IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an appeal in terms of section 333 (1) of the code Criminal Procedure Act No. 15 of 1997.

Democratic Socialist Republic of Sri Lanka

Complainant

Vs

Case No: **CA 0307/2016**

Ponna Hannadhige Daminda Buwaneka Samarasinghe

High Court: Colombo
Case No: **5760/11**

Accused

AND NOW BETWEEN

Ponna Hannadhige Daminda Buwaneka Samarasinghe

Accused – Appellant

Vs

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

Complainant – Respondent

Before	:	**P. Kumararatnam, J.**
		Pradeep Hettiarachchi, J.
Counsel	:	Tenny Fernando with Himashi Silva and Pasindu Gamage for the Accused - Appellant. Janaka Bandara, D.S.G for the Respondent.
Argued on	:	23.07.2025
Decided on	:	24.10.2025

Pradeep Hettiarachchi, J

Judgment

1. In this case, the accused-Appellant was indicted for the murder of a 7-year-old child. The trial was conducted before the High Court with a jury, and at the conclusion of the trial, the jury returned the verdict of guilty. Accordingly, the accused-Appellant was sentenced to death.

2. In this appeal, the only question to be determined by this Court is whether the jury's verdict finding the accused-Appellant (hereinafter referred to as "the Appellant") guilty of murder can be sustained, given the evidence adduced at the trial, particularly the circumstances under which the death occurred.

3. It was submitted on behalf of the Appellant that the unfortunate incident occurred as a result of grave and sudden provocation, and that the Appellant did not possess any murderous intention. Therefore, it was argued that the verdict of murder should be set aside and substituted with a conviction for culpable homicide not amounting to murder.

4. During the hearing, the learned Deputy Solicitor General, in keeping with the highest traditions of the Attorney General's Department, conceded to the argument advanced on behalf of the Appellant.

Background to the case:

5. The Appellant was a soldier in the army and was married to a destitute woman who had been living on the streets. At the time of their marriage, she had a daughter. The deceased was the nephew of the Appellant's wife. As the deceased's mother was a casual labourer with no substantial income to support him, the Appellant undertook to provide him with shelter and food so that he could pursue his education. On the day of the incident, while the Appellant was attempting to teach the deceased mathematics, he inflicted corporal punishment on him when the deceased failed to memorise certain numbers.

6. Subsequently, the deceased was admitted to the hospital, where he was later found dead. The Appellant was tried by a jury before the High Court, and at the conclusion of the trial, the jury found him guilty of murder. Accordingly, the learned High Court Judge imposed the sentence of death on the Appellant.

7. It was contended on behalf of the Appellant that he did not entertain any murderous intention at the time of the incident, and therefore, the learned High Court Judge had misdirected the jury.

8. As revealed by the evidence of PW1, she was about 14 years old at the time of the alleged incident. PW1's mother was married to the Appellant, and they were residing on the first floor of a building, the ground floor of which was occupied by a refrigerator repair shop. According to PW1's testimony, the deceased was her mother's younger sister's child, who had previously been staying at a probation home. Thereafter, the deceased came to reside with them, and he was admitted to a school by PW1's mother and the Appellant.

9. On the day of the incident, the Appellant had asked the deceased to engage in his studies. PW1 heard the Appellant scolding the deceased for failing to memorize certain numbers while studying with him.

10. The evidence of PW1 further reveals that the deceased had previously been living on the streets with his mother, as they had no permanent place of residence. According to PW1's testimony, while the Appellant was attempting to teach the deceased mathematics, she heard the deceased crying and also heard the sounds of the Appellant hitting him because the deceased had failed to follow the lesson properly. She further stated that she heard the deceased pleading with the Appellant not to hit him.

11. After some time, the Appellant asked the deceased to take a bath, but as the deceased was unable to go there on his own, the Appellant accompanied him to the bathroom. Thereafter, the Appellant dried the deceased and placed him on a bed. Having done so, the Appellant left the premises, instructing PW1 that if her mother inquired about the deceased's crying, she should say that he had fallen down the staircase. A short while later, PW1's mother returned home and inquired about the deceased, and PW1 told her what the Appellant had said. Subsequently, the deceased was taken to the

hospital in a three-wheeler, where, upon examination, the doctor pronounced him dead.

12. According to PW1's evidence, it appears that the deceased was maintained by the Appellant, who also looked after PW1 and her mother. The next witness to testify was Priyanthi Fernando, the mother of the deceased. According to her testimony, she had not witnessed the deceased being assaulted. She merely stated that the deceased did not have a proper place to stay and was therefore residing with her sister.

13. PW14, M. S. Wickramanayaka (PS 27050), conducted the investigation at the scene of the crime and submitted his report marked as P3. According to his observations, the house where the deceased resided was a two-storied building. The ground floor was occupied by a refrigerator and air-conditioner repair shop, while the deceased and other family members were residing on the upper floor.

14. The most vital evidence in this case came from Dr K.Muditha Kudagama the Judicial Medical Officer, who conducted the postmortem of the deceased. According to the postmortem, several injuries were observed on the body of the deceased, some of which were compatible with blunt trauma.

15. However, the JMO stated that these injuries were not necessarily fatal, but could be fatal in the ordinary course of nature. He further noted that the deceased could have been saved had he been admitted to the hospital and treated promptly. Some of the injuries observed by the JMO were also consistent with a fall.

16. J. L. Sunil Prasanna De Silva, the Chief Inspector of Police Station Wellawatta, testified as PW4. He accompanied the team of officers to the crime scene, made observations, and recorded statements from Nilanthi Fernando and PW1. Furthermore, the Appellant was also arrested by this witness.

17. The next witness was H. Samarasinghe, PC 40052, who, during the relevant period, was attached to the Crime Division of Mount Lavinia Police. He participated in the postmortem conducted at Kalubowila Hospital.

18. At the conclusion of the prosecution's case, the Appellant testified. According to his evidence, he became acquainted with the mother of the deceased at her friend's place. Thereafter, he married her, and at that time, her child (PW1) was not attending school.

19. The Appellant then made arrangements to send the child to school. During this period, a probation officer visited his house and inquired whether he was willing to take care of the deceased, to which the Appellant agreed. He stated that the deceased was somewhat stubborn and difficult to make study. According to the Appellant, the deceased fell down the staircase, after which he took a bath and slept. The Appellant also admitted that he had inflicted corporal punishment on the deceased on several occasions in order to discipline and advise him.

20. Apparently, the evidence adduced by the prosecution does not establish that the Appellant acted with the murderous intention required under Section 294 of the Penal Code. It is evident that the Appellant struck the deceased while attempting to teach him mathematics. The evidence of the Judicial Medical Officer demonstrates that the injuries sustained by the deceased were not necessarily fatal, but were sufficient to cause death in the ordinary course of nature.

21. The Judicial Medical Officer further stated that had the deceased been hospitalized and a blood transfusion administered, his life could have been saved. Furthermore, the JMO stated that the cumulative effect of all the injuries caused death in the ordinary course of nature.

22. Since this was a trial conducted before a jury, it was incumbent upon the learned High Court Judge to give proper directions to the jury. To elaborate further, the jury must be apprised of the relevant legal principles involved in the trial, particularly the distinction between an act committed with murderous intention and an act committed with knowledge. Otherwise, the jury would not be able to arrive at a correct verdict consistent with the accepted legal principles and the evidence adduced at the trial.

23. Given the evidence presented by the prosecution, it is very difficult, if not impossible, to conclude that the Appellant possessed a murderous intention at the time of assaulting the deceased. Therefore, if proper directions had been given on the available evidence, a reasonable jury would necessarily have found the Appellant guilty of culpable homicide not amounting to murder, on the basis of knowledge punishable under Section 297 of the Penal Code.

24. In this case, PW 1, although at home at the time of the alleged incident, had not seen the deceased being hit by the Appellant. According to her evidence, she merely heard

the deceased crying and pleading not to be hit. The learned High Court Judge, in his summing up to the jury, has extensively explained the medical evidence and the principle of proof beyond reasonable doubt.

25. Furthermore, he has addressed the evidence of PW 1 in the context of the time lapse between the alleged incident and the trial, her age, and, more importantly, her capacity to recall an event that she had witnessed about eight years earlier.

26. However, the learned High Court Judge has failed to explain to the jury, the most critical and vital legal principle, namely, murderous intention. Moreover, the learned High Court Judge has not adequately directed the jury on the legal principles relating to murder and the ingredients necessary to constitute the offence of murder. Similarly, the learned High Court Judge did not explain to the jury the distinction between the offence of murder and culpable homicide not amounting to murder.

27. In the present case, the directions given by the learned High Court Judge to the jury were highly inadequate, particularly in view of the ample evidence indicative of the offence of culpable homicide not amounting to murder under Section 293 of the Penal Code. Had the jury been properly directed on the basis of the evidence adduced in the present case, it is highly unlikely that they would have returned a verdict of murder.

28. According to the evidence of the Judicial Medical Officer (JMO), several injuries were found on the body of the deceased. Some of these injuries, in his opinion, were compatible with a fall. Injury No. 07 was described by the JMO as a tramline injury, and he further stated that this injury was very likely caused by an assault. Therefore, it can be safely concluded that some of the injuries sustained by the deceased were the result of an assault.

29. However, the nature of the injuries and their impact on the deceased must be assessed in light of the opinion expressed by the JMO. What is discernible from his evidence is that the cumulative effect of the injuries sustained by the deceased caused his death, and the cause of death was given as shock and hemorrhage following multiple contusions. No fractures were found on the body of the deceased. As stated elsewhere in this judgment, the injuries were not necessarily fatal, but could be fatal in the ordinary course of nature. This evidence further substantiates that the Appellant

lacked the requisite intention to commit murder, possessing only the knowledge of the likely consequences of his actions.

30. Without explaining the basic legal principles applicable to a case of this nature in plain and simple language to the jury, especially, when it is neither plain nor obvious whether the Appellant acted with a murderous intention, it is, in my view, unreasonable to expect a proper verdict from a jury composed of laypersons. To elaborate, in order to convict a person of murder punishable under Section 296 of the Penal Code, the presence of a murderous intention in the Appellant at the time of committing the act that led to the death of the deceased is of paramount importance.

31. Similarly, when there is evidence supportive of culpable homicide not amounting to murder as set out in Section 293 of the Penal Code, the members of the jury must be made aware of the fundamental legal principles, illustrated where necessary by appropriate examples, by the High Court Judge. Failure to do so would amount to non-direction or misdirection, thereby preventing the jury from returning a verdict consistent with the relevant legal principles and the evidence available.

32. More importantly, the learned High Court Judge's direction to the jury on the question of "knowledge," as contemplated under Section 293, is erroneous and therefore amounts to a clear misdirection. In his summing up the learned High Court Judge stated as follows:

> එම පහරදුන් තැනැත්තාට මෙවැනි දරුවකුට මෙවැනි පොල්ලකින් පහර දුන්නොත් එම දරුවා මිය යා හැකි බවට දැනුමක් තිබිය යුතුද නැද්ද යන්න තමුන්ලා තීරණය කරාවි. එය තමා තමුන්නාන්සේලා තීරණය කරනන් ඕනා. එවැනි දැනුමක් තිබිය යුතු බවට තමුන්නාන්සේලා තීරණය කලහොත් එහිදී මිනී මැරීමේ වරදට වරදක් සිදු කර තියෙනවා. ඒක මුලින්ම මම තමුන්නාන්සේලාට මම කීවේ මෙය සරලව තේරුම් ගැනීමට. මම හිතනවා තමුන්නාන්සේලාට මෙය තේරෙන්න ඇති කියා.

33. The above explanation is highly prone to misunderstanding and misdirection, given the circumstances under which the incident of assault took place. The plain meaning that can be deduced from the above elaboration is that, if the appellant possessed the knowledge as stipulated in Section 293, he could be found guilty of murder, which is incorrect in law.

34. Furthermore, the learned High Court Judge went on to explain the evidentiary value of circumstantial evidence and stated that, if a charge has been proved solely on circumstantial evidence, that evidence must be accepted. For a person to be convicted solely on circumstantial evidence, the only inference that can be drawn from such evidence must be the guilt of the accused, and all other possible inferences must be inconsistent with his innocence. Therefore, a correct direction requires the judge to explain that the evidence must be inconsistent with any other rational conclusion.

35. Nevertheless, the learned High Court Judge did not explain this to the jury when directing them to consider the circumstantial evidence, which, in my view, amounts to a non-direction.

36. Trial judges are obliged to explain to juries, in simple and clear language, how to apply the law to a particular case. The task is made even more difficult when the law in so many given areas is itself highly complex and prone to being misunderstood.

37. In the present case, had the learned High Court Judge given appropriate directions, it is highly unlikely that the jury would have returned a verdict of murder rather than one of culpable homicide not amounting to murder.

38. The courts have repeatedly emphasized the vital importance of proper and adequate directions being given to the jury by the presiding Judge.

39. In ***The King v. Vidanalage Lanty 42 N.L.R. 317,*** it was held:

> *There was evidence in this case upon which it was open to the jury to say that it came within exception 4 to section 294 of the Penal Code and that the Appellant was guilty of culpable homicide not amounting to murder. No such plea, however, was put forward on his behalf. In the course of his charge the presiding Judge referred to this evidence as part of the defence story but not as evidence upon which a lesser verdict might possibly be based. Held, that it was the duty of the presiding Judge to have so directed the jury and that in the circumstances the Appellant was entitled to have the benefit of the lesser verdict.*

At page 319, Moseley S.P.J further elaborated as follows:

> *" The learned Judge did in fact put it to the jury that if they were convinced beyond reasonable doubt by the evidence of the prosecution it was clearly their duty to find the Appellant guilty of murder, but that if they believed the defence they should not hesitate to acquit him. No question of culpable homicide not amounting to murder, he said, arose on his defence. It is a fact that no such defence was put forward by him or on his behalf. In William Hopper 2[11 Cr. App. R. 136.] the defence, as in this case, was that of accident. In that case, however, counsel for the defence indicated that, if that defence failed, he should hope for a verdict of manslaughter only. But the court expressed its view that even if counsel had not contended for a verdict of manslaughter, the Judge was not relieved of the necessity of giving the jury the opportunity of finding that verdict. Moreover, in The King v. Bellana Vitanage Edin 3[(1940) 41 N. L. R. 345.], Howard C.J. in referring to a defence that had not been raised nor relied upon at the trial said that that fact was not in itself sufficient to relieve the judge of the duty of putting this alter-native to the jury if there was any reasonable basis for such a finding in "the evidence on the record. "*

40. In ***RPS v The Queen (2000) 199 CLR 620, 637*** it was held:

> *The fundamental task of a trial judge is, of course, to ensure a fair trial of the accused. That will require the judge to instruct the jury about so much of the law as they need to know in order to dispose of the issues in the case. No doubt that will require instructions about the elements of the offence, the burden and standard of proof and the respective functions of judge and jury. Subject to any applicable statutory provisions it will require the judge to identify the issues in the case and to relate the law to those issues. It will require the judge to put fairly before the jury the case which the accused makes. In some cases it will require the judge to warn the jury about how they should not reason or about particular care that must be shown before accepting certain kinds of evidence.*

41. In ***E. Chandradasa v. The Queen 55 NLR 439***

> *In a trial for murder, questions of sudden fight or grave and sudden provocation should he left to the jury and adequately explained by the trial Judge where the facts, or the necessary inference to be drawn from them, would make it possible for the jury reasonably to form such a verdict. The mere fact that the accused himself, or his counsel, has contended for a complete acquittal on the ground of self-defence does not excuse the jury from considering, or the trial Judge from directing them upon, the question as to whether the true facts would not necessitate a verdict of culpable homicide not amounting to murder.*

42. If non-direction or misdirection is apparent in the summing up to the jury and has the effect of misleading the jury, such a verdict, if it appears unreasonable in light of the evidence adduced, shall be set aside. However, if such misdirection or non-direction has occasioned no miscarriage of justice, the appellate court shall dismiss the appeal.

43. In the present case, a careful examination of the prosecution's evidence, particularly the JMO's testimony, reveals that the appellant did not possess a murderous intention at the time of striking the deceased, although he may have had the knowledge as contemplated in Section 293. Therefore, had the learned High Court Judge properly directed the jury in accordance with the evidence adduced, it is my view that they would not have returned a verdict of guilty of murder.

44. In such circumstances, the appellate court is empowered to exercise its appellate jurisdiction to set aside the jury's verdict. Furthermore, if the appellate court is satisfied that the evidence on record is sufficient to support a conviction for an offence different from the one for which the accused was originally convicted, it may set aside the original conviction and substitute it with a conviction for the appropriate offence

45. Section 334(1) of the Code of Criminal Procedure Act reads:

> *(1) The Court of Appeal on any appeal against conviction on a verdict of a jury shall allow the appeal if it thinks that such verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before which the appellant was*

convicted should be set aside on the ground of a wrong decision of any question of any law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Provided that the court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

5) Where an appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, and on the verdict of the jury it appears to the Court of Appeal that the jury must have been satisfied of facts which proved him guilty of that other offence, the court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.

46. Upon consideration of the foregoing, it is my view that the verdict returned by the jury convicting the appellant of murder cannot be allowed to stand. Accordingly, the said verdict is hereby set aside.

47. Nevertheless, acting in terms of Section 334(5) of the Code of Criminal Procedure Act, the appellant is convicted of culpable homicide not amounting to murder under Section 293 of the Penal Code and is hereby sentenced to ten years' rigorous imprisonment. The sentence shall run from the date of conviction.

Judge of the Court of Appeal

P. Kumararatnam,J

I agree,

Judge of the Court of Appeal