2, the Accused, and the deceased were there. Both PW1 and PW2 were holding the deceased and the deceased scolded the Accused in filthy language. When PW3 and Ruwan went near the Accused to prevent the fight, he threatened to attack them if they came near him.

On page 145 of the brief:

ලංචෙනින එපා කැත්තෙන් කොටනවා කියල කැත්ත වැනුවා.

At that time, the PW3 had an injury after the Sickie hit his forehead. During this time, both the deceased and his mother, PW1 were there at the scene. Then, the PW2 was hit by the Accused using the Sickie and later the PW3 had taken PW2 inside the house. He has seen the Accused hitting PW1. When he returned, he saw both the Accused and the deceased standing together, and then the Accused stabbed the deceased's abdomen with a knife after which both of them fell on the ground. According to him, he saw the Accused pulling a knife and pressing it to the deceased's abdomen.

On page 148 of the brief:

ප්‍ර : මොකක්ද ඒ දැක්කේ?

උ : බාලසුරිය , හරිස්චන්ද්‍රයි දෙන්නම එකට හිටගෙන හිටිය. ඒ අවස්ථාවේදී හරිස්චන්ද්‍ර පිහියක් වගේ දෙයක් ගන්නවා දැක්කා. අරගෙන බඩට තියල තද කළා.

ප්‍ර : කාගේ බඩට තියලාද තද කළේ?

උ : බාලසුරියගේ බඩට තියල තද කළේ. ඒ සමගම දෙන්නම බිම වැටුනා. .

ප්‍ර : මේ දෙන්න මොන විදියට ඉඳ්දි ද ඔය වුදිත විසින් ඔහු ළඟ තිබුණු පිහියක් අරගෙන

බාලසුරියගේ බඩට තියලා තද කළේ?

උ : බාලසුරිය හරිස්චන්ද්‍රව අල්ලාගෙන හිටියා. ඒ අවස්ථාවේදී තමයි පිහිය දැක්කේ.

ප්‍ර ; දෙදෙනාම ඒ අවස්ථාවේදී හිටගෙනද හිටියේ?

උ : ඔව්.

ප්‍ර : වුදිත් ඔහුගේ අතේ තිබුණු පිහිය, බාලසුරියගේ බඩට තියල තද කරන අවස්ථාවේදී තමයි

දෙන්නම බිම වැටුන කිව්වේ?

උ : ඔව්.

ප්‍ර : බලසුරියගේ කොහොට තියලද තද කළේ ?

උ : බඩට

The PW3 has seen the incident from a very close proximity. According to him, while this incident happened, PW1 and PW2 were there.

After that, he has seen the deceased going away from the scene. Then PW3 held the deceased and went towards the main road. The PW3 had shouted for help. Later, the deceased was taken to the hospital.

During the cross-examination, according to PW3, the incident was started by PW1, the deceased's mother by scolding the Accused who was returning from home. However, the deceased was not there.

On Page 155 of the brief;

ප්‍ර : සාක්ෂිකරු, ඔබට මා වූදින වෙනුවෙන් යෝජනා කරනවා, තමුන්ගේ නිවසට පැමිණිලා

ආපසු යමින් සිටි හරිස්චන්ද්‍ර තමයි මාලනි කියන තැනැත්තිය ගිහිල්ලා අඩදබරයකට

පටලව ගත්තේ කියල?

උ : එහෙමයි ස්වාමිනි.

ප්‍ර ; ඒ වගේම හරිස්චන්ද්‍ර කියන්නේ ඒ වෙලාවේ එතන සිටි තනි පුද්ගලයෙක්?

උ : ඔව්.

ප්‍ර : එතන හිටියා තව ආරියවතී, මාලනි, වීරසිංහ සහ බාලසූරිය කියන හතර දෙනා?

උ : ඔව්.

ප්‍ර : ඔව්ත් සියල්ලන්ම එකතු වෙලා හරිස්චන්ද්‍ර ට පහර දුන්න නිසා ඔහු නැවත ඔහුගේ නිවාස

බලා ගියා කියලා යෝජනා කරනවා?

උ : ඒක පිළිගන්න බැහැ ස්වාමිනි.

ප්‍ර : පහරදීමක් සිදු වුයේ නැද්ද?

උ : නැහැ.

The Defence Counsel suggested that the PW1 along with others attacked the Accused and poured acid on the Accused which was denied by the PW3. He further affirmed that he saw the Accused stabbing the deceased.

All three witnesses who were the eyewitnesses of the incident are consistent with their testimonies and have been at the scene when the Accused stabbed the deceased and they have denied that no one had thrown acid at the Accused. Further, according to evidence, after the heated argument with the PW1, the Accused had gone to his house and brought the weapons. It should be noted that the deceased was not there when this incident happened. We are mindful that PW1 is the mother of the deceased and the deceased's wife eloped with the Accused and was living together with him at the time of the incident. The fact remains that on the previous day, the PW1, the deceased, and his father had gone to the Accused's house and told the deceased's wife not to come to the deceased's house. Further, we observe that the deceased did not have any weapons at the time of the incident. When we consider all three testimonies of the witnesses together, the evidence is consistent. This Court sees no reason to reject their evidence.

According to PW6, Madurasinghe Hadunpathirannahelage Wijewardhana, the Judicial Medical Officer who performed the post-mortem of the deceased on 30.09.2010 had stated that he observed 9 injuries on the deceased's body and the death was due to the stabs on the abdomen. Two stabs were in the chest and the upper part of the abdomen. As stated by him, the injuries would cause death in ordinary circumstances. From the wounds, he had identified that the injuries were caused by a thin sharp blade kind of weapon. According to him, the injuries had caused internal bleeding to the organs of the deceased. When the prosecution showed the weapon marked P1, he stated that the injuries would have been incurred by such a weapon.

According to the testimony of PW6, we can come to a conclusion that there was intention as injuries No. 1 and 3 would cause death to the deceased. Further, we observe that both injuries were deep penetration of 9 cm to the abdomen and the weapon used by the Accused was a thin weapon with a sharp edge. This indicates that the Accused acted in a cruel manner.

The evidence of the three witnesses indicates that there had been a lapse of time between the quarrel with PW1 and the stabbing. After PW1 scolded the Accused where the deceased was not there, the Accused had come back to the scene with a weapon. This shows that there was premeditation.

This Court can come to the conclusion from the wounds and the place where the stab injuries were caused that this is not a result of negligence or self-defence. A strong presumption arises that the injuries caused were intended to cause the death. The inference could be drawn that the Accused's intention was to cause death to the deceased.

The main defence taken by the Counsel for the Defence was that the incident took place as a result of a sudden fight. They have taken the defence that PW1 and the deceased had thrown acid at the Accused. The Accused gave evidence from the witness box which is as follows.

According to the Accused, while he was passing by the deceased's house, the PW1 grabbed him by the shirt and dragged him to the deceased's uncle's house. Further, he admitted that he eloped with the deceased's wife and stayed at a different house.

According to him, while he was sitting on the 'ගලේ වැටිය', the PW1, PW2, and her husband namely Weerasinghe had scolded the Accused and he had listened to them quietly. Then the said PW2's husband had thrown the hot tea which he had been having towards the Accused which burnt his face. This was not suggested to the prosecution witnesses when they were cross-examined. Then, the Accused tried to hit the said husband but the relatives of the deceased who were there had hit the Accused. Then the PW1 had come towards the Accused saying "නෙද් මම කනවා" and had bit the left side of the Accused's chest. This was also not suggested to the PW1. When the Accused tried to hit the PW1, the said Weerasinghe had come with a mamoty to hit him. Thereafter, the Accused took a long sickle which was there and waved it. It broke then after hitting the wall. Again, the said

Weerasinghe had tried to hit the Accused with the mamoty and then the Accused had taken an iron rod and when he hit the mamoty with the iron rod, it had been thrown. Then the two people called Ruwan held the Accused and some others had also joined them and then the deceased had come with a black jug in hand. Then he had poured what was inside the said jug on the Accused which burnt his head and the back. Then the Accused had tried to hold the deceased and the deceased had taken a knife from the said Weerasinghe and tried to stab the Accused. Then both had struggled and at that time the Accused had held the deceased's hand and then stabbed the deceased. This Court notes that the above said facts were not suggested to the prosecution witnesses.

Thereafter, both of them had fallen to the floor. Then when the Accused got up, the deceased was taken to the hospital. Since his shirt was torn, the Accused had taken a shirt from an uncle who was there. Then he had gone to the rented house where he stayed and told the wife of the deceased as to what happened. Then she suggested going to her house in Ampara and when they were on the way, they were arrested by the Siyambalanduwa Police for not being able to produce their identity. Thereafter, he was produced before the Court and remanded in the Monaragala Prison.

We observe that the defence has not suggested anything to the prosecution witnesses about a person called Weerasinghe or that the deceased tried to stab the Accused.

During the cross-examination, the Counsel for the Prosecution suggested that the story about throwing acid was a total lie which was denied by the Accused, and that he had not produced any medical reports regarding such burns. Further, it was suggested that the Accused stabbed the deceased intentionally which was denied by the Accused.

The above said evidence of the Accused was rejected by the Learned High Court Judge giving reasons for such rejection.

On page 247 of the brief:

“එමෙන්ම වුදින සාක්ෂි දෙමින් පවසා සිටි ආකාරයට මරණකරුගේ ඥාතියකු වන "වීරසිංහ" යන අය තේ වතුර කෝප්පයෙන් වුදිනගේ මුහුණට ගැසීම නිසා වුදිනගේ වම් පස මුහුණේ පැමිණිල්ලේ සාක්ෂි අංක 9 විසින් නිරීක්ෂණය කරන ලද පිළිස්සුනු තුවාල සිදු වුනු බවට තීරණය කල හැක. එනම් එම තුවාල උණු තේ වතුර වැටීමකින් සිදු වුන තුවාල බැවින්, පොලිසිය විසින් වුදිනගේ එම තුවාල සම්බන්ධයෙන් වෛද්‍ය වාර්තාවක් ඉදිරිපත් කිරීමට උත්සුක නොවූ බවට තීරණය කල හැක. එමෙන්ම පැමිණිල්ලේ සාක්ෂි අංක 9 හරස් ප්‍රශ්න වලට ලක් කරමින් එම තුවාල සම්බන්ධයෙන් ප්‍රශ්න කිරීමේදී පැමිණිල්ලේ සාක්ෂි අංක 9 කියා ඇත්තේ, රත් පැහැවුණු පිළිස්සුම් තුවාල තිබුණු බවයි. ඒ අනුව රත් වූ තේ වතුරෙන් එම පිළිස්සුම් තුවාල සිදුවූ බවට තහවුරු වන බව අවධානයට ගනිමි. පැ.සා 1, පැ.සා 2 හා පැ.සා 3 යන සාක්ෂිකරුවන් හරස් ප්‍රශ්නවලට ලක් කරමින් විත්තිය මෙම අපරාධය සිදු වීමට පෙර මරණකරු විසින් හෝ ඔහුගේ එතන සිටි ඥාතීන් විසින් හෝ වුදිනට ඇසිඩ් ප්‍රහාරයක් එල්ල කලාද යන්න පුන පුනා ප්‍රශ්න කර ඇත්තේ, මෙම පැමිණිල්ලේ සාක්ෂි අංක 9 පොලිස් සාක්ෂිකරුගේ (වුදින අත්අඩංගුවට ගත්) ඒ සම්බන්ධයෙන් කිසිදු හරස් ප්‍රශ්නයක් අසා නැති බව අවධානයට ගනිමි. ඇසිඩ් ප්‍රහාරයකින් සිදු වූ තුවාල වුදිනගේ ශරීරයේ තිබුනද ඇසීමට සුදුසුම සාක්ෂිකරු වන්නේ මෙම සාක්ෂිකරු වුවත්, වුදිනට සිදු කල බවට කියන ඇසිඩ් ප්‍රහාරය සම්බන්ධයෙන් මෙම සාක්ෂිකරුගෙන් නොවිමසා සිටීමට විත්තිය ප්‍රවේශම් වී අහි බව අවධානයට ගනිමි. එවැනි සිද්ධියක් පොලිසියට අනාවරණය වුවානම් එම ඇසිඩ් ප්‍රහාරය එල්ල කරන ලද මරණකරුගේ ඥාතීන්ට වෙනත් නඩුවක් ඒ සම්බන්ධයෙන් පැවරීමට පොලිසිය ක්‍රියා කරනු ඇති බව අවධානයට ගනිමි.

ඒ අනුව පෙනී යන්නේ මරණකරු හෝ මරණකරුගේ එතන සිටි ඥාතීන් විසින් වුදිනට එම අවස්ථාවේදී ඇසිඩ් ප්‍රහාරයක් එල්ල කර නොමැති බවටයි. වුදින සාක්ෂි දෙමින් කියා සිටියේ එම ඇසිඩ් වර්ගය එම ප්‍රදේශයේ රබර් නිෂ්පාදනය සඳහා ගන්න ඇසිඩ් වර්ගයක් බවයි. රබර් කර්මාන්තය සඳහා පාවිච්චි කරන ලද ඇසිඩ් වර්ගය වනුයේ formic acid/ acetic acid බවත් අවධානයට ගනිමි. එම ඇසිඩ් වර්ග දෙකම මිනිස් හම මත වැටුනහොත් අධික ලෙස පිළිස්සීමට ලක්වන බවත් අවධානයට ගනිමි. එවැනි ඇසිඩ් ප්‍රහාරයක් සම්බන්ධයෙන් කියමින් විත්තිකරු විසින් දණ්ඩ නීති සංග්‍රහයේ 294 වගන්තියේ ව්‍යතිරේක 2 අවස්තාව (පුද්ගලික ආරක්ෂාවේ අයිතිය) වුදිනට ලබා දීමට ගත් අසාර්ථක උත්සහයක් බවට සාවද්‍ය ස්ථාවරයක් ගැනීමට විත්තිය උත්සහ කර ඇති බවත් එහෙත් එම ස්ථාවරය බිඳ වැටී ඇති බවත් අවධානයට ගනිමි.”

I hold that the Learned High Court Judge has correctly rejected the self-defence pleaded by the Counsel for the Accused on the evidence placed before him.

Further, there is no evidence for us to consider Exception 4 to Section 294 of the Penal Code, the plea of sudden fight as pleaded by the Counsel for the Defence before this Court.

We are also mindful that the deceased was not present when the heated argument between the PW1 and the Accused took place.

Our Courts have considered that to qualify under Exception 4 to Section 294 of the Penal Code, the Accused has to establish that the incident was committed without premeditation in a sudden fight in the heat of an argument.

C. Ananda Grero, *Culpable Homicide, Proof and Defences*, 1988 at page 69:

“Gour in the Penal Law of India states: "Pre-meditation may be established by direct or positive Evidence or by circumstantial evidence. Evidence of pre-meditation can be furnished by former grudges or previous threats and expressions of ill-feelings; by acts of preparation to kill, such as procuring a deadly weapon or selecting a dangerous weapon in preference to one less dangerous, and by the manner in which the killing was committed. For example, repeated shots, blows or other acts of violence are sufficient evidence of meditation."

In the instant case, the following evidence was revealed regarding premeditation.

1. On the day before the incident, the deceased, PW1, and his father had gone to the Accused's place regarding the deceased's wife eloping with the Accused.
2. After the heated argument with the PW1, the Accused went to his house and came back after 15 minutes. Before leaving, the Accused has said that ‘අද දෙකෙන් එකක් කරලා යන්න ආවේ’.
3. The deceased was not there when the argument happened.

4. Bringing the knife, a sickle and an iron rod by the Accused.
5. Inflicting two deep stab injuries on the deceased which caused the death using the said weapon.

On the other hand, there was no evidence to show that the Accused sustained burn injuries which were caused by acid. Further, the Accused had tried to abscond from the scene. We observe that, if he had been wounded by such acid, he would have gone to the hospital and a prudent man would produce the medical reports of such wounds before this Court. According to him, the deceased had tried to attack him and in defence, he had stabbed the deceased.

This Court is also mindful that as substantiated by the evidence, the deceased was unarmed when the Accused stabbed him. The defence has therefore failed to prove the elements of a 'sudden fight' in order to avail of the exception.

Considering all the facts and the reasoning above, we see no reason to interfere with the judgment of the Learned High Court Judge delivered on 30.11.2022.

We further hold that the prosecution has established beyond reasonable doubt that the Accused is guilty of the murder of the deceased.

In this context, we affirm the conviction and the sentence imposed upon the Accused.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL