

**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 with
Section 138 of the Constitution of
Democratic Socialist Republic of Sri
Lanka**

Democratic Socialist Republic of Sri
Lanka

Complainant

Court of Appeal

Case No. CA HCC 0246/2020

Vs.

High Court of Colombo

Case No. HC 8106/2015

1. Gunasingha Arachchilage Susantha Kumara alias Ajith
2. Kalinga Newton alias Sudu/Sudha
3. Sellwanayagam Vijekumar
4. Thyagaraja Kadiraweli Wijendran
5. Dorapee Vithange Upali Vithanage alias Sudu Malli

Accused

AND NOW BETWEEN

Gunasingha Arachchilage Susantha
Kumara alias Ajith

1st Accused-Appellant

Vs.

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

Complainant-Respondent

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

Counsel: Anura Gunaratne with Sampath Tennakoon for the Accused-Appellant.

Dileepa Peiris, A.S.G. for the Respondent.

Argued on: 07.11.2025

Judgment on: 27.11.2025

JUDGMENT

AMAL RANARAJA, J.

1. The first accused appellant (hereinafter referred to as the “Appellant”) together with others had been indicted in the *High Court of Colombo* in HC case number HC/8106/15.

The charges in the indictment are as follows:

Charge 01

That on or about January 01, 2010, at Fort in the district of Colombo, within the jurisdiction of this Court, the appellant was a member of an unlawful assembly with the common object to cause the death of one *Samraj Sankar Raj*; and thereby committed an offence punishable under section 140 of the Penal Code.

Charge 02

In the same course of transaction as above, the appellant by being a member of an unlawful assembly caused the death of one *Samraj*

Sankar Raj; and thereby committed an offence punishable under Section 296 read with Section 146 of the Penal Code.

Charge 03

In the same course of transaction as above, the appellant committed murder by causing the death of one *Samraj Sankar Raj*; and thereby committed an offence punishable under section 296 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. The appellant aggrieved by the conviction, disputed judgment together with the sentencing order has preferred the instant appeal to this Court.

Case of the prosecution

3. As of the relevant date, PW01 has been engaged in the business of vending potatoes and onions. He has operated a stall on *5th Cross Street, Pettah*. The deceased has been responsible for transporting PW01's wares to his stall.
4. On January 1, 2010, PW01 has conducted his business as usual. In the afternoon, the deceased has approached the stall and expressed his desire to take some chicken home. PW01 has accompanied the deceased to the meat shop to purchase the chicken. Upon their return to PW01's stall, he has observed the appellant and the second accused named in the indictment in separate groups consuming alcohol at different locations on the *5th Cross Street*.
5. After arriving back, the deceased has hung the parcel containing the chicken at PW01's stall and indicated his intention to purchase some beetroot to take home. The deceased has departed in the same direction from which he and PW01 had come earlier. After a short period, PW01

has heard a verbal altercation coming from the direction in which the deceased had gone.

6. Thereafter, the fourth accused named in the indictment, embracing the deceased from behind, has brought him to the location of the stall of PW01. The second accused named in the indictment, while continuing to engage in a verbal altercation with the deceased has also been wielding a knife he had in his hand. The knife has struck the abdomen and caused an injury to the deceased.
7. Thereafter, the appellant has arrived at the scene and dealt a blow to the head of the deceased with a wooden pole.
8. The deceased had passed away while receiving treatment at the hospital. PW05, *Dr. Mrs. D. I. L. Ratnayake, Additional Judicial Medical Officer, Colombo*, has conducted the post-mortem examination on the deceased individual. *Dr. Ratnayake* has opined that cranio-cerebral injuries caused by a blunt weapon have caused the death of the deceased. The post-mortem report has been produced as evidence marked 87-03.

Case of the appellant

9. The appellant has maintained that PW01 harboured animosity towards him due to business rivalry. In light of these circumstances, the appellant has contended that PW01 has fabricated evidence in an attempt to incriminate him and undermine his business.

Grounds of appeal

10. When the matter was taken up for argument, the counsel for the appellant raised the following grounds of appeal:

- i. Could the appellant have been convicted for a lesser offence on the basis of a sudden fight?
- ii. Is PW01 a credible witness? And is it safe to act on his testimony?
- iii. The dock statement of the appellant has not been properly evaluated by the learned High Court Judge.

11. Exception iv; sudden fight – this exception applies to cases wherein death is caused in a sudden fight without premeditation in the heat of passion upon a sudden altercation. So long as the fight is unpremeditated and sudden, the accused, irrespective of his conduct before the altercation, earns the mitigation provided for in exception iv to section 296 of the Penal Code, subject to the condition that he did not, in the course of the fight, take undue advantage or act in a cruel or unusual manner.

12. To invoke the benefit of this exception, death must be caused:

- i. In a sudden fight;
- ii. In the heat of passion without premeditation, arising out of a sudden altercation;
- iii. Without the offender having taken undue advantage;
- iv. The offender should not have acted in a cruel or unusual manner and;
- v. The fight must have been with the person killed.

13. The testimony elicited at the trial is that a verbal altercation had occurred between the second accused and the deceased. It has developed into a physical altercation upon the second accused wielding a knife at the deceased. The fourth accused named in the indictment, attempting to end such altercation has embraced the deceased from behind and taken him towards the stall of PW01. The second accused

named in the indictment has also followed wielding the knife in his hand.

14. The knife has struck the abdomen of the deceased and caused an injury. Thereafter, the altercation has apparently abated. In that moment, the appellant has arrived at the location the deceased, second and fourth accused named in the indictment together with PW01 were and hit the head of the deceased with a blunt weapon (wooden pole).
15. In this case, it is critical to note that there is no evidence to suggest that the appellant did have an altercation with the deceased. Without any demonstrable history of an altercation, the claim of a sudden fight loses its basis. The absence of an altercation suggests that the interaction between the deceased and the appellant was not hostile nor was there any context that could reasonably trigger such a violent response.
16. Thus, without any preceding issues, the appellant's actions cannot be justified by the notion of a sudden fight. The legal framework stipulates that in order for this exception to be applied, there must be clear and compelling evidence of "heat of passion without premeditation arising out of sudden altercation" that precipitated the escalation into violence.
17. In this instance, the lacking of any altercation negates the possibility of the appellant invoking this exception.
18. The Counsel for the appellant has also drawn the attention of the Court to the discrepancies of the evidence in the testimony of PW01 in regard to the description of the wooden pole allegedly used by the appellant to assault the deceased, the manner in which it was brought to the possession of the investigation officers and the probability of the same lying at the scene of the crime until it was discovered.
19. PW01 has been called to testify in court almost eight years after the incident. Such a lengthy interval almost inevitably dulls a witness's

recollection especially of peripheral or technical details. In particular, PW01 now may struggle to recall the precise weapon that was used in the attack, its size, shape, colour or distinguishing marks.

20. Similarly, he maybe be uncertain about the circumstances in which the police eventually discovered or seized that weapon. Natural memory decay can therefore lead to inconsistencies or discrepancies between PW01's testimony and the testimony of an investigating officer as regards to the shape, size of the weapon used in an attack. These contradictions do not necessarily mean that PW01 is dishonest; rather, they reflect the fallibility of human memory over time.
21. PW07, *Inspector of Police Balasooriya* has visited the scene of the crime the next morning; January 02, 2010 at about 8.35 hours. The area had been deserted, no crowd had gathered at the scene before his arrival and nothing had suggested that the scene had been tampered with. PW07 has noticed clear signs of a brawl that had taken place earlier. Several blood stains had been present on the ground and PW07 has collected samples of each stain with cotton swabs. However, no weapon has been recovered from the scene in that instance.
22. This is consistent with the fact that PW01 had picked up the wooden pole that had been lying at the scene, taken it into the *Pettah Police Station* on January 02, 2010, and later given a second statement about the incident involving the deceased and the appellant prior to PW07 proceeding to the scene of the incident to conduct investigations there.
23. The learned High Court Judge has undertaken a holistic assessment of the appellant's testimony in the context of the entire testimony including the prosecution witnesses and documentary material. This assessment has revealed inconsistencies in the appellant's account on material particulars, such as how an animosity among the appellant and PW01 had purportedly developed, which has a direct bearing on the core issue of the testimony of the appellant. The learned High Court

Judge has found that these discrepancies were not minor but contradictions that go to the root of the defence.

24. The learned High Court Judge has further noted inherent improbabilities in the appellant's narrative when tested against ordinary human conduct and the factual, verifiable evidence on record. That the appellant's testimony appeared to be an afterthought. That taken together the discrepancies and the improbabilities undermined the credibility of the appellant's version. Accordingly, the learned High Court Judge has declined to place reliance on the appellant's testimony and has rejected it.
25. Due to the matters discussed above, I am not inclined to interfere with the conviction, the disputed judgment together with the sentencing order.

Accordingly, I dismiss the appeal and make no order regarding costs.

26. The Registrar of this Court is directed to send this judgment to the *High Court of Colombo* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree,

Judge of the Court of Appeal