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

In the matter of an appeal made under section 331 of the Code of Criminal Procedure Act, No.15 of 1979.

Warnakulasooriya Nevil Fernando *alias* Rambo.

Accused – Appellant

Vs

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

Respondent

Court of Appeal Case No:
CA/HCC/0011/2024

High Court of Kalutara Case No.
HC 580/2019

Before	:	**Hon. P Kumararathnam, J.**
		Hon. Pradeep Hettiarachchi, J.
Counsel	:	Ershan Ariaraynam for the Accused – Appellant.
		Malik Azeez, SC for the State.
Inquiry on	:	25.06.2025
Decided on	:	30.07.2025

Pradeep Hettiarachchi, J

JUDGMENT

1. The accused-appellant (hereinafter referred to as 'the appellant') was indicted in the High Court of Kaluthara for the offence of murdering Thanuja Lewke Bandara on 15.02.2015, an offence punishable under Section 296 of the Penal Code.

2. The trial was conducted before the Judge of the High Court without a jury. Upon conclusion of the trial, the learned High Court Judge convicted the Appellant and accordingly, imposed death sentence on him.

3. Being aggrieved by the said conviction and sentence, the appellant has preferred the present appeal. The grounds of appeal advanced by the appellant are as follows:

    a. The learned High Court Judge has not taken into account the inter-se contradictions of the prosecution evidence;
    b. The learned High Court Judge has failed to pay due attention to the submissions made by the defense;
    c. The learned High Court Judge has failed to consider the weaknesses and want of credibility of the prosecution evidence; and
    d. The judgment is contrary to the evidence led at the trial.

4. In the appeal, counsel for the Appellant primarily argued that the Learned High Court Judge failed to address the issue of mens rea and the accused's knowledge, particularly in light of the autopsy report, which does not support a finding of murder. It was further submitted that the death occurred three days after the alleged assault, and that it was the Appellant who took the deceased to the hospital. Based on these facts, it was argued that the Appellant's subsequent conduct also demonstrates that he did not have a murderous intention at the time of the assault.

5. Opposing the Appellant's argument, it was submitted on behalf of the Respondent that, even if the Appellant did not intend to cause the death, he cannot be exonerated from the charge of murder, as the injuries sustained by the deceased were sufficient, in the ordinary course of nature, to cause death.

6. The Respondents placed much reliance in ***Withana and Another vs The Republic [2007] (1) SLR 169 and Gunasiri & Two Others vs Republic of Sri Lanka [2009] SLR 39.***

7. In view of the arguments advanced by both parties, the issue of paramount importance to be determined in the present appeal is whether the Appellant's conviction for murder can be sustained, given the extent of the injuries observed on the deceased and the manner in which the Appellant acted. It is also pertinent to examine whether the blows inflicted by the Appellant directly contributed to the death of the deceased, or whether

the death occurred as a result of a supervening factor arising from the injuries inflicted by the Appellant.

8. 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.

9. It is clear that the intention contemplated under the first limb of Section 294 of the Penal Code is the intention to cause death, commonly referred to as murderous intention. In contrast, the intention under the third limb of Section 294 refers to the intention to cause bodily injury not necessarily death. However, the bodily injury inflicted must be sufficient, in the ordinary course of nature, to cause death. The emphasis under the third limb is therefore on the sufficiency of the injury to cause death in the ordinary course of nature, rather than on the intention to cause death itself.

10. At the trial, the prosecution evidence revealed that the assault occurred when the Appellant insisted that the deceased take her meals, which she refused. It was also established that, following the assault, the Appellant himself sponged the bruised areas of the deceased with hot water and accompanied her to the hospital. These actions indicate that the Appellant did not act with any murderous intention.

11. Therefore, the culpability of the Appellant in the present case must be assessed under the third limb of Section 294, namely, whether the bodily injury intended and inflicted

by the Appellant was sufficient, in the ordinary course of nature, to cause the death of the deceased.

12. In ***Virsa Singh v State of Punjab AIR (1958) SC 465 at 467*** His Lordship Justice Bose said: *"No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional."*

13. The aforementioned case establishes that a person accused of murder cannot claim he lacked the intent to cause death merely because he only intended to inflict bodily injury, if the injury inflicted is, in the ordinary course of nature, sufficient to cause death. To elaborate, if the injury that the offender intended to cause and did in fact cause is sufficient, in the ordinary course of nature, to result in death, the offence amounts to murder, regardless of whether the offender intended to cause death or had any subjective knowledge of the likely consequences. However, there must be a clear link between the appellant's act and the victim's death. This is known as the chain of causation.

14. It is important to emphasize that in cases where a person's death is not directly attributable to the initial injury but is instead linked to a subsequent supervening condition, the prosecution must establish not merely a likelihood, but a high probability—that the supervening condition resulted from the original injury and ultimately caused the death. This standard ensures that, in a charge of murder, a direct causal connection between the initial injury and the resulting death is proven beyond a reasonable doubt.

15. In ***State of Maharashtra v Arun Savalaram 1989 - CR LJ 191***, Indian Court observed thus:

> *"For the application of this clause it must be first established that an injury is caused, next it must be established objectively what the nature of that injury in the ordinary course of nature is. If the injury is found to be sufficient to cause death one test is satisfied. Then it must be proved that there was an intention to inflict that very injury and not some other injury and that it was not accidental or unintentional. If this is also held against the offender the offence of murder is established."*

16. In the instant case, it is evidenced that the Appellant struck the deceased once with a torch. However, the deceased did not suffer any fractures to the head or any other bones. Dr. Shalindra Shali Attanayake, who conducted the autopsy, clearly stated that although there was evidence of blunt trauma to the head, it could not be considered a blow inflicted with heavy force, as no fractures were observed on the skull.

17. Furthermore, Dr. Attanayake observed an acute-on-chronic right-sided subdural hemorrhage in the deceased. She further explained that, since it was chronic, it would have been present for at least three weeks.

18. According to Dr Attanayake, an acute-on-chronic subdural hemorrhage is a condition where new bleeding occurs on top of an existing chronic subdural hematoma. In essence, a patient with a chronic subdural hematoma, which is a collection of blood and blood breakdown products that has been present for weeks or months, experiences a new bleed into that same space.

19. From her evidence, it can be gleaned that the cause of death was not solely the blow struck by the Appellant, but rather the chronic subdural hemorrhage, which was precipitated by an acute subdural hemorrhage. Thus, it is evident that a supervening factor contributed to the death of the deceased

20. She further testified as follows:

ප්‍ර : වෛද්‍යතුමා පරීක්ෂා කරන වේලාවේදී මේ මරණ කාරියගේ හිස් කබලේ පිපුරුම් තුවාල කීයක් තිබුණා ද?

උ : හිස් කබලේ කිසිම පිපුරුම් තුවාලයක් නැ ස්වාමීනී එබැවින් තමයි මෙය ඉතා විශාල බලයක් නොවන බව පැවසිය හැක්කේ අභ්‍යන්තරයේ රුධිර වහනයක් සිදු වෙනවා . අපි ඒක ඒ තරම් ගැඹුරට ගියේ නැති එක මම කියන්නම්. Sub dural hemorrhage කියන එක ස්වාමීනී මොලය මතුපිට තිබෙන රුධිර වහිනී මොලය කවරය දක්වා යන රුධිර වාහිනී පිපුරුමට ලක් වුනහම තමයි ඒක එන්නේ. ඒ වගේ බල ගොඩාක් ත්වරන ඒ වගේම කැරකෙන වගේ force එකකින් තමයි ඒවා ඇදිලා ඉරෙන්නේ නමුත් හිස් කබලේ තැල්මක් Sub dural hemorrhage කියන එකට සම්බන්ධයක් නැහැ.

21. The death occurred on 21.02.2015 at around 9:15 p.m. The autopsy report bearing number SA/GHK/PM/14/ dated 23.02.2015 was marked as P2 in evidence. While

referring to the postmortem report, the JMO testified and explained the extent of the injuries observed on the deceased and the cause of death.

22. According to the postmortem report, the external injuries are described as follows:

    1. 2 x 1.5 cm contusion on the front of left side of forehead upper area it is 6 cm away from the midline and 5 cm above to the left eyebrow.

    2. 3.5 cm x 0.3 mm abrasion on back of left elbow.

    3. 0.5 x 0.5 cm abrasion front of right knee 36 cm above to the heel.

23. What is apparent from the above evidence is that it was not the contusion that caused the subdural hemorrhage, but rather a sudden movement of the brain that damaged the blood vessels and resulted in the hemorrhage.

24. The above opinion was further confirmed by Prosecution Witness No. 2, who stated in her testimony that the appellant aggressively pushed the deceased, causing her to fall to the ground. Thus, it is most probable that the act of pushing the deceased, causing her to fall to the floor, resulted in an acute subdural hemorrhage placed over a chronic subdural hemorrhage, which ultimately led to her death.

25. Thus, it is difficult to conclude that the appellant acted with any murderous intention when pushing the deceased. More importantly, as the JMO clearly stated that, apart from two abrasions and one contusion, no other injuries were observed on the body of the deceased, there is insufficient evidence to infer a murderous intention on the part of the appellant.

26. Furthermore, according to the JMO’s findings, there was no skull fracture or fracture of the neck bones. Similarly, there was no evidence of fractures in any other bones. The cause of death, as stated in the report, was an acute-on-chronic right-sided subdural hemorrhage resulting from blunt force trauma to the head.

27. It is clear that the immediate cause of death—namely, acute-on-chronic right-sided subdural hemorrhage, which supervened—was a likely consequence of an injury inflicted by the Appellant. Nevertheless, the more critical issue to be determined is whether a conviction for murder can be justified on the basis of the evidence presented by the prosecution. As reflected in the prosecution's own evidence, the Appellant’s subsequent conduct does not demonstrate the presence of a murderous intention at the

time of the incident. More importantly, the injury inflicted by the Appellant would not have caused the death of the deceased had the pre-existing chronic subdural hemorrhage not been present. Clearly, the Appellant had no knowledge of the deceased's chronic subdural hemorrhage at the time of the assault.

28. The medical evidence clearly indicates that the Appellant did not use significant force when assaulting the deceased with the torch. Moreover, there is no compelling evidence to suggest that the injury resulting from the assault can be directly attributed to the death of the deceased. In other words, there is no evidence to show that the injury inflicted by the Appellant alone was sufficient, in the ordinary course of nature, to cause death. Therefore, it is difficult—if not impossible—to apply the third limb of Section 296 of the Penal Code to the present case.

29. It is noteworthy, that the learned High Court Judge in his judgment concluded that the deceased had suffered skull fractures and internal hemorrhage as a result of the assault by the Appellant, findings that are totally contrary to the opinion of the JMO. In other words, the High Court Judge appears to have based his conclusions on factors that were not supported by the evidence.

30. Moreover, in the judgment the learned High Court Judge has come to a finding that the appellant had hit the deceased with a broom until it was broken, which had not been seen by any of the eye witnesses. In fact, PW 1 has clearly stated that he never saw that the appellant hitting the deceased with a broom. The witness testified as follows:

ප්‍ර : කොස්සෙන් ගහනවා නමුත් ඇස් දෙකට දැක්කද ?

උ : කෑගහන කොට අපි ආවේ. ටෝච් එකෙන් ගහනවා දැක්කා.

ප්‍ර : කොස්සෙන් ගහනවා තමුන් දැක්කද ?

උ : කොස්සෙන් ගහනවා නැහැ.

ප්‍ර : වෙන මොකක් හරි උපකරණයකින් ගහනවා දැක්කද ?

උ : ටෝච් එකෙන් ගහනවා දැක්කා. අපි අල්ලන්න හැදුවා. අල්ලගන්න බැරි වුණා.

ප්‍ර : තමුන් ඇස් දෙකට දැක්කා ටෝච් එකකින් ගහනවා ?

උ : ඔව්.

ප්‍ර : ටෝච් එකෙන් ගහපු පාර පුංචි අම්මාගේ ඇහේ කොතනට වැදුනේ කියලා තමුන් දැක්කද ?

උ : ඔළුවට තමයි වැදුනේ.

ප්‍ර : ටෝච් එකෙන් කී පාරක් ගැහුවද ?

උ : අපි දැක්කෙ එක පාරයි.

31. Regrettably, the learned High Court Judge failed to explain how the appellant could be found guilty under Section 296 of the Penal Code. More importantly, the impugned judgment does not set out the reasons for the appellant's conviction for murder, nor does it specify under which limb of Section 294 the act committed by the appellant would fall.

32. As held in ***Vithana & Another vs The Republic of Sri Lanka [2007] (1) SLR 169,*** the ingredients that must be proved by the prosecution in order to prove a charge of murder under the 3rd limb of Section 294 are that:

    (i) The accused inflicted a bodily injury on the victim.
    (ii) The victim died as a result of the above bodily injury.
    (iii) The accused had the intention to cause the bodily injury.
    (iv) The above injury was sufficient to cause the death of the victim in the ordinary course of nature

33. The JMO's evidence suggests that the subdural hemorrhage occurred as a result of a sudden movement of the brain. Therefore, it is evident that the appellant did not possess any murderous intent, nor did he have knowledge of the likelihood that such an injury would occur when he pushed the deceased.

34. In ***Mendis v Queen - 54 NLR 177***, it was held that as the injured man's death was not immediately referable to the injury actually inflicted but was traced to some condition which arose as a supervening link in the chain of causation, it was essential in such cases that the prosecution should, in presenting a charge of murder, be in a position to place evidence before the Court to establish that " in the ordinary course of nature " there was a very great probability (as opposed to a mere likelihood) (a) of the supervening condition arising as a consequence of the injury inflicted, and also (b) of such supervening condition resulting in death.

35. In ***Farook vs A.G. [2006] (3) SLR 174***, it was held inter alia:

    The determinant factor is the intentional injury which must be sufficient to cause death in the ordinary course of nature. that is to say. if the probability of death is not so high. the offence does not fall within murder but within culpable homicide not amounting to murder or something less.

36. In the instant case, it is evident that the appellant struck the deceased with a plastic torch and then pushed her, causing her to fall to the floor. As stated by the JMO, the chronic

subdural hemorrhage that pre-existed in the deceased was precipitated by the sudden movement of the brain. The JMO categorically stated that the contusion on the head had no connection whatsoever with the subdural hemorrhage observed in the deceased. Thus, there is hardly any evidence to satisfy the criteria stipulated under the third limb of Section 294 of the Penal Code.

37. In the absence of any conclusive proof that the appellant was entertaining an intention to cause the death of the deceased, the more appropriate finding is a conviction for the offence of culpable homicide not amounting to murder on the basis of knowledge, punishable under section 297 of the Penal Code.

38. Therefore, having regard to all the circumstances of the present case, I shall set aside the conviction and sentence for murder of the learned High Court Judge of Kalutara dated 11.10.2023, and convict him on the basis of knowledge under section 297 of the Penal Code.

39. Accordingly, I impose a sentence of 10 years rigorous imprisonment on the appellant and a fine of Rs 50000.00 with a default sentence of further three years.

40. Considering the age of the appellant and he has no previous convictions and is incarcerated from the date of the conviction, I further order that the prison term shall operate from 11.10.2023, i.e., from the date of the conviction.

41. Accordingly, the appeal is partly allowed.

Judge of the Court of Appeal

Hon. P. Kumararatnam,J (CA)

I agree,

Judge of the Court of Appeal