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

Democratic Socialist Republic of Sri Lanka.

Complainant

Vs

Dayarathne Dissanayake alias Ratne

Accused

Court of Appeal Case No:
CA/HCC/247/2024

High Court of Awissawella Case No:
HC 141/2008

AND NOW BETWEEN

Dayarathne Dissanayake alias Ratne

Accused-Appellant

Vs

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

Respondent

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

Pradeep Hettiarachchi, J.

Counsel : Neranjan Jayasinghe with Randunu Heellage for the Accused-Appellant.
Suharshie Herath D.S.G. for the Respondents

Argued on : 08.10.2025

Decided on : 16.01.2026

Pradeep Hettiarachchi, J

Judgment

1. The accused-appellant (hereinafter referred to as the appellant) was indicted before the High Court of Awissawella for committing the murder of one Kaluhena Arachchilage Ranil Shantha Priyadhrashana which is an offence punishable under Section 296 of the Penal Code. The appellant was tried before the Judge of the High Court without a jury and at the at the conclusion of the trial, the learned trial Judge found the appellant guilty of the charge and convicted him. Accordingly, the appellant was sentenced to death.

2. Being aggrieved by the said conviction and the sentence, the appellant has preferred the present appeal. The appellant's argument mainly based on three grounds namely,
    a. The learned High Court Judge had relied on unreliable and untrustworthy evidence of the prosecution witnesses;
    b. The learned High Court Judge had failed to consider the special exceptions under Section 294 of the Penal Code; and,
    c. The learned High Court Judge had failed to evaluate the evidence of the defence witnesses.

3. Nine witnesses testified for the prosecution. The appellant gave a dock statement, and three witnesses were called to testify on behalf of the defence

   The facts of the case may be briefly summarized as follows:

4. A group of people went to a stream to bathe and remained there for approximately two to three hours. Another group, which included the deceased, also arrived at the same location for the same purpose. The appellant was in the vicinity at the time, and a commotion ensued between the appellant and a person named Saman, who belonged to one of the groups.

5. Thereafter, the appellant left the scene. Saman sustained injuries and was taken away for treatment. Subsequently, the appellant returned to the scene armed with a gun and began searching for Saman. However, he was informed by those present that Saman had already left. Thereafter, a group of people, including the deceased, followed the appellant for about 20 feet, at which point the appellant fired at them, resulting in the deceased being shot.

Unreliable and untrustworthy evidence of the prosecution witnesses:

6. There were three eyewitnesses, namely PW1, PW2, and PW5, who testified at the trial. According to the testimony of PW1, he, along with four others, had gone to a place known as Thawana at Siriniwasa Estate to have a bath. While they were there, another group of persons also arrived at the same location for the same purpose. A person named Saman was among this second group. Shortly thereafter, PW1 heard a commotion, at which point the appellant and the said Saman were engaged in a heated argument.

7. Thereafter, Saman sustained injuries and was taken away from the scene. By that time, the appellant had also left the location. After approximately fifteen minutes, the appellant returned to the scene armed with a gun, apparently in search of Saman, with whom he had earlier been involved in a quarrel. When the appellant inquired about Saman's whereabouts, he was informed that Saman had already left. At that point, the appellant appeared angry and is alleged to have stated that he would kill Saman.

8. Subsequently, the appellant began to leave the place, and several persons followed him. The appellant warned them not to follow, but they nevertheless continued. It was then alleged that the appellant suddenly fired a shot, as a result of which the deceased sustained fatal injuries.

9. Thereafter, the deceased was placed in a three-wheeler and taken towards the hospital. While on their way, the three-wheeler overturned, compelling them to hire another three-wheeler, in which the deceased was eventually taken to the hospital. PW1 thereafter proceeded to the Hanwella Police Station, but was subsequently directed to the Kosgama Police Station, as the place of incident fell within the jurisdiction of the latter.

10. It is evident that two separate groups had come to the location to bathe. PW1 and the deceased belonged to one group, and it is admitted that all persons involved had consumed liquor. The quarrel initially arose between Saman and the appellant, which escalated into a heated confrontation. As a result of this altercation, Saman sustained injuries. It was in this context that the appellant is alleged to have threatened Saman that he would kill him.

11. Significantly, the deceased was never threatened by the appellant, nor is there any evidence to suggest that the appellant had any prior animosity or motive directed towards the deceased.

12. When Saman was taken away for treatment, the appellant had also left the scene, but subsequently returned armed with a firearm, inquiring about Saman's whereabouts. At that point, others requested the appellant to forget the incident, but he appeared unappeased.

13. The evidence of the eyewitnesses further reveals that all those present had consumed liquor on the day of the incident. Importantly, there is no evidence whatsoever to suggest that the appellant had any motive or prior intention to kill the deceased. On the contrary, the evidence indicates that the deceased, together with others, followed the appellant while he was leaving the scene, despite being expressly warned by the appellant not to do so.

14. The medical evidence establishes that the deceased was shot from a very close range, which is inconsistent with the eyewitness accounts suggesting that the shot was fired from a distance. Given the admitted state of intoxication of all those present, it would be unsafe to expect precise or reliable estimates of distance from the eyewitnesses.

15. What is discernible from the evidence of the eyewitnesses is that the appellant discharged the firearm only when the deceased and his companions had approached him at very close proximity, notwithstanding repeated warnings issued by the appellant for them to keep away.

16. The evidence of the eyewitnesses, although containing some minor discrepancies, is neither inconsistent nor untrustworthy on vital aspects. The evidence relating to the manner in which the appellant returned with a gun and shot the deceased while they

were following him is free of infirmities and can therefore be safely relied upon. Apart from a discrepancy regarding the distance from which the shot was fired, no material contradictions are discernible in the testimony of the eyewitnesses. Accordingly, the first ground advanced by the appellant is devoid of merit and must fail.

Whether the learned High Court Judge had failed to consider the special exceptions under Section 294 of the Penal Code

17. Section 294 of the Penal Code defines the offence of murder. When an accused was charged for murder, the prosecution has to prove that he had acted in one of the manners described in section 294 of the Penal Code which reads:
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.

18. Considering the manner in which the appellant fired the shot at the deceased, the location where the injury was inflicted, and the nature of the injury, particularly in light of the opinion expressed by the doctor who performed the autopsy, the act of the appellant would certainly fall under either the first or second limb of Section 294 of the Penal Code.

19. Accordingly, having regard to the grounds of appeal, the next question that arises for determination in this appeal is whether the appellant's act falls within any of the exceptions stipulated in Section 294 of the Penal Code and thereby warranting a conviction for culpable homicide not amounting to murder rather than for murder.

20. Having regard to the factual matrix of the present case, Exceptions 3 and 5 to Section 294 of the Penal Code have no application whatsoever. Accordingly, the inquiry must be confined to whether the evidence adduced at the trial was sufficient to bring the act complained of within the ambit of Exceptions 1, 2, or 4 of Section 294, and whether the learned trial Judge failed to adequately consider the applicability of those exceptions.

Exception 1. Culpable homicide is not murder if the offender whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident,

The above exception is subject to the following provisos—

Firstly - That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly—That the provocation is not given by anything done in obedience to the law or by a Public Servant, in the lawful exercise of the powers of such Public Servant-

Thirdly—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation

Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2 to section 294:

Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 4—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.

21. As is evident from the proceedings of the High Court, the appellant did not expressly invoke any of the exceptions enumerated in Section 294 of the Penal Code as a defence. Nevertheless, it is well settled that where the evidence led by the prosecution itself discloses circumstances which may bring the impugned act within the ambit of any of the said exceptions, the Court is duty bound to consider the applicability of such exceptions when evaluating the evidence, notwithstanding the absence of an express plea by the accused.

22. In the Indian case of ***Munshi Ram and Others Vs. Delhi Administration (1968) AIR 702***, Hegde, J. held that,

> *"It is well settled that even if an accused does not plead self defence, it is open for the court to consider such a plea if the same arises from material on record. See In Re- Jogali Bhaige Naiks and Another A.I.R. 1927 Mad.97. The burden of establishing that plea is on the accused and that burden can be discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record."*

23. In this regard observations made by Justice Sisira De Abrew in the case of ***Gamini Vs. Attorney General [2011] 1 Sri.L.R. 236*** would be of much relevance. He observed that:

> *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 relieve a judge of the responsibility of putting to the jury such defence if it arises on the evidence*

24. At the trial, the evidence of PW1, PW2, and PW3 does not disclose any act or conduct on the part of the deceased which could reasonably be said to have caused grave and sudden provocation to the appellant. On the contrary, the evidence reveals that the

deceased addressed the appellant respectfully as "Rathne uncle," and at no stage did the deceased use offensive language or engage in conduct capable of provoking the appellant.

25. More significantly, the appellant did not raise the defence of grave and sudden provocation before the learned trial Judge; his defence throughout was one of complete denial of the incident. It is trite law that for a Court to consider the applicability of grave and sudden provocation under Exception 1 of Section 294 of the Penal Code, there must be material on record—emanating either from the prosecution or the defence—which reasonably supports such a contention. In the absence of such evidence, a trial court is not entitled to speculate or infer provocation.

26. Furthermore, no evidence emerged from either the prosecution or the defence to suggest that the appellant had expressly invoked or relied upon the right of private defence. Significantly, even in his dock statement, the appellant did not raise a plea of private defence. There was also no evidence to establish that the deceased was behaving in a manner that would have led the appellant to reasonably apprehend that he was in imminent danger of death or grievous hurt.

27. The undisputed prosecution evidence was that the deceased, together with others, was following the appellant and requesting him to forget the earlier incident involving Saman. In these circumstances, there was no material before the learned trial Judge to attract or apply Exception 2 to Section 294 of the Penal Code.

28. The above exception was dealt with by Keuneman S. P. J. in ***The King v. Kirinelis 47 NLR 443***, as follows:

> *The intention which is referred to in section 294, Exception 2, of the Penal Code is a special kind of intention and should be explained to the Jury. In order to earn the clemency of the exception, the harm caused must have been caused solely with the intention of private defence.*

29. In the Indian Supreme Court case of ***Laxman Vs. State of Orissa (1988) Cr. L.J. 188 SC,*** it was held that,

> *"The right of private defence is available only to one who is suddenly confronted with immediate necessity of averting and impending danger not of his creation."*

30. In the Indian case of *Kuduvakuzinyil Sudhakaran Vs. State (1995) Cri. L.J. 721*, the plea of self defence was rejected where the evidence showed that the deceased was unarmed and was not the aggressor.

31. Furthermore, neither the prosecution evidence nor the defence evidence is indicative of the existence of any sudden fight between the appellant and the deceased, or even between the appellant and any of the persons who were following him at the time of the shooting. The evidence adduced does not reveal any mutual combat, exchange of blows, or spontaneous confrontation immediately preceding the firing of the fatal shot.

32. Equally, the conduct attributed to the deceased at the material time does not, in any manner, suggest the occurrence of a sudden fight. On the contrary, the undisputed evidence is that the deceased, along with others, was merely following the appellant and requesting him to abandon the earlier dispute. Such conduct, even if viewed at its highest, falls far short of establishing a sudden fight within the meaning of Exception 4 to Section 294 of the Penal Code.

33. Furthermore, it must be emphasized that when considering the applicability of the general exceptions under Section 294 of the Penal Code, trial courts are not expected, in the absence of supporting evidence, to engage in speculation or conjecture. The invocation of any such exception must necessarily be founded on material placed before court, either through the prosecution evidence, the defence evidence, or the statement of the accused, and cannot be presumed in a vacuum.

34. In ***Fernando et al v The Queen (1952) 54 NLR 255,*** the Court of Criminal Appeal relying on the pronouncements of the English Courts in *The King v Catherine Thorpe (1925) 18 Cr. A. R. 189*, and *Mancini v Director of Public Prosecutions (1942) A. C. 1*, stated that:

> *"[A] jury should be told to accept or reject evidence that they are entitled to and should draw reasonable inferences from the evidence which they accept, but they should never be directed in a way which opens for them the door to conjecture. This is necessary not only in order that the case for the defence may not, be prejudiced but also in the interests of the prosecution. It has to be remembered that a trial judge by suggesting an unsustainable element of evidence in favour of an accused may by rendering a verdict founded on that element unreasonable make the verdict itself unsustainable"*

35. As stated elsewhere in this judgment, there is no evidence, either from the prosecution or from the defence, which would persuade this Court to infer that the appellant shot the deceased under grave and sudden provocation, or in the exercise of the right of private defence, or in the course of a sudden fight. In the absence of any material bringing the case within any of the exceptions set out in Section 294 of the Penal Code, I see no reason to disagree with the conclusion reached by the learned trial Judge.

Whether the learned trial Judge has failed to evaluate the evidence of the defence witnesses:

36. It was submitted on behalf of the appellant that his identity was not properly established, as he was never referred to as "Ratnasiri," whereas in the police statements the witnesses had referred to him by that name. In his judgment, the learned trial Judge addressed the issue of identity and was satisfied that the appellant's identity was clearly established, notwithstanding the variation in the manner in which he was referred to in the police statements.

37. It is significant that the appellant was a known person to all the eye witnesses, and therefore whether he was referred to as "Ratnasiri" or "Ratne uncle" could not have created any doubt as to his identity. Moreover, at no stage during the trial was the identity of the appellant challenged. None of the eye witnesses were cross-examined on this issue.

38. The mere fact that the appellant had earlier been discharged by the Magistrate does not, in my view, weaken the prosecution case, nor does it give rise to a reasonable doubt as

to his identity. In these circumstances, I find no merit in any of the grounds advanced by the appellant.

39. Accordingly, I affirm the judgment dated 27.08.2004 of the learned High Court Judge of Avissawella, and the appeal is dismissed.

Judge of the Court of Appeal

P. Kumararatnam, J

I agree,

Judge of the Court of Appeal