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.

Court of Appeal Case No.
CA/HCC/ 0093/2024
High Court of Colombo
Case No. HC/2008/2020

Vilgamu Lekamlage Buddhika Hemakumara alias Alawala Dewalage Ajith Pushpakumara

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

BEFORE : **P. Kumararatnam, J.**
R.P. Hettiarachchi, J

COUNSEL : **Indica Mallawaratchy for the Appellant.**
Dishna Warnakula, DSG for the Respondent.

ARGUED ON : **16/01/2026**

DECIDED ON : **13/03/2026**

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JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted in the High Court of Colombo under Section 435 of the Penal Code for unlawfully entering into the house of one Lilion Ranjani Kumara at night on or about 24.01.2018.

Secondly, the Accused-Appellant was indicted for committing the murder of Lilion Ranjani Kumara in the course of the same transaction, which is an offence punishable under Section 296 of the Penal Code.

After a non-jury trial, the Learned High Court Judge found the Appellant guilty of the charges and sentenced him to 20 years rigorous imprisonment for the first count with a fine of 10,000/-. In default, he was ordered to serve 03 months simple imprisonment. For the second count he was sentenced to death on 22/11/2023.

Being aggrieved by the aforesaid conviction and sentence, the Appellant preferred this appeal to this court.

The Learned Counsel for the Appellant informed this court that the Appellant had given consent for the matter to be argued in his absence. Also, at the

time of argument the Appellant was connected via the Zoom platform from prison.

Background of the Case

PW1, who is a neighbour and a relation of the deceased, had told the court that on the date of the incident, between 8.30 pm and 9.00pm, another neighbour namely Kumari had alerted him about a strange sound coming from the deceased's house. As the deceased was staying alone, PW1 along with Kumari, had immediately rushed to the deceased's house and knocked on the door. At that time there was no light working outside. Nobody opened the door, but the witness could hear someone shouting in distress inside the deceased's house. As he had continued to bang on the door for about 5-10 minutes, a stranger had opened the door and had tried to flee from the scene. At that point, PW1 had apprehended the stranger and had tied him to a lamppost nearby with the assistance of neighbours who had gathered there. At that time the victim had come out and mentioned that the stranger, who had been named as the Accused in this case had assaulted her. She had uttered the words "me miniha mata geheuwa".

PW1 had immediately called the sister of the deceased, and the deceased's sister, who has been named as the 2nd witness, had arrived and called an ambulance and had then taken the deceased to the hospital. In the meantime, a police jeep had passed by, at which time the witness had handed over the Appellant to the police, and he too had accompanied him to the police station in the said police jeep.

PW1 had not noted any injury on the deceased at that time. However, on admission the deceased was transferred to the Intensive Care Unit and had succumbed to her injuries a week later.

PW2, Mallika is the sister of the deceased. She had provided dinner to her sister on that day and had left her at about 10.00pm. Upon receiving the

telephone call, she had immediately rushed to the place and found her sister in the ambulance, vomiting blood. At that time, the deceased had told her that a man had been hiding under her bed and when she had tried to switch the light on, she accidently trod on his hand, at which point he had inflicted an injury on her throat with a screwdriver. The Witness had seen the Appellant being tied to a lamppost. The deceased had died a week after being admitted to the ICU.

According to the medical evidence, the deceased had sustained 7 external injuries. Out of which, Injury No. 2 is a 0.3cm laceration on the soft pallet. The rest of the injuries are categorized as non-grievous injuries. According to the JMO, the cause of death is the Haemo-aspiration due to injury No. 2. The Appellant in his dock statement took up the position that he was apprehended when he ran to the place of the incident after hearing the commotion.

The following grounds of appeal have been raised by the Appellant:

1. Prosecution has woefully failed to prove that the injuries inflicted were sufficient to cause death in the ordinary course of nature with a high antecedent probability of death resulting as opposed to a mere likelihood.
2. Following closely on the heels of ground number one, the learned Trial Judge has woefully failed to address his judicial mind to the aforementioned factor which incidentally draws a distinction between Section 293(2) and Section 294(3) of the Penal Code.

In support of appeal ground one, the learned Counsel for the Appellant submits that it is trite law that to bring home a charge of murder within the purview of limb 3 of Section 294 of the Penal Code, the ingredients that the prosecution must prove beyond reasonable doubt are two-fold, to wit;
Firstly, the prosecution must prove that the Accused had the intention to inflict the injury.

Secondly, the prosecution must show that the injury inflicted was sufficient to cause death in the ordinary course of nature with a high degree of probability of death resulting from the injury inflicted, as opposed to a mere likelihood.

In order to substantiate her argument, the learned Counsel for the Appellant had cited the following judgments which I have reproduced as follows.

In **Mendis v Queen** 54 NLR 177 the court held that:

> *"There remains for consideration, however, the more difficult question whether the convictions for murder were justified upon the evidence. In the facts of the present case, this depends on whether there was evidence upon which the jury, properly directed, could reasonably hold that the act of the appellants which caused the death of Vincent Silva was also from its very nature " sufficient in the ordinary course of nature to cause death ". These words in clause 3 of the definition of " murder " contained in section 294 of the Penal Code require that the probability of death ensuing from the injury inflicted was not merely likely but " very great, though not necessarily inevitable".*

In **re Singaram Padayachi and others** [A. I. R: (1944) Mad. 223.] the court held that;

> *"If, on the other hand, the evidence establishes that there was probability in a lesser degree of death ensuing from the act committed, the finding should be that the accused intended to cause an injury likely to cause death and the conviction should be culpable homicide not amounting to murder."*

In the case of **Vithana and Another v The Republic of Sri Lanka** (2007) 1 SLR 169, it was held:

> *"The intention that is contemplated in the 1st limb of S294 is the intention to cause death which is commonly known as murderous intention, but the intention that is contemplated in the 3rd limb of S294 is the intention to cause bodily injury. This injury should be sufficient, in the ordinary course of nature to cause death. The emphasis here is on the sufficiency of the injury to cause death in the ordinary course of nature and not the intention."*

Hence, it very important to discuss whether the injuries caused to deceased by the Appellant were sufficient to cause death in the ordinary cause of nature as opposed to a mere likelihood.

The existence of a murderous intention generally has to be inferred from the circumstances.

In **Bastian Silva v Appuhamy** 4 NLR 47 the Court held that:

> *"It is not the nature of the wound, but the intention of the accused, which is decisive as to the nature of the crime committed."*

In the case of **R. G. Somapala v The Queen (1969) 72 NLR 121** it was held that:

> "*There was misdirection in that there was a lack of appreciation of important points of difference between a. 293 and s. 294 of the Penal Code. While the act of causing death with knowledge that the act is likely to cause death is culpable homicide, such an act is not murder, unless either (a) the offender intends to cause bodily injury and has the special knowledge that the intended injury is likely to cause the death of the person injured, or (b) the offender knows that, because the act is*

so imminently dangerous, there is the high probability of causing death or an injury likely to cause death."

The nature of the weapon used and the part of the body at which the blows were intended to alight, are among the factors to be taken into consideration in determining whether a murderous intention is imputable to the Accused.

In **Fernando** (1945) 30 CLW 22 Keuneman J, held that;

"As regards (the second accused's) own offence, regarded as an independent offence, we know that the majority of the jury held that he intended to kill. The injury he inflicted was with a dangerous weapon in a part of the body where danger to life was evident-namely the back of the abdomen, and the blade had penetrated 1 ½ inches".

In this appeal, the Appellant had not contested whether the incident had happened during the argument but had only contested that the injury caused to the deceased was not sufficient in the course of nature to commit murder. Therefore, he should have been convicted for culpable homicide not amounting to murder.

The prosecution had presented medical evidence to demonstrate that seven external injuries were inflicted on the deceased. It has been determined that the cause of death was the aspiration of blood (referred to as Haemo-aspiration) which was caused as a result of the 2nd injury. When considering this 2nd injury in isolation, such an injury has been classified as a non-grievous injury, located in an extensively vascular region, which has resulted in bleeding. As such, it has directly caused this condition of Haemo-aspiration, therefore being directly attributable to the Appellant's criminal act.

Therefore, the learned Deputy Solicitor General strenuously argued that the medical testimony establishes that Haemo-aspiration entails a very high

probability of causing death as it can cause instant death or death in the ordinary course of nature within a few days. The possibility of death resulting from consequences of such an injury is thus not a mere likelihood, but a high probability.

According to the evidence led by the prosecution, the Appellant had used a screwdriver to attack a vital part of the deceased's body. The deceased had sustained a laceration of the upper soft palette of the deceased.

PW15, the JMO who held the postmortem examination stated as follows in his evidence.

Pages 159-160 of the brief.

ප්‍ර : මේ සියලුම වෛද්‍යතුමාගේ නිරීක්ෂණ මත පදනම් වෙලා මෙම තැනැත්තියගේ මරණයට ආසන්නතම හේතුව හැටියට විශේෂඥ මතයක් ප්‍රකාශ කරන්නේ මොකක් ද?

උ : ගරු ස්වාමීනි. රුධිරය ශ්වසන මාර්ගයට එහෙම නැත්නම් පෙනහලුවලට යන, ඔය අපි කියපු හිමෝ ඇස්පිරේෂන් තත්ත්වය නිසා ක්ෂණික ඒ කියන්නේ ඉතාමත්ම කෙටි කාලයකින් මනුෂ්‍යයෙක් මිය යන්නත් පුලුවන්. ඒ වගේම ඒකෙන් ඇති වෙන සංකූලතා නිසා ටික දවසක් පීවත් වෙලා මිය යන්නත් පුලුවන්. මේ පුද්ගලයින් සමහර අය ප්‍රතිකාර ලබා සුවය ලබලා ගෙදර යන්නත් පුලුවන්. ඉතිං මේ තත්ත්වය සංකූලතාවය නිසා කියලා මම කියන්න හේතුව මේ පුද්ගලයා මෙසේ රුධිරය පෙනහලුවලට ගිහිල්ලා ටික කාලයක් පීවත් වෙලත් තියෙනවා. දවස් කීපයක්. ඒ වගේම පෙනහලුවල රුධිරයට අමතරව පෙනහලුත් පැසවීමට ලක් වෙන, ඒ කියන්නේ රුධිරය පෙනහලුවට යාමට අමතරව ඒක ආසාධනය වීම කරන කොට ඇති වූ සංකූලතා නිසා තමයි මරණය සිද්ධ වන්නේ. ඒ රුධිරය පෙනහලුවලට යන්නේ මුඛයට ඇති වෙච්ච ඇනුම් තුවාලයක් නිසා. පසාරු කර ගෙන ගිය තුවාලයක් නිසා. උඩු තල්ලට.

ප්‍ර : ඒ අනුව වෛද්‍යතුමා ඔය කියපු අංක 02 තුවාලය වෛද්‍ය විද්‍යාත්මකව වර්ගීකරණය කරන්නේ කවර ඝනයේ ස්වභාවයේ තුවාලයක් හැටියටද?

උ : සමස්ථයක් ලෙස ගරු ස්වාමීනි මා මේ කියපු සියලුම දේ සමස්ථයක් ලෙස ගත්තහම ඒ කියන්නේ පසාරු කරගෙන තල්ලට යන තුවාලය, රුධිර වහනය, ඒකේ පෙනහලුවලට යෑම මේ සියල්ලම ගත්තහම මේක ස්වභාවික තත්ත්ව යටතේ මරණය ගෙන දෙන තුවාලයක්. ඒකට හේතුව තල්ලට සිදුවන තැලුම් තුවාලයක් පමණක් ගත්තොත් ඒක සුලු තුවාලයක් ගරු ස්වාමීනි. නමුත් මේකේ සිදුවන රුධිර

වහනය සහ ඒ රුධිර වහනය පෙනහලුවලට සිදුවීම නිසා මෙම තත්ත්වය ස්වාභාවික තත්ත්වය යටතේ මරණය ගෙන දෙන තුවාලයක් වෙනවා. ඒ කියන්නේ නිශ්චිත ප්‍රතිකාර නිසා අවස්ථාවේ ලැබුනේ නැත්නම් මරණය ගෙන දෙන්න පුලුවන්.

As per PW 02's testimony, the deceased was in great pain when she had spoken to her. Although she had spoken to the witness, the deceased had experienced breathing difficulties. PW2 had noticed that the deceased was finding it increasingly difficult to breathe while being taken to the hospital. This is solely due to the injury she had sustained and also as an immediate consequence of extensive Haemo-aspiration. This medical condition had then led to an infection of the lungs. It is noteworthy to mention that the deceased was a person of good health and that she has had no previous illness.

The medical evidence confirms that although the injury sustained by the deceased was categorised as a non-grievous injury, it had developed into a condition of Haemo-aspiration, which is sufficient in the ordinary cause of nature to cause death, of which the causation would be the said injury. As explained by the pathologist, the death has been so caused as a direct consequence of the 2nd injury, which is the 0.3cm laceration on the soft pallet, affecting the function of the lung due to the aspiration of blood. Therefore, even if there was any medical intervention, it is established without any doubt that the nature of the injury was such that it was sufficient in the ordinary course of nature to cause the death. Accordingly, the evidence has clearly established that the Appellant had acted with the intention of causing bodily injury and the injury so inflicted was sufficient in the ordinary course of nature to cause the death of the deceased.

Although, the deceased had died seven days after the stabbing, this cannot be considered to mitigate the sentence under Section 297 of the Penal Code considering the nature of the injury which caused the death of the deceased.

Due to the aforesaid reasons, I find the first ground of appeal has no merit.

In the second ground of appeal, the learned Counsel for the Appellant contended that the Learned Trial Judge has woefully failed to address his judicial mind to the aforementioned factor which incidentally draws a distinction between Section 293(2) and Section 294(3) of the Penal Code.
Murder has been defined and clearly laid out in Sections 293 and 294 of the Penal Code. Murder refers to the acceleration of death where an act causing death is done along with the intention to cause such death or with the intention to cause bodily injury, where the injury inflicted would be very likely to cause death in the ordinary course of nature or with an overall knowledge of the possible danger being caused in all such instances.

In the case of **Farook v Attorney General** (2006) 3 SLR 174 it was held that:

> "*As regards the attempt to bring the case to one of culpable homicide not amounting to murder mainly on the basis that there is no intention to cause death, the intention that is required is to cause the injury in fact inflicted. If the intended injury is sufficient to cause death in the ordinary course of nature, the offence is murder;*
>
> *The injury which caused the death was the one inflicted by the accused. The sufficiency of the injury was objectively established. The sufficiency is the high probability of death in the ordinary way of nature and when this exists and death ensues, and if the causing of the injury is intended, the offence is murder;*
>
> *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"

The learned High Court Judge in his judgment at pages 198-200 stated as follows;

Pages 198-200 of the brief.

මෙම නඩුවට අදාළ අවස්ථාවේ දී චූදිත අදාල පහර එල්ල කර ඇත්තේ තියුනු ආයුධයක් වන නියනක් වීමද එසේ, එම ආයුධයෙන් එම තුවාලය කර ඇත්තේ ශරීරයේ වැදගත් කොටසක් වූ මුඛය තුළ එහි මෘදු තල්ලට වීමද අදාළ සිද්ධිය සිදු වූ රාත්‍රී කාලයේ එම නිවසේ වූ විදුලි බල්බය ගලවා නිවසේ වහලය මත තබා එම නිවසට ඇතුල් වීමෙන් අනතුරුව වේ. එම අවස්ථාවේ දී මරණකාරියගේ ඇඳ යට සැඟවී සිට මරණකාරිය නිදා ගැනීමට ඇඳමතට යාමේ දී ඇයගේ කකුලෙන් චූදිත ඇඳ යට සිටියෙදී චූදිතගේ අත ඇයට පෑගුනු පසුව මරණකාරිය බිය වී කෑ ගැසීමෙන් අනතුරුව චූදිත ඇයට එම මාරාන්තික පහර එල්ල කිරීම සිදු කර ඇති බව සියලු සාක්ෂි සළකා බලා තීරණය කර හැක.

පැ.සා. 02 හරස් ප්‍රශ්නවලට දී ඇති පිළිතුරු අනුව ඒ අවස්ථාවේ මරණකාරිය තමාට "මල්ලිකා අක්කේ මට මිනිහෙක් උගුරට ඉස්කුරුප්පු නියනෙන් ඇන්නා" යනුවෙන් ප්‍රකාශ කළ බවත් වැඩිදුරටත් ඒ පිළිබඳව ප්‍රශ්න කළ විට මරණකාරිය "මම ඇඳ යට සද්ද ඇහෙන හින්දා ලයිට් එක දාලා නැගිට්ටා, ඒ මිනිහාගේ අත පෑගුනා මට" යනුවෙන් ප්‍රකාශ කළ බවටත් සාක්ෂි දී ඇත. එයද මරණකාරියගේ මරණාසන්න ප්‍රකාශයක් ලෙස සළකා බැලිය හැකි වේ.

එම සිද්ධි දාමය අනුව කාමරය තුළ ඇඳුරේ සිටියෙදී චූදිත විසින් මිය ගිය අයගේ ජීවිතය කෙරෙහි කිසිම තැකීමක් නොකර එම මරණීය පහර එල්ල කර ඇති බව තහවුරු වේ. එසේ චූදිත නිවසට ඇතුල් වූයේ කුමන අරමුණක් සම්බන්ධයෙන් ද යන්න තහවුරු වන සාක්ෂියක් නොමැති නමුත් චූදිත ඇඳ යට සැඟවී සිට ඇති බව ඉන් තහවුරු වේ. එසේම චූදිතගේ අරමුණ කුමක් වුවද තනි කාමරයක් වූ එම නිවසේ වූ දොරෙන් මිය ගිය කාන්තාව කෑ ගැසීම අතරතුර පැන යා හැකිව තිබියෙදී ඇයට නියනකින් පහර දෙමින් සහ වෙනත් අයුරින් ද පහර දෙමින් නිවසේ සිට ඇති බව ඇයට සිදුවී ඇති අනෙකුත් තුවාල වලින් ද තහවුරු වේ. වෛද්‍යවරයාගේ සාක්ෂි අනුවද එම නඩුවේ මියගිය අයට නියනකින් සිදුවූ තුවාල සාමාන්‍ය තත්ත්වය යටතේ මරණය ගෙන දීමට ප්‍රමාණවත් බවට තහවුරු කර ද ඇත. පැ.සා. 01 ට අනුව මරණකාරිය කෙදිරි ගාමින් නිවස තුළ සිටියදී, පැ.සා. 01ට ද සෘහෙන වේලාවක් ජනේලය සහ දොර ඇරගත නොහැකිව එහි රැඳී සිටියදී චූදිත විසින්ම එම නිවසේ දොර ඇරගෙන එලියට පැමිණි බව තහවුරු වේ. ඒ අනුව චූදිත මරණකාරියගෙන් මිදී පැන යාමට අවස්ථාව තිබියෙදී තවදුරටත් සාපරාධී චේතනාවෙන් එම නිවසේ

රැඳී සිටිමින් ඇයගේ හිස ඉලක්ක කර අදාළ මරණීය පහරදීම කර ඇති බව හොඳින් තහවුරු වේ. ඒ අනුව චූදිත වෙත වූයේ මරණීය චේතනාව බව හොඳින් තහවුරු වේ.

The learned High Court Judge has correctly taken into consideration the testimony of the medical expert and accepted that the nature of the injury, its location, the weapon which was used and the haemo-aspiration had collectively caused the injury, which was sufficient to cause death in the ordinary course of nature. The Learned High Court judge has not specifically mentioned the elements of the offence of murder in specific terms or which limb he considered it to be murder under; however, the analysis would be sufficient to conclude that the offence of murder was in fact committed. As such, the findings clearly satisfy the statutory requirements to constitute murder and that the injury caused was sufficient to cause death in the ordinary course of nature.

<u>The proviso to Article 138(1) of the Constitution reads thus:</u>

> The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance, tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and restitutio in integrum, of all causes , suits, actions, prosecutions, matters and things of which such High Court, Court of First Instance, tribunal or other institution may have taken cognizance:
>
> Provided that no judgment, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.

Considering the evidence presented and the findings of the learned High Court Judge, no substantial miscarriage of justice has actually occurred and the substantial rights of the appellant has not been prejudiced nor has a failure of justice occurred in this case.

Considering the above circumstances, the appeal is accordingly dismissed. The conviction and the sentence are affirmed.

The Registrar is directed to send this judgment to the High Court of Colombo along with the original case record.

JUDGE OF THE COURT OF APPEAL

R.P. Hettiarachchi, J.

JUDGE OF THE COURT OF APPEAL