IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an appeal in terms of section 331 (3) of the Code of Criminal Procedure Act.15 of 1979 read with Article 139 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Democratic Socialist Republic of Sri Lanka.

Complainant

Court of Appeal Case No:
CA/HCC/0125/2024

High Court of Polonnaruwa Case No:
HCC- 41/2016

Vs

1. Matibawegedara Ajith Kumara

Accused

AND NOW BETWEEN

Matibawegedara Ajith Kumara

Accused-Appellant

Vs

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

Complainant – Respondent

Before : **P. Kumararatnam, J.**
Pradeep Hettiarachchi, J.

Counsel : Kasun Sarathchandra instructed by Chaminda Athukorala for the Accused - Appellant.
Azad Navavi ASG for the Respondents.

Argued on : 29.10.2025

Decided on : 23.01.2026

Pradeep Hettiarachchi, J

Judgment

1. The accused-appellant (hereinafter referred to as the appellant) has preferred the present appeal against the judgment and sentence of the learned High Court Judge of Polonnaruwa. The appellant was indicted for the murder of K. A. Amila Samantha (hereinafter referred to as "the deceased"), an offence punishable under section 296 of the Penal Code.

2. The trial against the appellant was conducted before the High Court Judge without a jury. Seven witnesses testified for the prosecution, while the appellant gave a dock statement and two witnesses testified for the defence. At the conclusion of the trial, the learned Judge found the appellant guilty of murder and, accordingly, imposed the death sentence.

3. The grounds of appeal advanced by the appellant are as follows:
    a. The learned High Court Judge has erred in concluding that PW1 and PW2 are eye witnesses of the fact in issue of the instant case;

b. The learned High Court Judge has failed to accurately evaluate the dock statement of the appellant; and,
c. The learned High Court Judge has failed to properly evaluate the applicability of the special exception of grave and sudden provocation to the facts of the case.

4. In view of the grounds of appeal advanced by the appellant and the defence taken up by him at the trial, the sole question that arises for determination in this appeal is whether, on the evidence led at the trial, the appellant ought to have been convicted of culpable homicide not amounting to murder.

5. PW2, Sarath Dissanayake, was the first witness to testify for the prosecution. On the day of the incident, while he was in his paddy field, he heard a noise resembling someone shouting. He immediately went in that direction and observed two persons engaged in a scuffle, identifying one of them as Janaka (PW1). He also saw that the deceased had fallen on the paddy field. At that moment, Janaka informed him that a knife was involved and asked him to throw it away, which he did. Thereafter, an uncle of the deceased arrived at the scene, and the deceased was taken to the hospital in a three-wheeler.

6. The most vital witness for the prosecution is PW1, Janaka. According to his evidence, on the day of the incident, while he and the deceased were waiting at a junction known as "Palama Gava," the appellant approached them and inquired about directions to Buddhayaya. They directed the appellant to proceed forward and followed him for approximately 300 metres. Thereafter, the deceased requested the appellant to produce his identity card, which the appellant handed over. The deceased then questioned him further, whereupon the appellant stated that he was attached to the Sri Lanka Army. The deceased subsequently asked for the appellant's leave chit, which was also produced. At that time, both the appellant and the deceased were standing at the edge of a nearby canal.

7. According to PW1, the appellant suddenly pulled a knife from his bag, causing the witness to fall into the canal. Thereafter, the appellant chased after the deceased. When PW1 managed to climb out of the canal, he observed the appellant positioned

over the deceased, pointing the knife at him and warning him not to come closer. Despite this, PW1 approached the appellant and engaged in a scuffle with him.

8. In the meantime, a person named Sarath arrived at the scene and was able to seize the knife and throw it away. Thereafter, the deceased was taken to hospital. The appellant was apprehended and assaulted by those present, following which the police arrived at the scene and took the appellant into custody.

9. According to the testimony of the Judicial Medical Officer, two stab injuries were observed on the body of the deceased at the post-mortem examination. Injury No. 1 had penetrated the right ventricle of the heart and was categorised as a necessarily fatal injury. Injury No. 2 had penetrated the soft tissues and muscles and extended up to a vertebra.

10. PW9 was the police officer who accompanied Inspector of Police (I.P.) Tilakarathne to the scene of the crime. Since I.P. Tilakarathne had passed away, PW9 testified by referring to the notes the Inspector had made. On their way to the scene, they encountered a group of people escorting the appellant. They arrested the appellant and then proceeded to the crime scene.

11. According to the evidence, the incident occurred in a paddy field. Officers found a single-edge knife and recovered a wooden club. Additionally, a black bag was recovered at the scene; it contained a bottle of weedicide, a passbook, a telephone charger, a photograph of a woman, Rs. 3,070.00 in cash, and a toothbrush. The appellant's service identity card was also handed over to the police by a person at the scene.

12. At the time the appellant was handed over to the police, the officers observed swelling on his face and lips, as well as bleeding from two fingers. The appellant was subsequently admitted to Hingurakkgoda Hospital before being transferred to Polonnaruwa Hospital, where his statement was recorded.

13. In his dock statement, the appellant stated that after alighting from the bus at Buddhayaya Junction, he was confronted and questioned by two youths. When he attempted to walk away, they approached from behind, blocked his path, and demanded his identity card. The appellant also produced his leave chit upon their

request. When the appellant questioned their identity, the youths assaulted him, and one of them struck him with a club.

14. When the appellant asked for the return of his leave chit, he was pushed into a nearby paddy field, where a scuffle ensued with one of the individuals. During the struggle, his bag was thrown aside, and a knife inside the bag fell out. As the appellant attempted to grab the knife, the other person also reached for it; in the ensuing struggle, the appellant's hand was cut. The appellant maintained that his actions were committed in self-defense and in an effort to recover his identity card and leave chit. He further stated that he had no intention to kill anyone.

15. In view of the evidence adduced by both the prosecution and the defence, the question that needs to be determined by this Court is that whether the incident amounts to murder, punishable in terms of Section 296 of the Penal Code as determined by the learned High Court Judge and supported by the learned ASG, or whether the incident amounts to culpable homicide not amounting to murder in terms of Section 294 exception 4 of the Penal Code, punishable in terms of section 297 of the Penal Code.

16. In other words, the point falling for consideration is whether the conviction of the appellants under Section 294 of the Penal Code is sustainable.

    Exception 4 of 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 and unusual manner. Explanation: It is immaterial in such cases which party offers the provocation or commit 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. The following authorities provide valuable guidance on the approach to be adopted by courts in determining the question of culpable homicide.

19. What is provocation is considered by His Lordship Nagalingam S.P.J in ***K.D.J. Perera v. The King, 53 NLR 193, at page 201***, as follows:

> *"Under our law, what has to be established by a prisoner who claims the benefit of exception 1 to section 294 of the Penal Code is : (1) that he was given provocation, (2) that the provocation was sudden, (3) that the provocation was grave, (4) that as a result of the provocation given he lost his powers of self-control, (5) that whilst deprived of the power of self-control he committed the act that resulted in the death of the victim." Further held that: "In the first place, it would be necessary to ascertain what is meant by provocation. Provocation, according to the dictionary, would be any annoyance or irritation, and for our purpose it must be defined as anything that ruffles the temper of a man or incites passion or anger in him or causes a disturbance of the equanimity of his mind. It may be caused by any method which would produce any one of the above results-by mere words which may not amount to abuse or by words of abuse, by a blow with hands or stick or club or by a pelting of stones or by any other more serious method of doing personal violence.*

20. The Privy Council in ***Attorney-General v John Perera (54 NLR 265)*** observed that

> *"The defence of provocation may arise where a person does intend to kill or inflict grievous bodily harm but his intention to do so arises from sudden passion involving loss of self control by reason of provocation" (ibid at p 269). The Privy Council in the same judgment further held that "In order to reduce the crime from murder to manslaughter the offender must show first that he was deprived of self control and*

secondly that that deprivation was caused by provocation which in the opinion of the jury was both grave and sudden". (ibid at p 269).

21. In ***Muthu Banda v. The Queen, 56 NLR 217,*** *at page 218*, it was held that:

> *"The direction criticized in this appeal is that which expresses the proposition that in considering whether a particular episode contains the elements of grave and sudden provocation the jury must apply an objective test, i.e. whether in the particular case under consideration a reasonable or average man with the same background and in the same circumstance of life as the accused would have been provoked into serious retaliation." Further held that; "The argument, as I understood it, for the appellant was that the jury, in considering the reaction of the hypothetical reasonable man" to the acts of provocation, must not only place him in the circumstances in which, the accused was placed, but must also invest him with the personal physical peculiarities of the accused. Learned counsel, who argued the case for the appellant with great ability, did not, I think, venture to say that he should be invested with mental or temperamental qualities which distinguished him from the reasonable man ; for this would have been directly in conflict with the passage from the recent decision of this House in Mancini's case which I have cited."*

22. In ***Samithamby v. The Queen, 75 NLR 49,*** *at page 50,* His Lordship H.N.G. Fernando, C.J. held that;

> *"In these circumstances, the majority of us considered that in terms of Exception (1) set out in s. 294 of the Code the attention of the Jury should have been drawn to the question whether the act of stabbing took place whilst the accused was deprived of the power of self-control. There was no doubt an interval of time between the giving of the provocation and the time of the stabbing, but the provocation given was sudden, in the sense that the accused must have been taken aback when he realised that his wife wished him to be dead. The evidence concerning the subsequent period made it quite probable that in fact the accused all the time suffered under a loss of self-control. Had this aspect of the matter been presented to the Jury, they*

should, in the opinion of the majority of us, have returned the lesser verdict."

23. In ***King vs. Widanalage Lanty, 42 NLR 317,*** His Lordship Moseley SPJ held that

"The remaining ground of appeal is that the jury were not directed properly on the matter of a fight before the deceased was stabbed. That is to say, that it was not brought to the notice of the jury that there was some evidence upon which, if they believed it, it was open to them to find that the appellant was guilty of culpable homicide not amounting to murder, as provided by exception 4 to section 294 of the Penal Code. The learned Judge did in fact put it to the jury that, if they were convinced beyond reasonable doubt by the evidence for the prosecution, it was clearly their duty to find the appellant guilty of murder, but that, if they believed the defence, they would not hesitate to acquit him. No question of culpable homicide not amounting to murder, he said, arose on his defence. It is a fact that no such defence was put forward by him or on his behalf. In William Hopper ' the defence, as in this case, was that of accident. In that case, however, Counsel for the defence indicated that, if that defence failed, he should hope for a verdict of manslaughter only. But the Court expressed its view that, even if Counsel had not contended for a verdict of manslaughter, the Judge was not relieved of the necessity of giving the jury the opportunity of finding that verdict.

24. In *The* King v. Bellana Vitanage Eddin Howard C.J. in referring to a defence that had not been raised nor relied upon at the trial, said that that fact was not in itself sufficient to relieve the Judge of the duty of putting this alternative to the jury " if there was any basis for such a finding in the evidence on the record".

25. In ***Premlal v Attorney-General [2000] 2 SLR 403*****,** the Court of Appeal cited with approval the following passage from the judgment of Lahore High Court in Jan Muhammed v Emperor, AIR 1929 – Lahore 861 at page 862 –

"Each case must depend upon its own facts and circumstances. In the present case, my view is that, in judging the conduct of the accused, one must not confine himself to the actual moment when the blow, which ultimately proved to be fatal, was struck, that is to say, one must not take

> *into consideration only the event which took place immediately before the fatal blow was struck. We must take into consideration the previous conduct of the woman. Her evil ways were the common scandal of the village and must have been known to the husband, causing him extreme mental agony, shame and humiliation".*

26. In Premalal v Attorney General [2000] 2 SLR 403 Kulatilaka, J held that: "Until the judgment of Chief Justice H.N.G Fernando in Samithamby v Queen (1) (de Krester,J-dissenting) our court followed a strict view in applying Exception (1) set out in Section 294 of the Penal Code. Our judges following their counterparts in England interpreted the phrase "sudden provocation" to mean that provocation should consist of a single act which occurred immediately before killing so that there was no time for the anger to cool and the act must have been such that it would have made a reasonable man to react in the manner as the accused did. Our Courts were reluctant to take into consideration any special circumstances which manifested in the particular offender's case". Kulatilaka, J. further held that: "Of late we observe a development in other jurisdictions where Courts and juries have taken a more pragmatic view of the mitigatory plea of provocation. In a series of cases in applying the mitigatory plea of provocation Courts took into consideration the prior course of relationship between the accused and his victim"

27. The Indian Supreme Court has laid down in ***Prabhakar Vithal Gholve v/s The State of Maharashtra reported in AIR 2016 SC 2292*** that if the assault on the deceased could be said to be on account of the sudden fight without pre-meditation, in heat of passion and upon a sudden quarrel, conviction of the appellant cannot be sustained under Section 302 and altered to under Section 304 Part-I of IPC. (Sections 302 and 304 of the Indian Penal Code are in terms similar if not identical to Sections 296 and 293 of the Ceylon Penal Code.)

28. The Indian Supreme Court has laid down in *Prabhakar Vithal Gholve v/s The State of Maharashtra reported in AIR 2016 SC 2292* that:

> *if the assault on the deceased could be said to be on account of the sudden fight without pre-meditation, in heat of passion and upon a sudden quarrel, conviction of the appellant cannot be sustained under Section 302 and*

altered to under Section 304 Part-I of IPC. The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found.

29. In ***Punchi Hewage Samantha alias Mahathun vs AG. S.C. Appeal No. 168/2018 S.C./SPL/LA No.192/2017*** decided on 25.07.2025, Justice A. Wengappuli J. observed:

> *"In my view, the phrase "... in a sudden fight in the heat of passion upon a sudden quarrel", of the Exception 4 of Section 294 clearly envisages a situation, which started off perhaps with a mere verbal disagreement or an argument between rival parties which then takes a violent turn with sudden escalation of that 'quarrel' into a 'fight' during which exchange of physical blows or use of weapons occurs between them, resulting in the fatality in question. The start of the quarrel and its escalation into a fight must happen within a short duration of time. The emphasis placed by the Section on the progressive but sudden escalation of the intensity of the degree of passion with which the opposing parties acts in a quarrel culminating with the act or acts that results in the fatality could easily be discerned from the phrase "... in a sudden fight in the heat of passion upon a sudden quarrel". That seems to be the sequence events that envisaged by the Legislature in enacting Exception 4 in that form."*

30. In the present case, the evidence discloses that both the deceased and PW1 were intoxicated at the time of the incident. It was they who stopped the appellant and questioned him. The evidence further reveals that the deceased took possession of the appellant's identity card as well as the leave chit issued to him by the Sri Lanka Army.

31. PW1 did not witness the act of stabbing. Having fallen into the canal, by the time he emerged and ran towards the place where the deceased was, the stabbing had already occurred.

32. The police witness's testimony establishes that a wooden club was recovered from the scene. In his dock statement, the appellant stated that he was assaulted with a club by the deceased. Furthermore, the fact that the appellant's identity card and leave chit were taken by the deceased was confirmed by PW1.

33. More importantly, PW1 admitted that he had grabbed the appellant by his shirt collar when the latter refused to produce his identity card. He also noted that when the deceased demanded the appellant's leave chit, a heated argument ensued between them. Moreover, PW1 admitted that it was the deceased who initiated the fight. He testified as follows:

ප්‍ර : උසාවියට ගියාට පස්සේ ඔබෙන් සාක්ෂියක් ගත්තානේ යම්කිසි වෙලාවක?

උ : ගත්තා.

ප්‍ර : දැන් ඒ වෙලාවේ ඔබ කිව්වාද හැදුනුම්පත දෙන්න බෑ කිව්වාට පස්සේ ඔබ එයාගේ කොලර් එකෙන් ඇල්ලුවා කියලා?

උ : මම කිව්වා ස්වාමීනී.

ප්‍ර : කොලර් එකෙන් ඇල්ලුවාට පස්සේ මොකද වුනේ?

උ : කොලර් එකෙන් ඇද්දට පස්සේ හැදුනුම්පත දුන්නා වගේ මතකයි.

ප්‍ර : ඊට පස්සේ ඔබේ යාලුවා ලිව් විට් එකකුත් ඉල්ලුවා කියලා කිව්වා?

උ : ඔව් ඔහු යුධ හමුදාවේ කියලා කිව්වාට පස්සේ ඉල්ලුවා.

…..

Page 87,88

34. Evidently, no prior animosity existed between the deceased and the appellant. The appellant was a stranger to the village, and it was the deceased who initiated the encounter by stopping the appellant and demanding his identity card and, subsequently, his leave chit.

35. It is undisputed that a scuffle occurred during which the deceased sustained injuries. It is also in evidence that the appellant suffered cut injuries to his fingers. This

circumstance lends support to the defence version that both the deceased and the appellant were struggling to gain control of the knife.

36. Furthermore, the doctor called by the defence confirmed that the appellant had sustained cut injuries on his fingers and had also been subjected to an assault. As evidenced by the testimony of PW1, the deceased had taken possession of the appellant's identity card and leave chit when questioning him. In his dock statement, the appellant stated that he engaged in a scuffle with the deceased in order to retrieve his identity card and leave chit, as he could not return to the army camp without them and would have faced punishment for doing so.

37. Nowhere in the evidence of PW1 is it stated that the deceased returned the leave chit and identity card to the appellant. Accordingly, even if it is presumed that the appellant was pursuing the deceased up to the paddy field, a reasonable doubt arises as to whether the purpose of the pursuit was genuinely to recover the identity card and leave chit, rather than to intentionally stab the deceased.

38. It must be emphasized that the subjective state of mind of an accused at the time of inflicting a fatal injury is not ordinarily capable of direct proof and can ordinarily only be inferred from all the circumstances leading up to and surrounding the act.

39. In the present case, the evidence shows that the appellant had no intention of engaging in any scuffle or confrontation with the deceased and PW1 when he alighted from the bus at the junction. As admitted by PW1, it was the deceased who initiated the sequence of events that ultimately led to the stabbing. It is further in evidence that the appellant attempted to disengage and leave, but was followed by the deceased and PW1, who demanded his identity card and leave chit.

40. Although the learned trial Judge concluded that the taking of the appellant's identity card and leave chit could not, by themselves, be regarded as grave enough to amount to provocation, such conduct must be assessed in the light of the attendant circumstances of the case. As stated by the appellant, there was a real likelihood

that he would have been subjected to disciplinary action upon reporting back to camp without his identity card and leave chit.

41. It was through no fault of the appellant that he was stopped by the deceased and compelled to produce his identity card and leave chit. As admitted by PW1, both PW1 and the deceased were intoxicated at the relevant time, and it would therefore be unrealistic to infer that the questioning of the appellant was carried out in a calm or restrained manner. PW1 further admitted that it was they who initiated the confrontation by stopping a person who was merely proceeding along the road. He testified as follows:

ප්‍ර : ඔබලා මේ පාරේ ගමන් කරන පුද්ගලයෙක් නතර කරලා ඔහු සමඟ නිකරුනේ ආරවුලක් ඇති කර ගත්තා කියලා මම ඔබට යේජනා කරනවා?

උ : ඔව් ස්වාමීනී.

ප්‍ර : ඒ ආරවුලේ ප්‍රතිඵලයක් විදිහට තමයි මේ අම්ලට තුවාල සිදු වෙලා තියෙන්නේ කියලා මම ඔබට යෝජනා කරනවා?

උ : ඔව් ස්වාමීනී.

Page 93

42. It is also observed that the learned trial Judge's evaluation of the dock statement was not carried out in the correct perspective. The learned Judge appears to have rejected the dock statement solely on the basis of the testimonies of PW1 and PW2, on the premise that they were eye witnesses to the incident. However, PW1 unequivocally admitted that he did not witness the deceased being stabbed, as the stabbing had already occurred by the time he emerged from the canal.

ප්‍ර : පිහියෙන් අනිනවා දැක්කද?

උ : නැහැ. මම එතකොට ඇලේ හිටියේ. මම ගොඩ වෙන කොට පිහිට මගේ පැත්තට දික් කරගෙන හිටියා.

ප්‍ර : ජනක ගියා කිව්වා අජිත් සමඟ පොර බදින්න ?

උ : ඔව්.

ප්‍ර : පොර බදින විට අජිත්ගේ අතේ පිහිය තිබුණාද?

උ : පිහිය තිබුණා. යාලුවාගේ ෂර්ට් එකේ ලේ තියෙනවා දැක්කා.

Vide page 78

43. PW2 only observed that PW1 was engaged in a scuffle with the appellant but did not witness how the deceased sustained the fatal injury. Nor did he see the deceased being chased by the appellant. PW1 admitted that he had held the deceased by the shirt collar when the latter was reluctant to hand over the identity card and leave chit.

44. The learned trial Judge refused to accept that a scuffle occurred between the deceased and the appellant, relying on the evidence of the two eyewitnesses. However, as demonstrated above, this conclusion is incorrect. Both the testimony of PW1 and PW2, when properly considered, indicates that a scuffle took place, and the learned Judge erred in disregarding this crucial aspect of the defence case. In the impugned judgment it is stated:

විත්තිකරු විත්ති කූඩුවේ සිට ප්‍රකාශයක් කරමින් සඳහන් කර සිටියේ මරණකරු තමන්ගේ හැඳුනුම්පත සහ නිවාඩු අවසර පත්‍රය ගෙන යලි භාර නොදුන් බවත් ලියද්දට තල්ලු කරගෙන ගොස් පොර බැඳීමේදි බෑගය තුල තිබූ පිහියක් ඉවතට විසි වූ බවත් පිහිය ගැනිමට දෙදෙනාම පොර බැඳීමේදී පිහිය මරණකරුගේ ඇඟට තමා අතින් වදින්නට ඇතැයි සිතන බවත්ය. විත්තිකරු එම සිදුවිම අහඹු සිදුවීමකට ලඝු කිරීමට උත්සාහ කලද එකිනෙකට සම්පාත වන පැ.සා 01 ගේ සහ පැ.සා 02 ගේ ඇසු දුටු සාක්සී අනුව එකී විත්තවාචකය පිලි ගත නොහැකි බව පැහැදිලි ලෙසම පෙනී යන බව සඳහන් කල යුතුය.

Vide page 197

45. As noted earlier, the cut injuries sustained by the appellant on his fingers, although not conclusively established as having been caused during the struggle for the knife, were corroborated by the evidence of the doctor who testified for the defence. The doctor stated that such injuries could have been inflicted while the appellant was attempting to defend himself. This evidence lends support to the appellant's dock statement to a certain extent and, in doing so, casts doubt on the credibility of the evidence of PW1.

46. In ***Gunasiri and two others vs. Republic of Sri Lanka [2009] 1 SRI.L.R.39***, it was held inter alia, that:

In evaluating a dock statement the trial Judge must consider the following principles: (1) If the dock statement is believed it must be acted upon. (2) If the dock statement creates a reasonable doubt in the prosecution case the defence must succeed.

47. Considering the question of evaluation of a dock statement made by an Accused, Sisira De Abrew, J. in ***Priyantha Lal Ramanayake vs. Hon. Attorney General [SC Appeal No. 31/211], (SC Minutes dated 27/01/2020***), cited with approval the case of Queen vs. Kularatne (1968) 71 NLR 529, where it was held; 1. If they believe the unsworn statement, it must be acted upon. 2. If it raises a reasonable doubt in their minds about the case for the prosecution the defence must succeed. In the afore-stated case, His Lordship made the following guidelines as to how the evidence given by an Accused person should be evaluated; 1. If the evidence of the Accused is believed by court it must be acted upon. 2. If the evidence of the Accused raises a reasonable doubt in the prosecution case, the defence of the Accused must succeed. 3. If the Court neither rejects nor accepts the evidence of the Accused, the defence of the Accused must succeed. (Emphasis is mine)

48. The evidence adduced by the prosecution does not suggest that the appellant intended to, or premeditated, any injury to the deceased. Evidently, the scuffle arose as a result of the conduct of the deceased and PW1, who admitted that they had initiated the confrontation. When these facts are considered in their entirety, a reasonable inference arises that the appellant acted under grave and sudden provocation.

49. In view of the foregoing analysis, especially when the attendant circumstances of the prosecution case are considered, it is clear that the appellant did not act with premeditation or an intention to cause death. The evidence establishes that the scuffle was initiated by the deceased and PW1, and that the appellant's actions were reactionary, arising from grave and sudden provocation and the pressing need to recover his identity card and leave chit. In these circumstances, the learned trial

Judge erred in convicting the appellant under section 296 of the Penal Code for murder.

50. Hence, I hereby set aside the death sentence and convict the Appellant for culpable homicide not amounting to murder under Section 297 of the Penal Code. I sentence the Appellant for 10 years rigorous imprisonment commencing from the date of conviction namely 26.03.2024.

51. Additionally, the appellant is ordered to pay a fine of Rs. 10,000/- with a default sentence of one year's simple imprisonment in the event of non-payment. The appellant is further directed to pay compensation of Rs. 300,000/- to the family of the deceased. In the event that the compensation is not paid, the appellant shall serve a default sentence of one year's simple imprisonment.

Judge of the Court of Appeal

P. Kumararatnam,J

I agree,

Judge of the Court of Appeal