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

In the matter of an appeal made under Section 331(1) of the Code of Criminal Procedure Act No. 15 of 1979, read with Article 138 of the Constitution of the democratic Socialist Republic of Sri Lanka.

CA Case No: CA -HCC-298-299/24

HC of Gampaha Case No: HC 116/18

The Democratic Socialist Republic of Sri Lanka

Complainant

Vs.

1. Pasadoruge Dilum Tharanga Perera alias Kasadoruge Dilum Tharanga Perera
2. Pasadoruge Dinuka Suranga Perera alias Kasadoruge Dinuka Suranga Perera

Accused

AND NOW BETWEEN

1. Pasadoruge Dilum Tharanga Perera *alias* Kasadoruge Dilum Tharanga Perera

2. Pasadoruge Dinuka Suranga Perera alias Kasadoruge Dinuka Suranga Perera

Accused-Appellant

Vs.

The Attorney General

Attorney General's Department

Colombo 12

Complainant-Respondent

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

Amal Ranaraja, J

Counsel : Chrishan de Alwis with Wajira Daluwatte for the Accused-Appellants

Akila Dalpatadu, SC, for the Respondent

Written Submissions: 03.07.2025 and 02.12.2025 (by the Accused Appellants)

07.08.2025 (by the Respondent)

On

Argued On : 22.10.2025

Judgment On: 08.12.2025

JUDGEMENT

B. Sasi Mahendran, J.

The Accused- Appellants (hereinafter referred to as the 1st and the 2nd Appellant) were indicted before the High Court of Gampaha on the charge of committing the offence of murder of one Samantha Kumara on 01.08.2017, punishable under Section 296 read with Section 32 of the Penal Code.

At the trial, the prosecution presented evidence through 7 witnesses and marking productions P1-P10, and thereafter closed its case. The first Appellant, in his defence, made a dock statement, and the 2nd Appellant gave evidence in the witness box. At the conclusion of the trial, the Learned High Court Judge, by judgment dated 25.09.2024, found both Appellants guilty of murder and imposed the death sentence.

Being dissatisfied with both the conviction and the sentence imposed by the Learned High Court Judge, the Appellants have preferred an appeal before this Court, articulating the following grounds in support of their challenge.

1. Failure to Properly Evaluate and Reconcile Contradictory Eyewitness Testimony
2. Improper admission of inadmissible evidence under section 27 (1) of the Evidence ordinance and judicial misattribution of recovery.
3. Improper analysis of private defence and sudden fight
4. Erroneous finding on common intention under section 32 of the penal code
5. Failure to prove the offence of murder beyond reasonable doubt - entitlement to acquittal

The facts and circumstances of this case are as follows,

PW 1, Jeewanthi Aruna Kumari, the wife of the deceased, testified as follows:

On 01.08.2017, the deceased was at home, resting in his room. At approximately 5:00 p.m., both Appellants arrived and knocked at the gate. She observed that the 1st Appellant, Dilum, carried an iron pipe, while the 2nd Appellant, Dinuka, was

armed with a Manna knife. She then called out to the deceased and at that time the Appellants proceeded to unlock the gate and enter the house. Once inside, they began breaking the windows. As the deceased approached them near the portico, the 1st Appellant struck him with the iron pipe, causing him to fall to the ground. Immediately thereafter, the 2nd Appellant inflicted a cut on him with the Manna knife.

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ප්‍ර : දැන් ඔය යකඩ පොල්ලෙන් ගැහුවට පස්සේද මන්න පිහියෙන් කෙටුවේ ?

උ : ඔව්. ඒ ගැහුවට පස්සේ මහත්තයා බිමට වැටුනා.

ප්‍ර : මහත්මිය දැක්කද යකඩ පොල්ලෙන් කොහාටද ගැහුවේ කියලා?

උ : ඔව්. ගැහුවේ කකුල් දෙකට. වැටුනට පස්සේ තමයි දිනුක මන්න පිහියෙන් කෙටුවේ.

During the cross-examination, she admitted that she threw chilli powder mixed with water at the 1st Appellant. At the time the deceased was being attacked, both the daughter and the second son were present in the house. The witness identified both Appellants as residents of Kongasdeniya and admitted that the deceased and the 2nd Appellant had previously quarrelled over a money transaction on the 31.07.2017. On that occasion, the 2nd Appellant attempted to take the key of the motorbike, but the deceased resisted, quarrelled with him, and ultimately retained the key. The witness then took the deceased to the Wathupitiwala hospital, where he subsequently died on the way and on the same day, the witness gave a statement to the police.

It was observed that, during cross-examination, counsel for the defence questioned the witness regarding several cases that were filed against the deceased in court involving the deceased. The defence further asserted that the deceased had obtained Rs. 500,000 from the appellants, and that on the date in question, they visited his residence intending to recover this sum. The witness, however, denied this version of events. The defence further proposed that the deceased attempted to attack the Appellants with a Manna knife, and that the witness threw chilli water at them. The witness denied this version. The defence also contended that

the Appellants had seized the knife from the deceased and attacked him in self-defence. Further, the defence proposed that the witness and the deceased were armed with the Manna knife, an iron pipe and chilli powder and attacked the Appellants.

Upon considering the evidence of PW 01, it is noted that counsel for the Appellants failed to highlight any contradictions or omissions. It is further observed that the witness remained consistent in her statement of how the attack took place, and that the Appellants had entered the house armed. Furthermore, it is noted that the witness admitted to having thrown chilli water in an attempt to protect her husband from the Appellants.

PW 2, Ravindu Dilshan, the second son of the deceased, testified that while he was flying a kite in a land behind the house, he heard a commotion from the house. Thereafter, this witness has come from the back door of the house. When he came onto the porch, the witness saw his parents and the Appellants engaged in a heated argument, during which the Appellants attempted to attack the deceased. Furthermore, the witness admitted that the deceased had instructed the Appellants to leave the house. The witness has seen the 1st Appellant holding the iron pipe and the 2nd Appellant holding the Manna knife. The witness stated that he saw his father, deceased, throwing chilli powder towards the Appellants, which was given by PW 1, and at that time he saw the 1st Appellant attacking the deceased with the iron pipe, and the 2nd Appellant attacking the deceased with the Manna knife.

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ප්‍ර : මිරිස් කුඩු ගැහුවට පස්සේ මේ ආපු පුද්ගලයෝ දෙන්නා ගියාද?

උ : සාලයේ හිටියේ ඊට පස්සේ එළියට ගියා.

ප්‍ර : එළියට කියන්නේ ගෙයින් එළියටද නැත්නම් ගේට්ටුවෙන් එළියටද ?

උ : ගෙයින් එළියට ගියා. ඊට පස්සේ ගෙදර ජනේලයට එහෙම ගැහුවා.

ප්‍ර : දැන් ඒ දෙන්නා ගෙදරින් එළියට ගියාට පස්සේ ආපහු ආවද නැත්නම් යන්නම ගියාද?

උ : නැහැ. ඊට පස්සේ ආයි මිරිස් කුඩු ගැහුවට පස්සේ පාරට ගියා. ඒත් එක්කම තාත්තත් පාරට ගියා. ඊට පස්සේ ආවා ගහ ගත්තට පස්සේ තාත්තා වැටුනා. වැටුනා පස්සේ කෙටුවා.

ප්‍ර : මේ දෙන්නා ගෙදරින් එළියට ගියාට පස්සේ තාත්තා කොහාටද ගියේ?

උ : තාත්තා ගේට්ටුව ගාවට ගියා.

ප්‍ර : ඒ වෙලාවේ රවිඳු කොතනද හිටියේ?

උ : මම ඉස්තෝප්පුව ගාව හිටියේ.

Initially, the deceased was attacked by the 1st Appellant's iron pipe, and after that, he fell, and the 1st Appellant continued to attack him. Then the 2nd Appellant came and attacked the deceased with the Manna Knife more than 5 times on the neck of the deceased. Then the Appellants had threatened the witnesses to go inside the house and leave the house on a white color scooter.

During cross-examination, the witness acknowledged that he was 12 years old at the time of the incident. He further testified that the deceased was holding a pole and instructed the Appellants to leave the house. The defence highlighted a contradiction, noting that in his police statement, the witness had said the Appellants moved towards the road when the deceased, holding the pole, told them to leave. The witness also confirmed that the Appellants had issued threats before departing. Additionally, he admitted that the deceased threw chilli powder at the Appellants because they refused to leave when they were told to leave. The witness was clear in stating that although the deceased held a pole, he did not attack the Appellants but only threatened them to go away from the house.

PW 10, IPS Ruwan Pradeepa Siriwardana, upon receiving the information on 01.08.2016, proceeded to the scene, where police officers from Nittambuwa were already present. He thereafter observed blood patches on the gate and on the road in front of the house. He further observed that the motorcycle had sustained damage caused by a sharp object, that a window of the house was broken with shattered glass, and that cut marks were also visible on the gate.

On 11.08.2017, PW 9, SIP Mahesh Raveendra Kumara, arrested the 1st Appellant. From his statement, an iron rod was recovered from behind the Appellant's residence. However, during the trial, PW 1 and PW 2 failed to identify the said production.

Upon conclusion of the trial, the 1st Appellant gave a dock statement, and the 2nd Appellant gave evidence from the witness box. According to the 2nd Appellant, on the previous day, they had met the deceased, who had asked them to come the following day to discuss the transaction. According to the Appellant, when they arrived at the house, PW 1 opened the gate. (It is noted that this was not advanced by the defence during the cross-examination of PW 1.) PW 1 then went inside and woke up the deceased, who came out and took hold of an iron rod that was near the wall and began to strike the appellant. The 1st Appellant seized the iron rod from the deceased and struck him in return. At that time, PW 1 brought chilli-mixed water and threw it at the appellants. PW 1 thereafter took a long knife from under a chair and handed it to the deceased. (During the cross-examination of PW 1, this was not proposed to her.)

The 2nd Appellant stated that he pulled the knife from the deceased. This version was not challenged during the cross-examination of PW 1. He further claimed that after the deceased attacked the appellants with chilli powder, the 2nd Appellant held the 1st Appellant and moved outside. The deceased then returned, took the iron rod from the 1st Appellant, and subsequently fell down. At that point, the 2nd Appellant, in order to safeguard his brother, struck the deceased once with the knife.

The Learned High Court Judge rejected the appellants' defense of a sudden fight and ruled that the appellants are guilty of murdering Samantha Kumara.

The main arguments advanced by the Appellants are as follows:

1. The Learned High Court Judge failed to take into account the discrepancies in the eyewitness testimony.

2. The Learned High Court Judge failed to properly consider the occurrence of a sudden fight.

Inconsistency in the witness's testimony

In evaluating the evidence of both witnesses, it is observed that PW 1 and PW 2 were eyewitnesses to the incident, though they were not present simultaneously. It is further noted that PW 2 was only 12 years old at the time, whereas PW 1, being the wife of the deceased, was the only elder there. Both witnesses consistently testified that the 1st Appellant attacked the deceased with an iron pipe, while the 2nd Appellant attacked him with a Manna knife. The 1st and 2nd Appellants did not deny this fact. Their defence was that the deceased attempted to attack them and threw chilli water, and that they acted in private-defence.

When we examine the testimonies of PW01 and PW02, certain discrepancies become apparent. PW01 did not mention that the deceased was holding a pole, whereas PW02 stated that his father was carrying a wooden pole. Another inconsistency arises regarding the use of chilli powder water: PW01 claimed that she alone threw it, while PW02 asserted that the deceased was the one throwing chilli water.

The critical issue, therefore, is whether these discrepancies undermine the credibility of these witnesses. The following judgments are relevant to answer the above question.

Sunil v. Attorney-General, 1999 (3) SLR 191 at page 194, Jayasuriya, J held that:

> *"In Jagathsena v. Bandaranayake Justice Colin-Thome gave his mind to contradictions of inter se proved between the testimony of two witnesses. His Lordship in evaluating those contradictions raised the following question: "Was the discrepancy due to dishonesty or to defective memory or whether the witness' powers of observations were limited"*

Further held that;

> *"Justice Thakkar in a very instructive judgment, relying on human psychology and relying on his vast experience in the trial Court, has laid down certain important principles which ought to guide any Court in the evaluation of testimony adduced before it. Having indulged in that exercise*

he finally observed that discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore, cannot be annexed with undue importance: Bharwada Bhogindhai Hirjibhai v. State of Gujarat at 755. In Samaraweera v. Republic. The Court of Appeal placing reliance on passages from Indian treatises and following dicta laid down in Indian judgments has raised some issues which any Court ought to consider - Whether the discrepancy in testimony is due to dishonesty or to human defects or due to an embroidery indulged in by the witness and the latter situation does not justify the rejection of his testimony."

Justice S. Tilakawardane, J. **in A.G vs. Sandanam Pitchai Mary Theresa (SC Appeal 7912008, SC minutes dated 06.05.2010) has observed that.**

"Discrepancies which do not go to the root of the matter and assail the basic version of the witness cannot be given too much importance. "

Accordingly, we find that the discrepancy highlighted by the Appellants does not undermine the credibility of the witnesses. We are mindful that both witnesses, who are the wife and the son testifying on the memory of a horrendous incident where the deceased was killed.

It is true that the wife of the deceased, PW 1 did not mention seeing the deceased carrying a pole. However, the second son, PW 2 stated that he observed the deceased holding a pole. It must be remembered that PW 1's testimony focused on how the Appellants entered the house armed and began attacking the deceased. In an attempt to protect her husband, the deceased she threw chilli powder mixed with water and continued to follow him in order to prevent further attack. By contrast, PW 2, who was a child at the time, arrived later and witnessed the incident differently. Our courts have consistently recognized that witnesses are human beings, and it is unreasonable to expect each of them to perceive and recount an event with identical focus or detail. It is pertinent to refer to the dictum expressed in the following judgement.

In ***Bhoginbhai Hirjibhai V. State of Gujarat*** AIR 1983 SC 753 wherein Indian Supreme Court held as follows:

> *"By and large a witness cannot be expected to possess a photo graphic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.*
>
> *Ordinarily it so happens that a witness is overtaken by events. The Witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to attuned to absorb the details.*
>
> *The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.*
>
> *Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on."*

I hold that the discrepancies highlighted by the Appellants does not go to the root of the matter. I further hold that the evidence of both witnesses is credible and truthful.

We further conclude that the Learned High Court Judge who heard the case had opportunity to assess evidence as he saw the deportment and demeanor of the witnesses. In this regard it is pertinent to refer to the judgment ***Fradd V. Brown & Co. Ltd.,*** 20 NLR page 282, wherein Earl Loreburn, J, held as follows,

> *"It is rare that a decision of a Judge so express, so explicit, upon a point of fact purely, is over-ruled by a Court of Appeal, because Courts of Appeal recognize the priceless advantage which a Judge of first instance has in matters of that kind, as contrasted with any Judge of a Court of Appeal, who can only learn from paper or from narrative of those who were present. It is very rare that, in questions of veracity, so direct and so specific as these, a Court of Appeal will over-rule a Judge of first instance."*

We hold that discrepancy submitted by the counsel for the Appellants are not vital and they do not go to the root of the case. For the above reasons, I reject the said contention of the counsel for the Appellants.

Private Defence

Both Appellants' main contention is that the Learned Trial Judge has erred both in fact and law with regard to the applicability of the exception of private defence.

Exception 2 to Section 294 in the Penal Code reads as follows,

> *"Exception 2 - 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."*

The Appellants contend that the deceased first attacked the 1st Appellant, and that in an effort to prevent any further assault, the 2nd Appellant retaliated by attacking the deceased.

The concept of private defence was elaborated by G.L. Peries in his book '*Offences under the Penal Code of Sri Lanka',* Page 124.

> *"(B) Bona Fide Excess of the Right of Private Defence*
>
> *Exception 2 to section 294 of the Penal Code provides that "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"*

Further, it is pertinent to refer to the case of ***Subramani v. State of Tamil Nadu***, 2005 AIR SC, Page 1983, Arjith Pasayat, J held;

> *"Only question which needs to be considered is the alleged exercise of right of private defence. Section 96, IPC provides that nothing is an offence which*

is done in the exercise of the right of private defence. The Section does not define the expression `right of private defence'. It merely indicates that nothing is an offence which is done in the exercise of such right. Whether in a particular set of circumstances, a person legitimately acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. No test in the abstract for determining such a question can be laid down. In determining this question of fact, the Court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea. In a given case the Court can consider it even if the accused has not taken it, if the same is available to be considered from the material on record. Under Section 105 of the Indian Evidence Act, 1872 (in short `the Evidence Act'), the burden of proof is on the accused, who sets up the plea of self-defence, and, in the absence of proof, it is not possible for the Court to presume the truth of the plea of self-defence. The Court shall presume the absence of such circumstances. It is for the accused to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution. An accused taking the plea of the right of private defence is not necessarily required to call evidence; he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden. Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the Court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record.

……..

Sections 100 to 101 define the extent of the right of private defence of body. If a person has a right of private defence of body under Section 97, that right extends under Section 100 to causing death if there is reasonable apprehension that death or grievous hurt would be the consequence of the assault. The oft quoted observation of this Court in Salim Zia v. State of U.P., AIR (1979) SC 391), runs as follows:

"It is true that the burden on an accused person to establish the plea of self-defence is not as onerous as the one which lies on the prosecution and that, while the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea to the hilt and may discharge his onus by establishing a mere preponderance of probabilities either by laying basis for that plea in the cross-examination of the prosecution witnesses or by adducing defence evidence...."

The accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea."

The Section 105 of the Evidence Ordinance reads as follows,

*'when a person is accused of any offence, the **burden of proving** the existence of circumstances bringing the case within any of **general exceptions** in the Penal Code, or within any **special exception** or proviso contained in any part of the same Code, ……. **is upon him**, and the court shall presume absence of such circumstances"* (Emphasis added)

Is there any evidence before the trial judge that supports the private defence?

It is pertinent to note that the Learned High Court Judge correctly found that both Appellants, armed with weapons, entered the house and attacked its windows. No evidence was adduced of any injuries sustained by the Appellants, whereas the doctor recorded multiple injuries on the deceased. It was further established that,

immediately following the incident, the Appellants threatened the witnesses. In these circumstances, the Learned High Court Judge rightly considered and rejected the plea of private defence.

Accordingly, the Learned High Court Judge made the following observations and findings:

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> "මන්නයෙන් කොටන්නට තැත් කිරීමේදී එය උදුරා ගෙන ආත්මාරක්ෂාවට සටන් කල බවයි. ඒ අනුව අධිකරණය විසින් ප්‍රථමයෙන් නිගමනය කල යුත්තේ මෙම යකඩ පොල්ල සහ මන්නය වුදිතයින් රැගෙන ආ ඒවාද නොඑසේ නම් මරණකරු සන්තකයේ තිබූ ඒවාද යන්නයි.
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> මරණකරු සිටි නිවසේ ගේට්ටුවට වූ කැපෙන අවියකින් වූ ප්‍රහාරය නිවසට පිටතින් සිට ඇතුලට වුවකි. මෙම ප්‍රහාරය ද නිවසේ තුල සිටි මරණකරු එල්ල කල ප්‍රහාරයක් ලෙස සැලකිය නොහැක.
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> ඒ අනුව යකඩ පොල්ල සහ මන්නය වුදිතයින් විසින් රැගෙන ආ ඒවා බවට නිගමනය කරමි.
>
> මරණකරුට එල්ල වී ඇති ප්‍රහාර පුද්ගලික ආරක්ෂාවේ අයිතිය ක්‍රියාත්මක කිරීමේදි එල්ල වූ ප්‍රහාරයක් දැයි ඊලඟට මෙම අධිකරණය නිගමනය කල යුතු වේ."

Page 364 of the brief,

> "දෙවන වුදිතගේ සාක්ෂියද ඊට අනුරූප වන අතර ඉන්පසු මරණකරු ඔහු අත තිබූ පොල්ලකින් පළමු වුදිතට පහරදුන් බව පළමු වුදිතගේ ස්ථාවරය වන අතර එම අවස්ථාවේදී පළමු වුදිතගේ ජීවිතය බේරා ගැනීම සඳහා මන්නා පහර කිපයක් එල්ල කල බව වුදිතයින්ගේ ස්ථාවරයයි.
>
> සාක්ෂි ආඥා පනතේ 105 වගන්තිය යටතේ පුද්ගලික ආරක්ෂාවේ අයිතිය සම්බන්ධයෙන් ඔප්පු කිරීමේ භාරය වුදිතයින් මත පැවරෙන බව නිගමනය කල හැකි අතර පහත කරුණු කෙරෙහි මෙම අධිකරණයේ අවධානය යොමු වේ.
>
> 01. මෙම සිදුවීමේදි වුදිතයින් දෙදෙනාගේ එක් අයෙකුට හෝ තුවාල සිදු වී ඇති බව සාක්ෂි මඟින් තහවුරු වී නොමැත.
>
> 02. මරණකරුගේ ශරීරයේ කැපුම් සහ තැලුම් තුවාල 20 කි. ගෙලෙහි වම් පසට වන්නට සෙන්ටි මීටර් 16ක් දිගට විහිදි ඇති එක් තැන කැපී ඇති ගැඹුරු කැපුම් තුවාල 03 කි. මෙම තුවාල දෙවන වුදිත විසින් එල්ල කල මන්නා ප්‍රහාරයන් ලෙස සැලකිය හැක."

Page 365 of the brief,

> "මරණකරුගේ ශරීරයේ ඇති තුවාල 20 ක් සහ ඉහත සඳහන් තැලීම් සහ කැපීම් තුවාල 20 න් පෙනී යන්නේ වුදිතයින් මරණිය චේතනාවෙන් යුතුව මෙම ප්‍රහාරය එල්ල කර ඇති බවයි. වුදිතයින්ට තුවාල සිදු වූ බවට කරුණු තහවුරු නොවීමත් මරණකරුගේ ශරීරයේ තුවාල 20 ක් තිබීමත් වුදිතයින්ගේ විත්ති වාචකය මඟින් කිසිදු ආකාරයකින් පැහැදිලි කරන්නේ නැත. පළමු වුදිතට මිරිස් කුඩු ප්‍රහාරයක් එල්ල විනි නම් පළමු වුදිත මරණකරුගේ අත තිබූ පොල්ල උදුරාගෙන තිබුණේ ඉන් පෙර විය යුතුය."

In considering the plea of private defence, we are mindful that both Appellants arrived at the house armed. When the police, PW 10, inspected the scene, they observed damage caused to the house. It is further noted that the deceased sustained multiple injuries inflicted by the Appellants, whereas no injuries were found on either Appellant.

The Learned High Court Judge has rightly concluded that there is no evidence to establish that the injuries sustained by the deceased were inflicted in the exercise of private defence. We are further of the view that there is no material to demonstrate any necessity for the Appellants to cause such injuries to the deceased.

We note that the Appellants arrived armed and entered the house. Furthermore, both PW 1 and PW 2 consistently testified that the 1st Appellant assaulted the deceased with an iron pipe, while the 2nd Appellant attacked him with a Manna knife. It is also established, based on the testimony of PW 1 and PW 2, that the Appellants threatened the family members of the deceased before they are leaving the house. Upon evaluating the evidence, we hold that the Appellants entered the premises with a common intention.

Upon careful consideration, we find that the prosecution established the case, beyond a reasonable doubt, that the Appellants committed the murder of Samantha Kumara.

In those circumstances, I am not inclined to interfere with the disputed judgment together with the sentencing order.

The Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL