

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

**In the matter of an appeal under  
section 331 of the Code of Criminal  
Procedure Act No.15 of 1979 (as  
amended).**

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

**Complainant**

Court of Appeal Case No.

**CA HCC 0282/2024**

Vs.

High Court of Monaragala Case No.

**HC 350/2019**

Herath Mudiyansele Priyantha

**Accused**

**AND NOW BETWEEN**

Herath Mudiyansele Priyantha

**Accused-Appellant**

**Vs.**

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

**Complainant-Respondent**

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

**Counsel:**   Prashan Wickramaratne for the Accused-Appellant.

                  Akila Dalpadatu, S.C. for the Respondent.

**Argued on:**   11.09.2025

**Decided on:** 16.10.2025

## **JUDGMENT**

### **AMAL RANARAJA, J.**

1. The Accused-Appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Monaragala* in High Court case number HC 350/19.
  
2. The charge in the indictment is as follows;

That on or about February 08, 2018, within the jurisdiction of this Court, the appellant did commit murder by causing the death of one *Herath Mudiyansele Samantha*, an offence punishable under section 296 of the Penal Code.

3. At the conclusion of the trial, the learned High Court Judge has found the appellant guilty of the charge, convicted him thereof, and has sentenced him to death.

4. Aggrieved by the conviction, disputed judgment and the sentence, the appellant has preferred the instant appeal to this Court.

### **Case of the Prosecution**

5. On February 08, 2018, a party has been held at the residence of one *Gunathilake* in *Randeniya, Monaragala* to celebrate the attainment of age of his daughter. During the festivities, a dispute has arisen between the appellant and the deceased, disagreement has quickly escalated into a physical confrontation, during which the appellant has slapped the deceased, twice on the face. The altercation has eventually been broken up by the intervention of the other guests.
6. Sometime after the initial incident, a woman who was preparing food at the back of the house has observed the deceased walking past her followed by an unidentified individual heading towards a location further away from the area the food was being prepared. Shortly thereafter, the woman had heard the scream coming from the direction, where the deceased had gone. When she rushed towards the source of the scream, she has discovered the deceased lying on the ground.
7. The deceased has been subsequently transported to the *District General Hospital in Monaragala* for treatment. Unfortunately, despite receiving medical care, the deceased had passed away on February 10, 2018.
8. PW08, *Dr. Ruwan Nanayakkara, Judicial Medical Officer*, at the *District General Hospital in Monaragala* has conducted the post-mortem examination of the deceased. He has determined that the cause of death was cranio-cerebral injuries sustained by the deceased. Furthermore,

he has opined that the injury located on the back of the left side of the scalp together with the corresponding injury were in the ordinary course of nature, sufficient to result in the death of the deceased.

### **Case of the Appellant**

9. The appellant has maintained that he did not inflict the injury to the scalp of the deceased, which, in the ordinary course of nature was sufficient to result in the latter's death.

### **Ground of Appeal**

10. When the matter was taken up for argument, the learned Counsel for the appellant has urged the following ground of appeal,
  - i. The learned High Court Judge has failed to properly appreciate the evidence relating to the identification of the alleged perpetrator.
11. PW02, PW05 and PW13, have been invited guests at the party hosted by one *Gunathilake* to celebrate the attainment of age of his daughter. During the event, PW02, has witnessed the appellant slap the deceased twice on the face following a disagreement between them.

ප්‍ර : කාට ගහනව දැක්කේ ඉස්සරවෙලාම?

උ : සමන්තයි ප්‍රියන්තයි ගහ ගන්නවා දැක්කේ.

ප්‍ර : කවුද ඉස්සර වෙලා ගැහුවේ ?

උ : සමන්ත ගැහුවේ.

ප්‍ර : සමන්තට පහර වැදුනද ?

උ : ඔව්.

ප්‍ර : කාගෙන් ද ඒ පහර සමන්තට වැදුනේ ?

උ : ප්‍රියන්තගෙන්.

ප්‍ර : මොකකින් පහර දුන්නේ ?

උ : අතින් ගැහුවේ.

ප්‍ර : සමන්තට අතින් කොහෙටද ගැහුවේ ?

උ : මුහුණට.

ප්‍ර : පහරවල් කීයක් විතර ගැහුවද ?

උ : දෙකක් විතර ගැහුවා.

ප්‍ර : තමුන් ඒ වෙලාවේ මොකක් ද කලේ ?

උ : නතර කරන්න උත්සහ කලා.

ප්‍ර : ඒ වෙලාවේ මොකක්ද ඔහුන් කලේ ?

උ : නතර වුනා.

[*vide* pages 64 and 65 of the Appeal Brief]

12. PW13 has observed that the two, i.e. the deceased and the appellant, engaged in an argument at around 22.00 hrs that night but has not seen the appellant physically assault the deceased.

13. At approximately 21.00 hrs that night, PW05 has been out of the residence in which the celebrations were taking place, preparing to

leave and smoking a cigarette when the appellant allegedly confessed to him that he had indeed slapped the deceased, a short while earlier.

14. In these circumstances, it is evident that the appellant has merely slapped the face of the deceased. This action does not constitute an assault that could have caused the injury found on the left side of the scalp, which, in the ordinary course of nature, was sufficient to lead to the deceased's death.

15. At approximately, 23.00 hrs to 23.30 hrs, the witness, referred to as PW11, has been cooking at the back of the house where the celebrations were being held. During this time, she has observed the deceased walking past her location towards a point further away. PW11 has noted that the deceased did not appear to be in any discomfort at that moment. Following the deceased had been, although PW11 being familiar with the features of the appellant, was unable to identify this person.

16. As the two individuals moved towards a location further away, PW11 has heard a scream coming from that direction. In response, she has rushed towards the source of the scream and found the injured deceased lying on the ground.

ප්‍ර : ඒ කියට පමණද ?

උ : රාත්‍රී 11.00 ට 11.30 ට පමණ.

ප්‍ර : එතන ඉන්න වෙලාවේ මොකක්හරි අමුතු දෙයක් වුණාද?

උ : අපි එතන ඉන්න වෙලාවේ එතනින් ගියා සමත්ත.

ප්‍ර : සමන්ත කියන්නේ කවුද ?

උ : මිය ගිය කෙනා.

ප්‍ර : එතනින් ගියා කිව්වේ කොහොටද ?

උ : අපි එන්න ඉද්දි එතනින් එහා පැත්තට ගියා.

ප්‍ර : ඒ යනකොට ඔහු ඇවිදගෙන හෙමින් ගියාද, මොකක්හරි හදිස්සියකින් ගියාද ?

උ : එහෙම නැහැ එයා සාමාන්‍ය විදියට ඇවිදගෙන ගියා.

ප්‍ර : ඒ පැත්තෙන් මියගිය කෙනා ගියාට පස්සේ මෝකද්ද වූනේ ?

උ : සමන්ත මල්ලි එතනින් ගියාට පස්සේ තව කළු ඇඳගත්ත කෙනෙකුත් එතනින් ගියා.

ප්‍ර : කවුද ගියේ ?

උ : තව කෙනෙක් එයාගේ පිටිපස්සෙන් ගියා.

ප්‍ර : ඒ කෙනා තමුත් දන්නවද ?

උ : අපි ඒ කෙනා එව්වර බැලුවේ නැහැ.

ප්‍ර : එයා කලින් දැකලා තිබුණු කෙනෙක් නෙමෙයිද ?

උ : එයා එව්වර පැහැදිලිව ඇඳුරගත්ත බැරුව ගියා. වැස්සකුත් වැහැලා තිබුනේ ඒ වෙලාවේ.

[vide pages 105, 106 and 107 of the Appeal Brief]

17. In light of these circumstances, the unidentified individual cannot be excluded as the potential perpetrator responsible for inflicting the injury to the deceased scalp. Furthermore, *Dr. Nanayakkara* has opined that the injury to the scalp of the deceased could have been caused by a fall.

ප්‍ර : වෛද්‍යතුමන් යම් අවස්ථාවක පුද්ගලයෙක් යම් ආකාරයෙන් බිමකට වැටුනොත් ඒ අවස්ථාවකදී හිසේ පිටුපස කොටස බිම වාදින අවස්ථාවකදී මෙවැනි ආකාරයේ තුවාලයක් වෛද්‍යතුමන්ට නිරීක්ෂණය කරන්න පුළුවන්ද?

උ : 1වන තුවාලය එසේ විය හැකියි උතුමාණනි.

[vide page 210 of the Appeal Brief]

18. Also, there is no evidence to indicate that the appellant was present at the scene when the deceased sustained the injuries to his scalp, which, in the ordinary course of nature, was sufficient to lead to the deceased's death.
19. Although, a stained wooden pole has been reportedly recovered consequent to the statement of the appellant, the investigators have not submitted it for analysis.
20. Consequently, there are no details regarding the nature of the stains found on the pole. Additionally, a blood sample from the deceased has not been compared to the stains on the pole to determine any connection between the injuries sustained by the deceased and the pole itself.
21. Ultimately, the recovery of the pole would only indicate that the appellant had knowledge of its whereabouts, offering no further implications.
22. A. *Etin Singho and Another vs. The Queen* 69 NLR 353, T. S. Fernando, J. speaking for the Court of Criminal Appeal has stated,

*“if the Jury believe that the 2<sup>nd</sup> accused made the statement, all that was proved was that he had knowledge of the whereabouts of the club. The fact discovered as consequence of the statement was confined to that knowledge on the part of the second accused. There was no proof before the Court that the club was in fact used in the assault of the deceased...The jury should have been told that the 2<sup>nd</sup> accused's knowledge of the*

*whereabouts of the club should not be used by them as an admission that he had used that club to attack the deceased.”*

23. In those circumstances, the prosecution has failed to prove the guilt of the appellant beyond a reasonable doubt. Hence, I am inclined to interfere with the conviction and the disputed judgment together with the sentence.

24. I set aside the conviction, the disputed judgment, together with the sentence, and acquit the appellant of the charge.

*Appeal allowed.*

I make no order regarding costs.

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

**Judge of the Court of Appeal**

**B. SASI MAHENDRAN, J.**

I agree.

**Judge of the Court of Appeal**