**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**

CA HCC **181/2020**

HC Kalutara **736/2006**

**Vs**

Ahangama Vithange Anura

**Accused**

**AND NOW BETWEEN**

Ahangama Vithange Anura

**Accused – Appellant**

**Vs**

Attorney General

**Complainant-Respondent**

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

Counsel : Chamindi Diloka Mannkkara for the Accused-Appellant
Hiranjan Peris ASG for the Complainant- Respondent

Argued on : 03.10.2025

Decided on : 16.01.2026

**Pradeep Hettiarachchi, J**

## Judgment

1. The accused-appellant (hereinafter referred to as the appellant) in this case along with 6 other accused were indicted in the High Court of Kalutara for committing following offences:
    I. On or about 11.02.1995, within the jurisdiction of this court, being members of an unlawful assembly with the common object of causing hurt to Suppaiah Sodaladaman and thereby committing an offence punishable under Section 140 of the Penal Code
    II. While being members of the aforesaid unlawful assembly causing the death of Suppaiah Sodaladaman by one or few members of the said unlawful assembly and thereby committing an offence punishable under Section 296 read together with Section 146 of the Penal Code
    III. Causing the death of Suppaiah Sodaladaman and thereby committing an offence punishable under Section 296 of the Penal Code
    IV. While being members of the aforesaid unlawful assembly causing mischief by destroying Thosse Suppaiah's residence by one or few members of the said unlawful assembly and thereby committing an offence punishable under Section 410 read with Section 146 of the Penal Code
    V. Causing mischief by destroying Thosse Suppaiah' residence and thereby committing an offence punishable under Section 420 read together with Section 32 of the Penal Code.

2. The trial was conducted by the learned High Court Judge sitting without a jury. During the trial, two eyewitnesses, namely PW3 and PW4, as well as official witnesses PW11, PW12, PW10, PW8, and the Interpreter of the High Court, testified for the prosecution. All the accused thereafter made dock statements and closed their case.

3. At the conclusion of the trial, the learned trial Judge convicted the appellant (the 6th Accused) for the third count in the indictment and accordingly sentenced him to death. The 1st to 5th and 7th accused were acquitted from all counts. It is against the said conviction and sentence, the appellant has preferred this appeal.

4. In the petition of appeal, four grounds were urged by the appellant. However, in the written submissions dated 20.04.2022, the appellant confined his grounds of appeal to two grounds, namely,
    a. *Has the Learned trial Judge failed to comply with the provisions of Section 195(cc) of the Code of Criminal Procedure Act which denied the appellant a Constitutional right resulting a denial of justice?*
    b. *Has the learned trial Judge considered any evidence favorable to the appellant when he found that the prosecution has proved their case beyond reasonable doubt?*

5. Nevertheless, during the course of argument, learned counsel for the appellant principally contended that the alleged incident occurred in the course of a sudden fight and, therefore, the appellant could not properly have been convicted of murder, but only of culpable homicide not amounting to murder.

6. It was his position that the conviction should have been in terms of exception 4 of section 294 of the Penal Code on the basis of an act committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel.

7. It can be observed that during the trial, no such Exception was pleaded by the appellant. However, our Superior Courts have consistently held that even if no such exception has been pleaded by an accused person during a trial, it is the duty of a trial Judge to consider whether such circumstances do exist. Following authorities have emphasized this position.

8. In the case of ***King Vs. Bellana Withanage Eddin 41 NLR 345,*** a Court of Criminal Appeal held thus;

    *"In a charge of murder, it is the duty of the judge to put to the jury, the alternative of finding the accused guilty of culpable homicide not amounting to*

*murder when there is any basis for such a finding in the evidence of Page 8 of 14 record, although such defence was not raiser nor relied upon by the accused."*

9. In ***The King Vs. Albert Appuhamy 41 NLR 505***, it was held,

> *"Failure on the part of a prisoner or his counsel to take up a certain line of defence does not relieve the judge of the responsibility of putting the jury such defence if it arises on the evidence."*

10. In the case of ***The King Vs. Withanalage Lanty 42 NLR 317***, the Court of Criminal Appeal, observed the following;

> *"There was evidence in this case upon which it was open to the jury to say that it came within exception 4 to section 294 of the Penal Code and that the appellant was guilty of culpable homicide not amounting to murder. However, no such plea was put forward on his behalf. In the course of his charge to the jury, the presiding judge preferred to this evidence as part of the defence story but not as evidence upon which a lesser verdict possibly be based. It was the duty of the presiding judge to have so directed the jury and that in the circumstances, the appellant was entitled to have the benefit of the lesser verdict."*

11. The above line of authorities further establishes that for a trial Judge to consider whether there was provocation, which reduce the offence of murder to that of a lesser culpability, there must be evidence available in the trial.

12. Since the counsel for the appellant primarily contended that the alleged incident occurred during a fight, I shall first consider whether the evidence led at the trial is sufficient to support the inference that the fatal injury to the deceased was caused in the course of a sudden fight, without any premeditation.

**Relevant Law:**

13. Section 294 of the Penal Code defines the offence of murder. However, the section contains five Exceptions which operate to reduce the offence of murder to culpable homicide not amounting to murder. In the present appeal, the appellant seeks to bring his case within Exception 4 to Section 294 of the Penal Code, which reads:

    *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 or unusual manner.*

    Explanation- *It is immaterial in such cases which party offers the provocation or commits the first assault.*

14. In the case of ***Gamini vs. The Attorney General (2011) 1 SLR 236,*** it was held,

    1. *Though the accused-appellant in his defence did not take up the defence of grave and sudden provocation, the trial Judge must consider such a plea in favour of the accused-appellant if it emanates from the evidence of the prosecution.*
    2. *Failure on the part of the petitioner or his Counsel to take up a certain line of defence does not relive a Judge of the responsibility of putting to the jury such defence if it arises on the evidence."*

15. In ***Bandara v. The Attorney-General [2011] 2 Sri L.R. 55***, the Supreme Court has re-emphasised that an accused who seeks to avail himself of the benefit of reduced culpability on the basis of a sudden fight, in terms of Exception 4, bears the burden of satisfying the Court that the requisite conditions of that exception are fulfilled. Accordingly, in the present appeal, it is incumbent upon the appellant to establish, on a balance of probabilities, that the incident occurred during a sudden fight within the meaning of Exception 4 to Section 294, if he is to obtain the benefit of the lesser degree of culpability contemplated therein.

16. The question whether the appellant has sufficiently discharged his evidentiary burden before the trial court in respect of all the requisite elements can be answered only upon a careful consideration of the evidence placed before that court. The

narrative of the prosecution witnesses, particularly that of the two eyewitnesses to the incident, does not support a finding that the incident occurred during a sudden fight within the meaning of Exception 4. Likewise, the evidence of the appellant, presented by way of a statement from the dock, also fails to establish the existence of such a sudden fight.

17. The Supreme Court of India, in its judgment of ***Bhagwan Munjaji Pawade v State of Maharastra AIR 1979 SC 133***, dealt with a similar situation. In that case, the deceased, who had just returned home, upon observing that his mother was engaged in a heated argument with the appellant, inquired of the appellant as to the reason for the altercation. Thereupon, the appellant attacked the deceased three times on the head with an axe, twice with the blunt side and once with the sharp edge. In the appeal, the Supreme Court held that a

> *" '[F]ight' postulates a bilateral transaction in which blows are exchanged. The deceased was unarmed. He did not cause any injury to the appellant or his companions. Furthermore, not less than three fatal injuries were inflicted by the appellant with an axe, which is a formidable weapon on the unarmed victim. Appellant, is therefore, not entitled to the benefit of Exception 4, either".*

18. Similar sentiments were expressed by the Indian Supreme Court in the judgment of ***State Of Orissa vs Khageswar Naik & Others (2013) SCC 649,*** in order to set aside the conviction already entered against the accused for the offence of culpable homicide not amounting to murder on the basis of a sudden fight, and in order to alter the same into a conviction for murder. The Court considered the evidence and decided to interfere with the conviction entered erroneously by the lower Court for the lessor offence on the footing that there was no 'fight' between the accused and the deceased, since the evidence indicated that it was only a one-sided attack. The Court stated

> *"[I]n the case in hand, the convicts had entered the room of the daughter of the deceased in midnight, molested her and the poor father, perhaps because of his age, could not do anything other than to abuse the convicts. He gave choicest abuses but did not fight with the convicts. Verbal abuses*

*are not 'fight' as it is well settled that at least two persons are needed to fight.*

19. In ***Pappu vs State of M.P. (2006) 7SCC 391***, the Supreme Court of India held:

*The help of Exception 4 can be invoked only if death is caused*

a. *Without premeditation;*
b. *In a sudden fight;*
c. *Without the offenders 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. It is to be noted that the 'fight' occurring in Exception to Section 300 of IPC is not defined in the IPC. It takes two make a fight. Heat of passion requires that there must be no time for the passion to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons, it is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case.*

20. The first witness to testify for the prosecution was PW3, Suppaiah Subramanium, a brother of the deceased. According to his evidence, the deceased and other family members were residing in line rooms at the Panthiya Estate. While PW3 lived in a line room with his parents and sisters, the deceased occupied a line room situated at the corner. He further testified that on the day of the incident, at around 12.00 noon, the 7th accused had quarreled with his wife over an incident in which the 7th accused had struck their goats.

21. Thereafter, at around 7.30 p.m., the appellant came to their line rooms and attempted to assault PW3's father. The witness intervened and led his father inside a line room. At that moment, the deceased emerged, and the appellant (6th accused) stabbed him.

22. According to the witness, after stabbing the deceased, all the accused fled the scene. The witness categorically stated that it was the appellant who stabbed the deceased in the chest with a pointed knife. PW3 further testified that three kerosene lamps were burning, one inside the house and two outside, providing sufficient light to identify the appellant. Moreover, the appellant was a known person to the witness, and therefore, there could have been no difficulty in identifying him. The witness also stated that he could not take the deceased to the hospital until the police arrived.

23. T. Suppiah, PW4, was another eyewitness who testified for the prosecution. He was the father of the deceased. According to his evidence, the incident that led to the death of the deceased occurred inside line room No. 05, where PW4 resided. The witness identified the appellant as the person who stabbed the deceased. According to PW4, the stabbing took place at around 9.00 p.m.

24. PW11, M.M. Weerakoon, was a Sub-Inspector of Police during the relevant period. Upon receiving information, he, along with a team of officers, proceeded to the scene of the crime and transported the deceased to the hospital in a police vehicle. The medical officer who examined the deceased pronounced him dead. Thereafter, PW11 returned to the crime scene and made his observations.

25. His observations corroborated the evidence of PW4, who stated that when the accused came to their line room, they pelted stones and caused damage to the property. It is also pertinent to note that human blood was detected by the Government Analyst on the sarong recovered from the possession of the appellant, and this evidence remains unchallenged. No plausible explanation was offered by the appellant in this regard.

26. While certain discrepancies are discernible in the testimony of PW4, the evidence of PW3 does not contain any material contradictions or omissions that go to the root of the case. The incident occurred in February 1995, and the trial commenced only in March 2016. It is therefore unreasonable to expect witnesses to recall every detail without any discrepancy after a lapse of 21 years. What is crucial is that the discrepancies identified are not of such a nature as to undermine the credibility of the prosecution’s evidence.

27. PW3 clearly testified that the stabbing occurred inside the line room, and PW14, relying on observations made at the scene, corroborated this account. The appellant was well known to the witnesses, having resided in the same area for a considerable period. It was also undisputed that the line room was illuminated by kerosene lamps at the time of the incident. Given that the appellant frequently visited a nearby boutique and was familiar to the witnesses, his identity was never in dispute or question.

28. Accordingly, the prosecution has established beyond reasonable doubt that the 6th appellant stabbed the deceased, who subsequently succumbed to his injuries. Medical evidence confirms that the fatal injury was inflicted by a double-edged sharp cutting weapon, with the stab penetrating the right side of the chest and piercing the upper part of the right lung. The doctor opined that the injury was sufficient to cause death in the ordinary course of nature.

29. Since counsel for the appellant contended that the incident occurred during a sudden fight without premeditation, it is necessary to examine whether the evidence adduced at the trial would justify the Court in arriving at such an inference.

30. The evidence presented by the prosecution with regard to the commencement and continuation of the attack on the deceased revealed that he did not even once attack the appellant, who launched a surprise attack when he came near him. It was clearly a one side attack, which left no room at all for the unsuspecting and unarmed deceased even to run away from his assailant.

31. What is important to note from the above description and analysis of the evidence is the fact that there was no ‘fight’ between the deceased and the seven accused, though the stabbing on the deceased seemed to be a sudden one.

32. The evidence made available to the trial Court clearly suggests that this was not a single incident where the appellant has stabbed the deceased, but an incident which has taken place over an incident happened several days prior to the main incident and also triggered by an incident happened around 12.00 noon on the day of the incident.

33. As noted earlier, there is no evidence to suggest that the deceased had ever engaged in any quarrel with the appellant. Clearly, the deceased was unarmed and had not exhibited any conduct indicating an intention to attack or confront the appellant. He was merely walking out carrying some rotties when he was stabbed by the appellant.

34. As discernible from the evidence, it was the appellant, accompanied by others, who went to the line room where the deceased and his family resided. They initially assaulted PW4, following which PW3 led PW4 into the line room. There is no evidence to suggest that any member of the deceased's family had engaged with the appellant or with any of the other accused who accompanied him. The stabbing of the deceased appears to have been wholly unprovoked, as the deceased had done nothing to provoke the appellant. He was merely coming out holding some *rotties* in his hands when the stabbing occurred. In view of these facts, the applicability of the exception relating to a sudden fight is clearly ruled out.

35. Furthermore, PW3 testified that the accused prevented the injured from being taken to the hospital. Although the defence suggested that this fact was not mentioned in the statement made by PW3 to the police and therefore amounted to an omission, no such omission was subsequently proved through the relevant police witnesses. It is evident from the record that the deceased remained at the scene of the crime until the police arrived, and it was PW11 who ultimately transported the deceased to the hospital in a police vehicle. Had the deceased not been prevented from being taken to hospital, his relatives would not reasonably have kept him at the scene despite the stab injury to the chest and profuse bleeding.

36. This circumstance lends corroboration to the testimony of PW3 that the accused obstructed the removal of the deceased to hospital. Moreover, the medical evidence establishes that an injury of this nature required immediate medical attention and that, if treatment was not administered within two to three hours, the injured person would likely succumb to the injuries.

37. The aforesaid conduct of the accused in preventing the deceased from being taken to the hospital further demonstrates that the stabbing was not the result of a sudden fight, but rather a consequence of a premeditated attack. Such conduct is wholly

inconsistent with the requirements of Exception 4 to Section 294 of the Penal Code and, accordingly, precludes the act from being brought within its ambit.

38. Therefore, it is the view of this Court that this incident would not fall under exception 4 of section 294 of the Penal Code. Thus, I am strongly convinced and inclined to accept the validity of the reasoning adopted by the Indian Supreme Court in the aforementioned judgments in relation to the instant appeal, as the underlying principle that had been enunciated upon the factual considerations contained therein are very similar, if not, almost identical, with the evidence presented before the trial Court on this particular aspect.

39. In view of the reasoning contained in the preceding paragraphs, I am of the firm view that there was no sudden fight, in terms of Exception 4 of Section 294 of the Penal Code, between the appellant and the deceased. Nor was there any evidence to infer that the deceased was engaged or at least attempted to engage with the appellant. The deceased was unarmed and was bringing some *rotties* when the alleged stabbing took place. It is true that PW4 was assaulted shortly before the stabbing took place but no evidence was forthcoming to evince that the deceased had ever taken part in that incident or even tried to prevent the appellant from attacking PW4.

40. Thus it is evident that there was no 'fight' between the deceased and the appellant, though the stabbing on him seemed to be a sudden one. It was for the appellant to satisfy the trial Court that there was a sudden fight and it is not for the prosecution to establish there was none. In the present case, the appellant has manifestly failed to establish that the stabbing occurred in the course of a sudden fight.

41. The manner in which the appellant, along with several others, arrived at the line rooms armed with a pointed knife, the fact that the deceased and his family were residing there, the unprovoked nature of the attack, the nature and location of the fatal injury inflicted on the deceased, and the subsequent conduct of the appellant, when considered cumulatively, do not persuade this Court to bring the case within the ambit of Exception 4 to Section 294 of the Penal Code.

42. Thus, the argument advanced on behalf of the appellant is devoid of merit and cannot be sustained. In the circumstances, I find no reason to interfere with the findings of the learned High Court Judge. Accordingly, the appeal is dismissed.

**Judge of the Court of Appeal**

**P. Kumararatnam,J**

I agree,

**Judge of the Court of Appeal**