

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

**In the matter of an Appeal under and in
terms of Section 331(1) of the Code of
Criminal Procedure Act No. 15 of 1979 (as
amended).**

Democratic Socialist Republic of
Sri Lanka

Complainant

Court of Appeal
Case No. **CA HCC 100/2024**

Vs.

High Court of Hambantota
Case No. **HC 70/2016**

1. Mihiriya Galla Pathiranage Gayan Indika
2. Mihiriya Galla Pathiranage Dulan
Danushka
3. Manjula Chamin Kumara Paranamana
4. Mirissa Badalge Suneethalatha
5. Kankanam Pandithage Chandana
Priyantha

Accused

AND NOW BETWEEN

Mihiriya Galla Pathiranage Gayan Indika,
Presently at,
Welikada Prison,
Borella,
Colombo 08.

1st Accused-Appellant

Vs.

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

Complainant-Respondent

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

Counsel: Anil Silva, P.C. with Kasun Nadiranga for the Accused-Appellant.

 Dileepa Pieris, A.S.G. for the Complainant-Respondent.

Argued on: 26.03.2025

Decided on: 20.05.2025

JUDGMENT

AMAL RANARAJA, J.

1. The Accused-Appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Hambantota* in High Court case no. HC 70/2016. The charges in the indictment are as follows;
 - i. On or about 14.04.2013, at *Gallawila*, within the jurisdiction of this Court, you were members of an unlawful assembly, with the common object to cause hurt to one *Weerappuli Gamage Suraj Rangana Dinesh* and thereby committed an offence punishable under section 140 of the Penal Code.
 - ii. At the same date, place and in the course of the same transaction, you while being members of the said unlawful assembly caused the death of one *Weerappuli Gamage Suraj Rangana Dinesh* in prosecution of the common object of the assembly or such as the members of that assembly knew that it was likely to be committed and you being members of the said unlawful assembly at the time

of the commission of said offence, thereby committed an offence punishable under section 296 read with section 146 of the Penal Code.

iii. At the same date, place and in the course of the same transaction, you caused the death of one *Weerappuli Gamage Suraj Rangama Dinesh* and thereby committed an offence punishable under section 296 read with section 32 of the Penal Code.

2. At the conclusion of the trial, the Learned High Court Judge has convicted the appellant of the third charge and sentenced him to death.
3. The accused-appellant being aggrieved by the conviction and sentencing order has preferred the instant appeal to this Court.

Case of the prosecution

4. On 14.04.2013, the appellant in a drunkard rage has gone to the residence of PW 04. Upon arrival, the appellant has made the utterance “එන්ඩි ඉන්නවා නම් එලියට වරෙල්ලා” and has been carrying a knife at that time. Without a provocation, the appellant has proceeded to stab a dog that was lying near PW 04. Following this act, the deceased and others had gathered at the location where the appellant was present. Subsequently, an exchange of blows have occurred between the appellant and the deceased, along with the individuals who had assembled with the deceased. As a result, the deceased has sustained injuries and hospitalized. While receiving treatment as an indoor patient, the deceased has ultimately passed away. Officers attached to the *Hambantota Police* have conducted investigations into the incident and a post-mortem examination has been performed by PW13, *Dr. D. T. Silva*, Judicial Medical Officer attached to the *Hambantota General*

Hospital at that time, at the mortuary of the hospital beginning 01.45 pm on 15.04.2013. The post-mortem report has been marked ‘37-1’.

Case of the appellant

5. The appellant has maintained that the deceased along with another 10 individuals armed with blunt weapons (such as poles) assaulted him.
6. During the altercation, the deceased has attempted to stab the appellant with a knife, that he was carrying. The appellant has tried to take the knife away but could not recall what happened next as he was in a state of intoxication. He has asserted that he did not stab the deceased or any other person. Although the appellant has been arrested by the police, he has also been hospitalized due to the injuries he has sustained.

Grounds of appeal

7. The Learned President’s Counsel for the appellant has urged the following grounds of appeal;
 - i. Has the prosecution failed to prove the charge of murder against the appellant beyond a reasonable doubt?
 - ii. Has the Learned High Court Judge not taken into consideration matters favourable to the accused and thereby has a miscarriage of justice occurred?

- iii. Has the Learned High Court Judge misdirected himself in analyzing the plea of voluntary intoxication under section 79 of the Penal Code?
 - iv. Has the Learned High Court Judge misdirected himself in not considering the plea of sudden fight in its proper perspective?
8. The Learned President's Counsel has argued that PW 04's narrative reveals an incident of a sudden fight between the appellant and the deceased. The circumstances surrounding the deceased's injuries which ultimately led to his death indicate that it was a sudden fight. Although the exception of sudden fight was not specifically raised, such fact did not relieve the Learned High Court Judge of the burden to consider that aspect of the case. By failing to take such fact into account, the Learned High Court Judge has misdirected himself and has occasioned in a failure of justice.
9. The Learned Additional Solicitor General appearing on behalf of the respondent has not disputed the arguments made on behalf of the appellant.
10. 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.
11. 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.

12. 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.

13. The narrative of PW 04 relevant in this instance is as follows,

ප්‍ර: ඒ වෙලාවේ 1වන විත්තිකරු ආප්‍රහම තමුන්ට දැනුනාද 1වන විත්තිකරු බේලා ඉන්නවා?

උ: එතෙමයි

[*vide* pages 89 and 90 of the Brief]

ප්‍ර: 1වන විත්තිකරු ඒ වෙලාවේ බීලද හිටියේ?

උ: හොඳටම බීලා

ප්‍ර: හොඳටම බීලා කියන්නේ කෙලින් ඉන්න බැරි වගේ තත්වයක හිටියද?

උ: හොඳටම බීලා කියන්නේ කෙලින් ඉන්න බැහැ ඒ වෙලාවේ ඒ තරමට බීලා.

ප්‍ර: හොඳටම බීලා කෙලින් ඉන්න බැරි අවස්ථාවක තමයි ඔය අවස්ථාවේ 1වන විත්තිකරු හිටියේ?

උ: ඔව්

[*vide* page 126 of the Brief]

ප්‍ර: රෝහිතී කිව්වානේ 1වන විත්තිකරු හොඳටම බීලා හිටියා කියලා?

උ: ඔව්

ප්‍ර: ඒ වෙලාවේ බල්ලාට කිසිම හේතුවක් නැතුව පිහියෙන් ඇත්නා?

උ: ඔව් බල්ලා නිදාගෙන සිටියේ බල්ලාට පිහියෙන් ඇත්නා.

ප්‍ර: රෝහිතීට හේතුවක් හිතාගන්න බැහැ මේ නිදාගෙන හිටිය බල්ලාට පිහියෙන් ඇත්තේ කියලා?

උ: ඔව්

ප්‍ර: 1වන විත්තිකරු එක්කත් යන්න උත්සාහ කලාට ඒකත් කරන්න බැරුව හියා?

උ: ඔව්

[*vide* pages 129 and 130 of the Brief]

ප්‍ර: ඒ වෙලාවේ කවිද දුටුගෙන ආවේ?

උ: ඉස්සරහටම දුටුගෙන ආවේ සුරාජ් කියන ලමයා ලමයි කවිටිය ඔක්කොම දුටුගෙන ආවා

ප්‍ර: සුරාජ් අමතරව කවිද ආවේ?

උ: නාලක, සුදු මහත්තයා, රනුක මට නම් මතක නැහැ ගොඩාක් අය කොල්ලො 15ක් විතර.

ප්‍ර: ආපු අවස්ථාවේදී මොකක්ද කලේ?

උ: දෙගොල්ලෝම හෝදවෝම ගහගන්නා කාටවත් බේරන්න බැරිවුනා එක්කෙනාට එක්කෙනා ගහගන්නා.

[*vide* page 115 of the Brief]

ප්‍ර: ගයාන් කෑ ගහනකොට අනික් කවිටිය ඇවිල්ලා මොකක්ද කලේ?

උ: ගයාන්ට ඒ ගොල්ලෝ ගැහුවා ගයාන්ලා ඒ කවිටියට ගැහුවවා දෙගොල්ලොම ගහ ගන්නා

[*vide* page 116 of the Brief]

ප්‍ර: නාලකලගේ ගෙදර පැත්තේ ඉදන් ඒ 15ක් ආපු අය ඒ ගොල්ලොන් නිකන් බිලා හිටියද?

උ: සමහර ටිට කවිටිත් අවුරුද්ද දවසේ බිලා ඇති

ප්‍ර: ඒ ගොල්ලො එතකොටත් ඒ ගොල්ලන්ගේ අතේ ආයුධ තිබුනද?

උ: ගහගන්න වෙලාවේ තමයි කාගෙන් අතේ පොලු කැලි තිබුනේ.

ප්‍ර: රෝහිනි කිව්ව පර්වට කවිට ගැහුවද කියලා අයුතගන්න බැහැ ඒක පැහැදිලිව පෙනීමක් නැහැ කියලා?

උ: ඔව්

ප්‍ර: අනිත් එක මේ එක රොදයට දෙගොල්ලොම ගහ ගන්නවා?

උ: ඔව්

ප්‍ර: මේ සිද්ධිය ඉවර වුනාට පස්සේ රෝහිනි කිව්වා එතන හිටපු හුගක් දෙනෙකුට කුඩාල වුනා කියලා?

උ: ඔව්.

ප්‍ර: 1වන විත්තිකරුවන් කුඩාල වුනා?

උ: ඔව්

[*vide* page 127 of the Brief]

14. It is evident that the appellant in a drunken rage has gone to the residence of PW 04. Upon his arrival, the deceased along with a crowd of 10 or more others have gathered around the appellant. This crowd including the deceased have been armed with blunt weapons such as poles. Furthermore, PW 04 has conceded that the individuals in the crowd could have had other kinds of weapons also, that she was unable

to observe. As a result of the gathering, the confrontation has ensured between the appellant and the deceased along with others present leading to blows being exchanged. It is also clear that sharp edged weapons have been used during this altercation as both the appellant and the deceased have sustained stab injuries from the incident. The post-mortem report marked '37-1' and the medical report marked '1V2' substantiate these claims.

15. Where the exception of sudden fights is pleaded it is immaterial as to which party offers the provocation or commits the initial assault. This principal is set out explicitly in an explanation to exception 4.

16. The events referred to implying that the bilateral transaction during which blows were exchanged was neither prearranged nor planned. The fight has been a sudden occurrence showing no significant lapse of time between the utterance, the gathering of the deceased along with others and the exchange of blows. It appears to be that there has been insufficient time for passion to subside, thus the act that caused the fatal injuries to the deceased cannot be deemed premeditated. To

constitute premeditation, a killing should be predetermined and calculated after careful consideration, not a sudden act driven by momentary excitement and impulse following a provocation given at the time or shortly before the event, allowing little time for reflection.

17. Furthermore, both parties, each armed with weapons, including sharp edged weapons have engaged in the fight, resulting in stab injuries to both the deceased and the appellant. Therefore, it cannot be concluded that either has acted unusually.

18. Although the defence of sudden fight was not explicitly raised, it does not absolve a trial judge of the responsibility to consider such a matter if the evidence presented during the trial suggests its relevance.

19. In ***King vs. Vidanalage Lanty* 42 NLR 319**, Moseley, J, has stated,

“It is the duty of the presiding Judge to have so directed the jury and that in the circumstances, the appellant was entitled to have the benefit of a lesser verdict”.

20. The narrative provided by PW 04 suggests that the appellant was in a drunkenness rage. However, it is important to note that there is a lack of evidence to support the fact that the appellant was so intoxicated that it rendered him incapable of forming a murderous intention at the time the altercation occurred. While alcohol can impair judgment and emotional control, the critical issue at hand is whether the appellant's level of intoxication was sufficient to negate his ability to premeditate or act with intent to kill. The absence of compelling evidence demonstrating that the appellant had reached a degree of impairment that would hinder his capacity for rational thought is a significant factor. Without definitive proof of impairment that would preclude the formation of murderous intent, the narrative of PW 04 alone would not be sufficient to substantiate such fact.

21. In ***Kumarasinghe vs. The State*** 77 NLR 218, H. N. G. Fernando.

C.J. (as he then was), has observed as follows;

“Any of the five Exceptions specified in Section 294 of the Penal Code (including Exceptions dealing with provocation and sudden fight) is applicable in a case, and

*only in a case, in which an accused has caused death with the murderous intention; if the mitigating circumstances set out in any of these Exceptions are established...**the effect of such an Exception is that the accused is guilty only of culpable homicide not amounting to murder despite the fact that he did entertain a murderous intention***".

Therefore, according to his Lordship's observation, when mitigating circumstances as outlined in the exceptions to section 294 are established, an accused person is guilty solely of culpable homicide not amounting to murder even if he had the intention to cause the death of the deceased, intention to inflict injury to or sufficient in the ordinary course of nature to cause the death of the deceased or possessed knowledge that his actions would likely result in the death of the deceased as stipulated in section 294 of the Penal Code.

22. Based on the reasons outlined above, I set aside the appellant's conviction of murder along with the accompanying death sentence,

instead I convict the appellant of culpable homicide not amounting to murder and impose the following sentence;

I sentence the appellant to 12 years of rigorous imprisonment and impose a fine of Rs.25,000. In the event of default in paying the fine, the appellant shall face an additional term of 2 years' imprisonment. The substantive term of 12 years of rigorous imprisonment shall commence on 08.02.2024, the date of conviction.

23. The appeal is dismissed subject to the above variation.

24. The Registrar of this Court is directed to communicate this judgment to the *High Court of Hambantota* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree.

Judge of the Court of Appeal