IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an appeal against the conviction / sentence of the High Court of Colombo under Section 331 of the code of Criminal Procedure Act No. 15 of 1979.

The Hon. Attorney General

Complainant

Vs

CA HCC **0297/2024**

HC Badulla **35/2016**

Sulaiman Dharmadasa

(Presently incarcerated in Bogambara Prison)

Accused

AND NOW BETWEEN

Sulaiman Dharmadasa

(Presently incarcerated in Bogambara Prison)

Accused – Appellant

Vs

Attorney General

Complainant - Respondent

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

Pradeep Hettiarachchi, J.

Counsel : Radha Kuruwitabandara for the Accused-Appellant

Lakmini Girihagama DSG and Natasha de Alwis for the Complainant-Respondent

Argued on : 04.08.2025

Decided on : 17.10.2025

Pradeep Hettiarachchi, J

Judgment

1. In this case, the accused–appellant (hereinafter referred to as "the appellant") was indicted for the murder of his wife, Mudiyanselage Chandrawathie, an offence punishable under Section 296 of the Penal Code. The trial was conducted before the learned High Court Judge of Badulla without a jury, and at the conclusion thereof, the appellant was found guilty of the charge. Accordingly, the learned High Court Judge convicted the appellant and imposed a death sentence on him. It is against the said conviction and sentence, the Appellant has preferred the instant appeal.

2. Although several grounds were urged by the appellant in his petition of appeal, at the stage of argument the appellant confined his challenge to a single argument, namely, that the Appellant had not entertained a murderous intention at the time of assaulting the deceased. The appellant's case, therefore, turns essentially on the question of intention, and it is this issue that now falls for determination.

3. The sole question that arises for consideration in this appeal is whether, at the time of assaulting the deceased, the appellant entertained the murderous intention necessary to sustain a conviction for the offence of murder under Section 296 of the Penal Code.

4. In considering this issue, it is necessary to examine both the factual matrix of the case and the legal principles governing the offence of murder under Section 296 of the Penal Code. The prosecution must establish beyond reasonable doubt that the appellant caused the death of the deceased with the intention of causing her death or with the knowledge that the act was so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death.

5. The evidence led at the trial, particularly the testimony of the prosecution witnesses, clearly establishes that the appellant inflicted the injuries on the deceased. This fact has not been seriously disputed by the defence. What is in issue, however, is the mental element, whether the appellant acted with the murderous intention required to constitute the offence of murder.

6. The appellant's argument, as advanced at the hearing of the appeal, is that the assault on the deceased occurred in the heat of passion and without premeditation, and therefore the requisite intention under Section 296 was absent. In support of this argument, learned Counsel for the appellant drew attention to the events preceding the assault, as evidenced by the prosecution's case, and urged that the appellant's conduct was more consistent with culpable homicide not amounting to murder under Section 297 of the Penal Code.

7. It is, therefore, incumbent upon this Court to consider whether the totality of the evidence supports the inference of a murderous intention beyond reasonable doubt, or whether the circumstances instead point to a lesser offence, either on the basis of knowledge or any mitigatory plea. For a mitigatory plea to be considered, all the ingredients required to establish the offence of murder must first be present. It is only then that the mitigatory plea can be taken into account.

8. However, if the evidence does not establish the requisite murderous intention but only the existence of knowledge, then the appellant can be convicted only of culpable homicide on the basis of knowledge under Section 297 of the Penal Code. In such a situation, the consideration of a mitigatory plea does not arise.

9. Thus, the critical issue for determination in the present case is whether the appellant's act of assaulting the deceased was accompanied by the degree of intention or knowledge necessary to constitute the offence under Section 294, or whether the circumstances warrant a reduction of the charge to culpable homicide not amounting to murder under Section 297, either on the basis of lack of intent or a plea in mitigation.

10. The sole eyewitness who testified at the trial was S.S. Madhushanka, the son of the appellant and the deceased. The prosecution also relied on the dying declaration of the deceased, which was marked in evidence.

11. According to PW1, the deceased was admitted to hospital after being assaulted by the appellant. On the day of the incident, a heated argument arose between the appellant and the deceased, during which the appellant assaulted the victim with an iron pipe used for blowing air into the hearth. The witness stated that the appellant struck the deceased on her leg and further observed that the appellant was under the influence of liquor at the time of the assault.

12. The witness applied some pain-relief balm on the deceased; however, as she subsequently complained of severe pain, she was taken to the Kendagolla Hospital and thereafter transferred to the Badulla General Hospital. After three days, she succumbed to her injuries while receiving treatment at the Badulla Hospital.

13. PW4, a police officer, recorded a statement from the deceased while she was at the Badulla Hospital. An extract of that statement was marked as P2 and was admitted in evidence as a dying declaration.

14. Apart from the testimony of PW1, the other most vital evidence in this case was given by the Judicial Medical Officer, Dr. Ruhul Haq, who conducted the post-mortem examination of the deceased at the Badulla Hospital. The post-mortem report dated 02.05.2012 was marked as P3.

15. PW8, E.M. Wimalasena, was the officer who assisted IP Ariyadasa in arresting the appellant and subsequently recorded his statement. This witness also accompanied IP Ariyadasa to the appellant's residence, where a child of the deceased handed over a small iron pipe said to have been used by the appellant to assault the deceased. The witness identified the said pipe, which was marked as P1.

16. At the close of the prosecution case, the appellant gave evidence on his own behalf. According to his testimony, there had been ongoing family disputes arising out of an alleged extra-marital affair of the deceased. The appellant stated that on the day of the incident, when he returned home, he saw one Ariyarathne, with whom the deceased was allegedly having an affair, leaving his house. This sight, according to the appellant, provoked him to assault the deceased.

17. In the written submissions filed on behalf of the appellant, the grounds of appeal advanced by the appellant are as follows:

    a. The learned trial Judge has failed to consider the absence of mens rea as a fundamental element of the alleged offence;
    b. The learned trial Judge has misdirected himself in law and in fact by not adequately considering and sufficiently assessing the evidence as to whether the appellant possessed the necessary mental element, despite the mitigating circumstances like provocation or sudden fight, whereas the prosecution has

not proved beyond reasonable doubt the existence of the mental element of the appellant in committing the alleged offence;

c. The learned High Court Judge has erred in law by not considering the possibility of diminished responsibility or lack of mental capacity due to sudden provocation and heal of passion; and,
d. The conviction and sentence are bad n law as the sentence given in excessive given the mitigating factor.

18. It was argued on behalf of the appellant that, as he had no knowledge of the likely consequences of the act he committed and had not entertained any murderous intention at the time of assaulting the deceased, the conviction under Section 296 of the Penal Code cannot be sustained. Learned Counsel for the appellant contended that the act did not amount to murder but, at most, of culpable homicide not amounting to murder under Section 297 of the Penal Code. It was further submitted that the appellant had attacked the deceased not with the intention of causing her death but out of aggression and in the heat of passion, arising from provocation, and therefore lacked the requisite *mens rea* for a conviction under Section 296.

19. Admittedly, the deceased died as a result of complications arising from the injuries inflicted upon her by the appellant. Thus, the question of paramount importance in the present appeal is whether the evidence adduced at the trial suffices to establish that the appellant's act falls within any of the limbs enumerated in Section 294 of the Penal Code.

20. It is Section 293 of the Penal Code, which defines culpable homicide. Section 293 reads:

> *Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.*

Section 294 sets out the instances where culpable homicide is murder.

Section 294 of the Penal Code reads:

Except in the cases hereinafter excepted, culpable homicide is murder-

Firstly- if the act by which the death is caused is done with the intention of causing death; or

Secondly- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or

Thirdly- If it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

Fourthly- If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

21. As can be observed for the impugned judgment, the learned High Court Judge concluded that the appellant's act falls within the third limb of Section 294 of the Penal Code and, accordingly, found the appellant guilty of murder under Section 296 of the Penal Code.

22. In view of the argument advanced on behalf of the appellant, the pivotal question in the present appeal is whether the evidence adduced at the trial suffices to establish the ingredients set out in the third limb of Section 294 of the Penal Code.

23. The respondents argued that the infliction of injuries by the appellant falls within the third limb of Section 294, and therefore, a conviction under Section 296 is justifiable. In contrast, the appellant contended that he neither entertained any murderous intention nor intended to cause the injuries sustained by the deceased, and, as such, he cannot be found guilty of murder.

24. The evidence suggests that the appellant struck the deceased on her leg. As explained by the JMO, toxaemia is a poisoning of the body caused by bacteria from damaged tissues. The deceased's tissues were damaged as a result of the blows inflicted by the appellant.

25. The question, therefore, is whether the appellant intended to cause such bodily injury, namely, damage to the soft tissues of the deceased, at the time of the assault. More

specifically, whether the appellant in fact intended to inflict the injuries actually sustained by the victim.

26. The JMO stated that toxaemia occurred due to damaged tissues resulting from blunt trauma to the upper part of the lower limb. There is no doubt that the appellant acted without premeditation, but in consequence of an exchange of heated words with the deceased that provoked him. More importantly, the part of the body struck by the appellant and the circumstances in which he chose the alleged iron pipe to inflict the blow do not in any way indicate the presence of a murderous intention.

27. Furthermore, the cause of death, as described by the JMO, resulted from a sequence of events within the body following the assault. His comments in the report clearly show that compartmental syndrome, if not detected and treated as early as possible, could lead to the death of the relevant tissues. Compartment syndrome is an increase in pressure inside a muscle, which restricts blood flow and causes pain. This implies that, if detected and treated promptly, such tissue death could potentially have been avoided.

28. According to the JMO, the injuries sustained by the deceased were sufficient to cause death in the ordinary course of nature, but he clearly stated that they could not be categorized as necessarily fatal.

29. The learned High Court Judge has based his conclusion on the third limb of Section 294 of the Penal Code. The relevant portion of Section 294 reads as follows:

> *If it is done with the intention of causing bodily injury to any person, and* ***the bodily injury intended to be inflicted*** *is sufficient in the ordinary course of nature to cause death;(emphasis added)*

30. However, it must be noted that there is a clear distinction between third limb of section 294 and section 293 which define culpable homicide.

31. In the 1876 case of ***Reg vs Govinda, [1 (1876) 1 Born. 342.]*** the Bombay High Court explained the difference between culpable homicide and murder under the Indian Penal Code. The Court in *Reg v. Govinda* held that culpable homicide involves causing death with the intention of inflicting bodily injury likely to cause death. In contrast, murder requires a more specific intent to cause death or such bodily injury that would

ordinarily result in death. *Reg vs Govinda* case remains an important precedent in interpreting the difference between the two offences.

32. In this regard, the findings of H.N.G.Fernando C.J. in ***R.G.Somapala vs Queen 72 NLR 121*** would be of much relevance. In that case it was held:

> *that there was misdirection in- that there was a lack of appreciation of important points of difference between s. 293 and s. 294 of the -Penal Code. While the act of causing death with knowledge that the act is likely to cause death is culpable homicide, such an act is not murder, unless either (a) the offender intends to cause bodily injury and has the special knowledge that the intended injury is likely to cause the death of the person injured, or (b) the offender knows that, because the act is so imminently dangerous, there is the high probability of causing death or an injury likely to cause death.*

33. In fact, the case of *Reg VS Govinda (supra)* was also referred to in *R.G. Somapala vs Queen*, where H.N.G. Fernando C.J. has distinguished the 3rd limb of Section 294 from the second explanation to Section 293 and stated as follows:

> *The 3rd limb of s. 294 postulates one element which is also present in the second clause of s. 293, namely, the element of the intention to cause bodily injury; but whereas the offence of culpable homicide is committed, as stated in the second clause of s. 293, when there is intention to cause bodily injury likely to cause death, the offence is one of murder under the 3rd limb of s. 294 only when the intended injury is sufficient in the ordinary course of nature to cause death. In our opinion, it is this 3rd limb of s. 294 which principally corresponds to the second clause of s. 293 ; and (as is to be expected) every intention contemplated in the latter second clause is not also contemplated in the former 3rd limb. An injury which is only likely to cause death is one in respect of which -there is no certainty that death will ensue, whereas the injury referred to in the 3rd limb of s. 294 is one which is certain or nearly certain to result in death if there is no medical or surgical intervention. This comparison satisfies us that the object of the Legislature was to distinguish between the cases of culpable homicide defined in the second clause of s. 293, and to provide in the 3rd limb of s. 294 that only the graver cases (as just explained) will be cases of murder. If this was not the object of the Legislature, then there would be no substantial*

difference between culpable homicide as defined in the second clause of s. 293 and murder as defined in the 3rd limb of s. 294. It will be seen also that if the object of the 2nd limb of s. 294 was to adopt more or less completely the second clause of s. 293, then the 3rd limb of s. 294 would be very nearly superfluous. To continue with the comparison of the two sections, it is noteworthy that the element of knowledge is specified only in the third clause of s. 293, and again only in the 2nd and 4th limbs of s. 294. This fact at least prima facie justifies a supposition that the 2nd and 4th limbs of s. 294, under which knowledge is an element of the offence of murder, are intended to correspond, not with the second clause of s. 293, but instead with the third clause-of the latter section. This third clause declares to be culpable homicide "an act done with the knowledge that the offender is likely by such act to cause death", and it is obvious that knowledge here comprises both a general knowledge, i.e. held objectively, or a special knowledge held subjectively with respect to the person injured. On the other hand, the language of the 2nd limb of s. 294 prima facie denotes only the subjective knowledge as to the likelihood of the death of the person to whom the harm is caused. There is thus evidence in the 2nd limb of s. 294 of a design to classify as murder some but not all of the offences of culpable homicide defined in the third clause of s. 293. There is evidence also of a similar design in the 4th limb of s. 294 ; knowledge, that an act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, is knowledge, not merely of the likelihood of causing death, but of the high probability of causing death or injury likely to cause death; so that many cases which fall within the third clause of s. 293 will not be murder within the meaning of the 4th limb of s. 294.

34. In the same judgment, it was further stated that:

It thus appears that while the act of causing death with knowledge that the act is likely to cause death is culpable homicide, such an act is not murder, unless either-

(a) the offender intends to cause bodily Injury and has the special knowledge that the intended injury is likely to cause the death of the person injured, or

(b) the offender knows that, because the act is so imminently dangerous, there is the high probability of causing death or an injury likely to cause death.

35. In view of the above authorities, the question to be answered is whether at the time of inflicting the injury, the appellant had the intention to kill or fatally injure the deceased. In other words, did the appellant possess the requisite *mens rea* i.e., the murderous intention at the time of hitting the deceased on her thigh?

36. There was ample evidence to show that the assault occurred following a vituperative verbal exchange which lasted for a few minutes. Further, there was evidence that the appellant had struck the roof of the hut and damaged certain utensils before assaulting the deceased. This fact was not challenged by the prosecution. According to PW1, the appellant first damaged a bucket with a knife but subsequently used the iron pipe to assault the deceased. It was also established in evidence that the iron pipe was ordinarily used to blow air into the hearth.

37. The above evidence sufficiently demonstrates that the appellant had acted without any premeditation but due to the anger and heat of passion consequent to the heated exchange of words with the deceased.

38. However, at the outset, taking into account the attendant circumstances, as well as the nature, extent, and location of the injuries and the weapon used, it appears that the conduct of the accused is not consistent with that of a person acting with a murderous intention.

39. Thus, inferentially, it is apparent from the aforesaid evidence that the appellant acted with the knowledge that his act was likely to cause death. Accordingly, the evidence establishes that the appellant had acted with the degree of knowledge punishable under Section 297 of the Penal Code. If the appellant had only the knowledge that his act was likely to cause death he can be convicted only of the offence of culpable homicide not amounting to murder.

40. The findings of the JMO and his opinion on the cause of death also support the view that the appellant could not have intended to cause the injuries actually suffered by the deceased, but only intended to hit her on the leg.

41. The injuries actually suffered by the deceased consisted of damage to soft tissues and the release of toxic bacteria into the bloodstream, which eventually developed into the condition known as toxaemia. Hence, it cannot be reasonably held that, at the time of

assaulting the deceased, the appellant had the **special knowledge** (emphasis added) that the intended injury was likely to cause death, or that he knew the act was so imminently dangerous that there was a high probability of causing death or an injury likely to cause death.

42. In ***Woolmington vs Director of Public Prosecutions [1935] AC 462***, it was held that:

> *In a trial for murder, the Crown prove death as the result of a voluntary act of the prisoner and malice of the prisoner. When evidence of death and malice has been given, the prisoner is entitled to show by evidence or by examination of the circumstances adduced by the Crown that the act on his part which caused death was either unintentional or provoked. If the jury are either satisfied with his explanation or, upon a review of all the evidence, are left in reasonable doubt whether, even if his explanation be not accepted, the act was unintentional or provoked, the prisoner is entitled to be acquitted.*

43. In light of the aforementioned authorities and the factual matrix of the instant case, it is my considered opinion that the conviction for murder cannot safely be sustained, as the appellant did not possess the requisite mens rea to constitute the offence of murder at the time of assaulting the deceased.

44. Although the learned High Court Judge has extensively analyzed the evidence presented by both the prosecution and the defense, he has failed to appreciate the distinction between Section 293 and the third limb of Section 294. More importantly, the learned High Court Judge overlooked the crucial issue of the absence of requisite intention on the part of the appellant. Furthermore, the lack of evidence to establish the ingredients under the third limb of Section 294, namely, that the appellant had the special knowledge that the intended injury was likely to cause death, or that he knew the act was so imminently dangerous that there was a high probability of causing death or an injury likely to cause death, has clearly escaped the Judge's attention.

45. On the above premise, I am unable to agree with the verdict of the learned High Court Judge. Accordingly, the verdict and sentence are hereby set aside. In their place, I substitute a verdict of culpable homicide not amounting to murder on the basis of knowledge punishable under Section 297 of the Penal Code. In my view, a sentence of

seven years rigorous imprisonment would meet the ends of justice in the circumstances of this case. The sentence shall take effect from the date of conviction.

Judge of the Court of Appeal

P. Kumararatnam, J

I agree,

Judge of the Court of Appeal