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

In the matter of an appeal in terms of Section 331 of the Code of Criminal Procedure Act No. 15 of 1979, read with Section 11 of the High Court of the Provinces (Special Provision) Act No. 19 of 1990 and Section 14 of the Judicature Act.

CA Case NO: HCC/300/24

HC Ampara Case No:
HC/AMP/2255/2022

Democratic Socialist Republic of Sri Lanka

Complainant

Vs.

1. Abeyweera Mirissa Patabendige Dinesh Asanka alias Kira

2. Kaluthotage Pubudu Tharanga alias Kola

3. Loronsu Hewa Welle Kankanamlage Buddhika Tharanga alias Sagara

Accused

AND NOW BETWEEN

1. Abeyweera Mirissa Patabendige Dinesh Asanka alias Kira

1st Accused-Appellant

Vs.

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

Complainant-Respondent

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

Amal Ranaraja, J

Counsel : Dimuthu Senerath Bandara with Shashimini Gunarathna and Ravindu Mapalagama for the 1st Accused-Appellant
Akila Dalpatadu, SC for the Respondents

Written Submissions: 16.05.2025 (by the Accused-Appellant)
On 24.07.2025 (by the Respondent)

Argued On : 08.12.2025

Judgment On: 29.01.2026

JUDGEMENT

B. Sasi Mahendran, J.

The Accused Appellant (hereinafter referred to as the Appellant), along with two others, was indicted before the High Court of Ampara for inflicting injuries on Galappaththilage Buddika Rukmal with a sword on or before 16th November 2008 and thereby committing the offence of attempted murder punishable under Section 300 read with Section 32 of the Penal Code.

It should be noted that at the beginning of the trial, the 2nd and the 3rd Accused pleaded guilty to the charge and were convicted and imposed 2 years of Rigorous imprisonment suspended for 10 years and fined Rs. 10,000, with a default sentence of six months' rigorous imprisonment. Additionally, compensation was ordered to be paid to the victim of Rs. 100,000 with a default sentence of 1 year's simple imprisonment.

The Appellant pleaded not guilty to the indictment, and at the trial, the prosecution presented evidence through 3 witnesses and marked production as P1 and thereafter closed its case. The Appellant, in his defence, made a dock statement.

At the conclusion of the trial, the Learned High Court Judge, by judgment dated 29.10.2024, found the Appellant guilty of the charge and imposed a sentence of 5 years of rigorous imprisonment and a fine of Rs. 25,000/- and 6 months of rigorous imprisonment in default. Further, a compensation of Rs. 1,000,000/- was ordered to be paid to the victim; in default, a term of 2 years of simple imprisonment is imposed.

Being dissatisfied with both the conviction and the sentence imposed by the Learned High Court Judge, the Appellant has preferred an appeal before this Court, articulating the following grounds in support of their challenge.

1. The learned Trial Judge has failed to properly evaluate the credibility of PW1 and has failed to appreciate that he is unreliable as a witness.
2. The learned Trial Judge has misinterpreted the application of illustration (f) of section 114 of the Evidence Ordinance pertaining to withholding the evidence of PW2 by the prosecution, and has failed to grant its benefit to the accused.
3. The learned Trial Judge has failed to properly evaluate the dock statement of the accused and has rejected the same unduly.

4. The learned Trial Judge has failed to duly consider and the alternative defense of right of private defence.
5. The sentence imposed on the appellant is excessive and unreasonable

The facts and circumstances of this case are as follows,

PW-1, Galappaththilage Buddika Rukmal, the victim in this case, stated that on 16.11.2018, at approximately 3.30 p.m., he was returning home with his brother after consuming beer at a nearby friend's house. The witness encountered the Appellant, who was riding a scooter, and according to the witness, he said, "පස්සේ බලාගමු." The witness testified that the Appellant had known him since childhood. The witness says that a little later, the Appellant came to his house in a car with the 2nd and 3rd Accused, called PW1 to come out. As the witness opened the door of the house, the Appellant launched a repeated assault on him with a sword. The witness stated that the Appellant inflicted injuries on both of his hands, as well as other bodily injuries. Then the witness had fallen to the ground and further stated that he unsuccessfully tried to defend himself with a piece of an iron pipe, but received several injuries until he lost consciousness, which he regained only at the hospital.

During cross-examination, the witness admitted that there had been a dispute between the Appellant and his aunt, in which he had also become involved. He further stated that on the alleged day, he questioned the Appellant as to why he had come to his house seeking him. The witness further stated that the pipe he used for defence was positioned near the door of his house. The witness also testified that when the Appellant was shouting from outside the house, he did not step out with the pipe, and that when the Appellant began attacking, he took hold of the pipe that was near the door.

We note that the majority of the defence's questions focused on whether the witness was intoxicated and whether he was the one who initiated the fight by attacking the Appellant.

The Judicial Medical Officer, PW8, Dr Sandaruwan Dul Shri Appuhamy, confirmed that the victim sustained 17 injuries in total, of which four were classified as grievous hurt. He clarified that Injury No. 01, a stab wound to the rib cage, was sufficient in the ordinary course of nature to cause death. The remaining three grievous injuries were defensive cut wounds on the right hand, resulting in fractures. He further opined that a sharp weapon may have inflicted the injuries.

During cross-examination, the defence questioned whether the original medical record indicated that the victim was intoxicated. The witness confirmed this and proceeded to state as follows.

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> ප්‍ර : මොකක්ද එහි සඳහන් වෙන්නේ?
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> උ : ගරු ස්වාමීනී. එහි මා විසින් දක්වා තියෙනවා රෝගියාව මා විසින් පරීක්ෂා කරන ලද අවස්ථාවේදී රෝගියාගේ මත් පැන් ගඳක් හෝ එහෙමත් නැත්නම් බීමත්ව හිටිය කෙනෙක් යැයි සැක කරන්න පුළුවන් තරමේ ලක්ෂණ අදිකරණ වෛද්‍ය පරීක්ෂණය සිදු කරන මොහොතේදී නොතිබූ බවත් එනමුත් රෝගීයා රෝහල් ගත කරන මොහොතේදී ඇඳ ඉහ පත්‍රය අනුසාරයෙන් ඔහුගෙන් මද්‍යසාර ගඳක් වහනය වෙමින් පැවතිය බවත් මා එහි දක්වා තිබෙනවා ගරු ස්වාමීනී

The witness further stated that while recording the victim's statement, the victim mentioned having consumed one strong beer can.

During re-examination, the witness expressed the opinion that the injuries sustained involved cuts and lacerations extending to internal tissues and even reaching the bones. He stated that such injuries were caused by the application of considerable force, and opined that the weapon used must have been a heavy, though not excessively heavy, object possessing some mass.

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> ප්‍ර : එයට හේතුව කුමක්ද?
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> උ : ගරු ස්වාමිනි මෙම තුවාල බොහොමයක් තියුණු මුවහත් පෘෂ්ඨයකින් සිදු කරනු ලැබ ඇති තුවාල ස්වාමීනි. ඒ අනුව මාගේ මතය එම තුවාල සිදු කිරීම සඳහා භාවිතා කර ඇති ආයුධය හෝ ආයුධ තියුණු පෘෂ්ඨයක් සේම Pointed object නැත්නම් උල් අග්‍රයක් ඇති ආයුධයක් යන්නයි. 02 වන කරුණ ගරු ස්වාමිනි එම යොදා ඇති බලය ඇතැම් අවස්ථා වලදී ඊට අභ්‍යන්තර පටක කැපීම් හෝ ඉරීම් වලට ලක්ව ඊටත් අභ්‍යන්තරයෙන් ඇති අස්ථි දක්වා විහිදී ගොස් ඒවා වලබිදීම දක්වාම තිබෙනවා ගරු ස්වාමීනී. ඒ අනුව එකක් ගරු ස්වාමිනි එම යොදා ඇති බලය වැඩි බලයක් බවත්,එම යොදා ගත් ආයුධය බරකින් යුක්ත ඉතාමත්ම සියුම් නොවන යම්කිසි ස්කන්ධයක් යුක්තව, බරකින් යුක්ත ආයුධයක් විය යුතුයි යන්න බව මාගේ අදහසයි ගරු ස්වාමිනි.

PW 3 testified that he was informed of the incident through a 119 call. Together with other officers, he proceeded to the scene. Upon arrival, he questioned the bystanders and was told that three individuals had attacked the victim. He observed bloodstains in the

front area, a pole approximately two feet in length, and a pair of slippers. The condition of the ground indicated that a fight had taken place. Subsequently, PC 6247 Balasuriya recorded the statements of PW 1 and PW 2.

During cross-examination, the witness testified that on 16.11.2018, Officer PC 6247 Balasuriya attempted to obtain a statement from the victim but was unable to do so, as the officer recorded that the victim was intoxicated.

Upon the conclusion of the evidence of the prosecution, in the Dock statement, the Appellant stated that while riding his scooter bicycle, he encountered PW1 and PW1's brother in front of PW1's house. He alleged that both were in a highly intoxicated state and initiated an altercation with him, using obscene language, arising out of a prior dispute concerning PW1's aunt. The Appellant further claimed that PW1 then entered the house, returned with an iron rod, and attempted to assault him, with PW1's wife following behind. He stated that he managed to grasp the iron rod to ward off the blow, and while he and PW1 were struggling over it, PW1's brother began striking him with a knife. After being engaged in a brawl with both of them for some time, the Appellant asserted that he eventually released the iron rod and fled the scene in order to save himself from their continued attacks with the iron rod and knife.

The main argument advanced by the defence counsel is that the learned High Court Judge failed to properly consider the contradictions and omissions in the testimony of PW1, as well as the plea of private defence raised by the Appellant. It is acknowledged that several contradictions and omissions were, in fact, marked by the defence. Jurisprudence has established that where such contradictions and omissions go to the root of the case and relate to material facts, the Court must exercise caution in evaluating the evidence and be mindful of its impact on the credibility of the witness. On the other hand, witnesses should not be disbelieved merely on the basis of trivial discrepancies or minor omissions. Therefore, it becomes necessary to examine such discrepancies in conjunction with the other material relied upon by the learned counsel for the Appellant.

The following contradictions and omissions were brought to the attention of the Court.

Page 124 of the brief - Contradiction 01

ප්‍ර : ඇත්තමුන් කියනවා බිව්වේ බියර් එකක් කියලා. ස්ට්‍රෝන්ග් බියර් එකක් කියලා කියනවා හරිනේ?

උ : එහෙමයි ස්වාමීනී.

ප්‍ර : සුරංග සහ ටැටු සමඟ අරක්කු බිව්වා කියලා කිව්වා නම් ඒක වැරදියි නේද?

උ : ඔව් ස්වාමීනී.

Page 125 of the brief - Contradiction 2

ප්‍ර : ඊට පස්සේ " එසේ අරක්කු බීලා ඉවර වෙලා මම ගෙදර එන්න මල්ලී වන දිනේෂ් සමඟ " යන කොටසේ " එසේ අරක්කු බීලා '" එහෙම කිව්වද තමුන් පිළිගන්නවාද?

උ : බියර් බීලා කියලා කිව්වේ ස්වාමීනී.

ප්‍ර : එහෙම සටහන් වෙලා තිබුණොත් වැරදියි?

උ : එහෙමයි ස්වාමීනී.

Page 129 of the brief – Contradiction 3 and 4

ප්‍ර : පොලීසියට කියලා තියෙන්නේ මේ මම යන විට ඔයා හරි අභිංසක විදියට ඇවිද ගෙන යන විට අපිව පාර හරස් කරලා නැවැත්වූවා බයිසිකලේ. මං ඇහුවා "ඔහොමද යකෝ බයිසිකලේ එලවන්නේ " කියලා ඇහුවා? ඔය දෙකෙන් මොකක්ද හරි?

උ : නෑ ස්වාමීනි එයා මුණට ආවා ස්වාමිනි. එතකොට මං නතර කරලා ඇහුවා " ඇයි මාව හොයන් ආවේ " කියලා.

ප්‍ර : ඔබතුමා ඇහුවේ " ඇයි මාව සොයා ගෙන ආවේ " කියලා?

උ : එහෙමයි ස්වාමීනී.

ප්‍ර : ස්ථිරයිනේ?

උ : එහෙමයි ස්වාමීනී.

ප්‍ර : " ඔහොමද යකෝ පාරේ යන්නේ " මේ සටහන් වල තියෙනවා වැරදියි?

උ : එහෙමයි ස්වාමීනී.

ප්‍ර : "පාරේ යන විදියට පලයං " කියලා සටහන්වල තියේ නම් ඒකත් වැරදියි ?

උ : ඔව් ස්වාමීනී.

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ප්‍ර : දැන් මෙහෙම නියෙනවා නම් මහත්මයා " අරක්කු බීලා ඉවර වෙලා මම ගෙදර මල්ලී වන දිනේෂ් එක්ක පයින් ආවා. එසේ පයින් ආවේ අම්මලයි ගෙදර ඉඳලා අපේ ගෙදරට එන්න ආවේ. නිවස පිටුපස පැත්තේ ඇති පාරෙන් තමයි ආවේ " ඒක හරිද?

උ : නෑ ස්වාමීනී.

ප්‍ර : එහෙම තියේ නම් පොලිසියෙන් මේක හදලා දාලා තියෙන්නේ වෙන්න බෑ?

උ : මං ප්‍රධාන පාරෙන් ආවේ ස්වාමිනී.

Page 135 of the brief - Contradiction 6,7, and 8

ප්‍ර : 2018.11.18 මෙහෙම කියලා තියෙනවා නම් ඒක හරිද ? වැරදිද? 'ඒ අවස්ථාවේදී බිරිඳ විසින් කුස්සියේ තිබුණු යකඩ බටයක් ගෙනල්ලා මට දුන්නා' එහෙම කියලා කිව්වොත් හරිද ?

උ : නෑ ස්වාමිණි.

ප්‍ර : එත කොට ඒ බටේ තිබ්බේ කුස්සියේ නෙවෙයි ?

උ : එහෙමයි ස්වාමිණි.

ප්‍ර : ඒක යකඩ බටයකුත් නෙවෙයි?

උ : මතකයක් නෑ යකඩ බටයක් ද කියලා.

ප්‍ර : දැන් මතක නෑ බිරිඳ ගාව තිබ්බෙත් නෑ ?

උ : නෑ ස්වාමිණි

ප්‍ර : ස්වාමිණි ඒ අවස්ථාවේදී බිරිඳ විසින් කුස්සියේ තිබී යකඩ බටයක් මට ගෙනත් දුන්නා තිබුන නම් ඒක වැරදී නේද ?

උ : එහෙමයි ස්වාමිණි

Page 127 of the brief - Omission 01

ප්‍ර : තමුන් විත්තිකාරයා හම්බ වෙනවා. දැන් තමුන් කියපු විදියට බියර් එකක් නේ බීලා ඉන්නේ?

උ : එහෙමයි ස්වාමිනී.

ප්‍ර : විත්තිකාරයා පාරේ යනවා. අහනවා " ඇයි අපේ ගෙදර ආවේ " කියලා.

උ : එහෙමයි ස්වාමිනී.

ප්‍ර : තමුන් මේක පොලිසියට කිව්වද?

උ : ඔව් ස්වාමිනී.

Page 127 of the brief - Omission 02

ප්‍ර : විත්තිකාරයා ඇවිල්ලා කෑ ගැහුවද ? 'අඩෝ වරෙන් 'එහෙම මොකක්වත් කිව්වද?

උ : එහෙමයි ස්වාමිණි

ප්‍ර : මොකක්ද කිව්වේ?

උ : එළියට බැහැපන් කිව්වා දැන්.

ප්‍ර : තමුන්ට ඒක ස්ථිරයි?

උ : එහෙමයි ස්වාමිණි.

Before I consider the contradictions and omissions, I am mindful of the dictum of D. A. Desai J in the case of ***State of Uttar Pradesh v. M.K. Anthony***, reported in Supreme Court Journal 1984 (2) page 498,

> *"While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to*

find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals."

Bandaranaike v. Jagathsena and Others, SC Appeal 58/82, Decided On 12.12.1984, Colin Thome, J held that;

"When versions of two witnesses do not agree the trial judge has to consider whether the discrepancy is due to dishonesty or to defective memory or whether the witness' powers of observation were limited. In weighing the evidence the trial judge must take into consideration the demeanour of the witness in the witness box. Was she trying to the best of her ability to speak the truth? The learned Magistrate had to bear in mind that Kamala was giving evidence eight and a half months after the incident. Could she be expected to remember every detail of the incident? She was unable to remember how many papers were taken from the bag. She made these entries at night. Can she be expected to remember precisely several months later what shade of blue ink she used? According to her recollection she used a black coloured (ink) ballpoint pen which was clearly an error. The learned Magistrate considered all these circumstances and held that Kamala made a mistake about the number of pens she used as all her attention was focused on recording the words of the song and not on the implements used for recording it. This mistake was trivial and did not detract from the fact that Kamala Ranatunga had recorded the words on P2 and P2A contemporaneously with the singing."

The above two judgements were considered by His Lordship P. Padman Surasena J (as he was then) in ***Agampodi Wijepala de Soyza v OIC Police Station, Ahungalla,*** SC Appeal 159/2018, Decided On 07.07.2021, he held that,

> *"In the light of the above conclusions it is my view that the learned High Court Judge was right when he concluded that the so called discrepancies has not affected the credibility of the virtual complaint or that the said purported discrepancies have not created any reasonable doubt in the prosecution case. Therefore, I answer all of the aforementioned questions of law in the negative"*

Additionally, I am mindful of the following judgements.

Samaraweera V. The Attorney General 1990 (1) SLR, 256 at page 260, P.R.D. Perera, J, held that

> *"Where however the maxim set out above is applicable it must be borne in mind that all falsehood is not deliberate. Errors of memory, faulty observation or lack of skill in observation upon any point or points, exaggeration or mere embroidery or embellishment must be distinguished from deliberate falsehood. Nor does it apply to cases of testimony on the same point between different witnesses. (Vide The Queen v. Julis (1) C. C. A.)."*

Veerasamy Sivathasan v. Attorney General, SC Appeal 208/2012, Decided On 15.12.2021, Yasantha Kodagoda, PC, J held that;

> *"one cannot reasonably expect them to provide a picture perfect narrative complete with all details of what actually happened. Further, it is quite possible that IP Welagedera did not see the exact manner in which WSI Gamage conducted herself, particularly as he would have been concentrating on relieving himself from the grip of the 1st Accused and on preventing the 1st Accused from evading arrest and fleeing from the scene along with the polysack bag. When 'participant-witnesses' as opposed to 'passive-observer-witnesses' give evidence regarding an incident that occurred quite suddenly, it is not humanly possible for their testimonies to mirror each other."*

I now turn to the contradictions highlighted by the defence. It must be noted that the evidence was presented after a lapse of 16 years; the incident occurred in 2008, while the testimony was led in 2024. Most of the contradictions raised by the defence do not strike at the core of the case. For instance, the first and second contradictions concern whether beer or liquor was consumed; the third relates to the statement 'ඔහොමද යකෝ බයිසිකලේ එලවන්නේ'; the fourth to 'ඇයි මාව හොයන් ආවේ'; and so forth.

I am mindful that on the alleged day, the witness was under the influence of alcohol, and he himself admitted to having quarreled with the Appellant. The contradictions noted may well be attributable to defective memory, given that the evidence was led after a lapse of 18 years. In my view, the Learned High Court Judge has rightly concluded that these discrepancies neither undermine the credibility of PW1 nor cast any doubt upon the prosecution's case. It is noted that the witness is a layperson, yet his testimony has been consistent. We find no basis to discredit his evidence, and the minor discrepancies do not affect the overall credibility of his evidence.

The next question is whether there is evidence available to consider the action of the Appellant, where he relied on the plea of private defence, would fall under the general exception as stated in section 301 of the Penal Code, which reads as follows,

> *"Whoever does any act with such intention or knowledge and under such circumstances, that if he by that act caused death he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both; and if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.*
>
> *Illustration*
>
> *A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section."*

According to Section 105 of the Evidence Ordinance 'When a person is accused of any offence, the **burden of proving** the existence of circumstances bringing the case within any of **general exceptions** in the Penal Code, or **within any special exception** or proviso

contained in any part of the same Code,….**is upon him**, and the court shall presume the absence of such circumstances' (emphasis added)

It was admitted that before the incident, PW 1 had met the Appellant, had questioned him, and there was an altercation between them. At that point, nothing has happened. Later, Appellant, along with two other people, came in a car and called him out and attacked him. Was this a sudden fight? PW 1 admitted that prevent the attack, he used the iron pipe. According to the evidence of JMO, PW 8, the victim has received a number of injuries, and it has occurred due to a forceful impact.

The question is whether the Appellant was provoked. According to his evidence, the injuries were not caused by him. It should be noted that he has not received any injuries from the fight. I am mindful of the dictum of Arjith Pasayat, J, in ***Subramani v. State of Tamil Nadu,*** 2005 AIR SC, Page 1983,

> *"Only question which needs to be considered is the alleged exercise of right of private defence. Section 96, IPC provides that nothing is an offence which is done in the exercise of the right of private defence. The Section does not define the expression `right of private defence'. It merely indicates that nothing is an offence which is done in the exercise of such right. Whether in a particular set of circumstances, a person legitimately acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. No test in the abstract for determining such a question can be laid down. In determining this question of fact, the Court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea. In a given case the Court can consider it even if the accused has not taken it, if the same is available to be considered from the material on record. Under Section 105 of the Indian Evidence Act, 1872 (in short `the Evidence Act'), the burden of proof is on the accused, who sets up the plea of self-defence, and, in the absence of proof, it is not possible for the Court to presume the truth of the plea of self-defence. The Court shall presume the absence of such circumstances. It is for the accused to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution. An accused taking the plea of the right of private defence is not necessarily required to call evidence; he can establish his plea by reference to circumstances transpiring*

from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden. Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the Court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record. (See Munshi Ram and Ors. v. Delhi Administration, AIR (1968) SC 702), State of Gujarat v. Bai Fatima, AIR (1975) SC 1478, State of U.P. v. Mohd. Musheer Khan, AIR (1977) SC 2226 and Mohinder Pal Jolly v. State of Punjab, AIR (1979) SC 577. Sections 100 to 101 define the extent of the right of private defence of body. If a person has a right of private defence of body under Section 97, that right extends under Section 100 to causing death if there is reasonable apprehension that death or grievous hurt would be the consequence of the assault. The oft quoted observation of this Court in Salim Zia v. State of U.P., AIR (1979) SC 391), runs as follows:

"It is true that the burden on an accused person to establish the plea of self-defence is not as onerous as the one which lies on the prosecution and that, while the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea to the hilt and may discharge his onus by establishing a mere preponderance of probabilities either by laying basis for that plea in the cross-examination of the prosecution witnesses or by adducing defence evidence...."

The accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea."

This concept was further discussed by her Ladyship Chief Justice Dr. Shirani A. Bandaranayake, in ***Bandara v. The Attorney General***, 2011 (2) SLR 55 at page 61, 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."

Therefore, we have to consider whether there is evidence to show that the injured person has provoked the Appellant. In the instant case, there was an alteration between the victim and the Appellant. But later, Appellant came with two other people with a sword and called the victim to come out and attacked him. The JMO, PW 8, has observed several injuries on the victim. Those injuries were severe, and they were caused by a pointed weapon. Out of those injuries the witness classified the Injury No. 01, a stab wound to the rib cage, as sufficient in the ordinary course of nature to cause death.

This indicates that the Appellant acted with premeditation in attacking the victim, and the nature of the injuries demonstrates his cruelty. In our considered view, the Appellant cannot avail himself of the Exception of provocation.

Other grounds urged by the Appellant were that the sentence imposed by the learned High Court Judge was severe and excessive. It is true that the other two accused were given suspended sentences, but they had pleaded guilty at the beginning of the trial. On the other hand, Appellant has gone to the trial where the Learned High Court judge heard the evidence and came to the conclusion of how the Appellant attacked the victim.

We are mindful of Section 13 of the Code of Criminal Procedure Act No. 15 of 1979, which reads as follows,

"The High Court may impose any sentence or other penalty prescribed by written law"

In the instant case, the said sentence or penalty prescribed by written law is found in Section 300 of the Penal Code, which reads as follows,

"Whoever does any act with such intention or knowledge and under such circumstances that if he by that act caused death he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable to imprisonment of either description for a term which may extend to twenty years, and shall also be liable to fine."

We hold that the Learned High Court Judge has rightly concluded to impose the sentence after hearing both parties. We are mindful that the victim sustained fatal injuries. Therefore, this Court is not inclined to interfere with the sentence imposed by the Learned High Court Judge.

For the above-mentioned reasons, we are satisfied that the Learned High Court Judge has correctly come to the conclusion that the prosecution has proven the case beyond a reasonable doubt.

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

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.
I AGREE

JUDGE OF THE COURT OF APPEAL