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 together with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal No:
CA/HCC/0111/2022

High Court of Anuradhapura
Case No. HC/05/2017

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

COMPLAINANAT

Vs.

Dasanayakalage Nandatissa

ACCUSED

NOW AND BETWEEN

Dasanayakalage Nandatissa

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

BEFORE	:	**P. Kumararatnam, J.** **Pradeep Hettiarachchi, J.**
COUNSEL	:	**Asoka Weerasooriya with Akarsha Weerasooriya, Pasan Karunaratne and Kithsiri Liyanage for the Appellant.** **Jayalakshi De Silva, SSC for the Respondent.**
ARGUED ON	:	**27/08/2025**
DECIDED ON	:	**30/09/2025**

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JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General under the following charge:

On or about the 25th of June 2001, the Accused committed the murder of Tikiribandage Asoka Wijesundara which is an offence punishable under Section 296 of the Penal Code.

As the Appellant opted for a non-jury trial, the trial commenced before a judge and the prosecution had led eight witnesses and marked productions P1 to P4 and closed the case. The learned High Court Judge being satisfied that the evidence presented by the prosecution warrants a case to answer, called for the defence and explained the rights of the accused.

The Appellant made a Dock Statement and closed his case.

The Learned High Court Judge having considered the evidence led by both parties convicted the Appellant as charged and sentenced him to death on 18.01.2022.

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 has given consent to argue this matter in his absence. At the hearing, the Appellant was connected via Zoom platform from prison.

The Learned Counsel for the Appellant further informed this Court that he had filed a comprehensive written submission and he abides by the said written submission.

The Learned Senior State Counsel informed that she agrees with the concerns raised by the Appellant in his written submission and brought to the notice of the court that the incident had happened due to a sudden fight.

<u>The Appellant submits the following grounds of appeal for the consideration of this Court.</u>

A. The Learned High Court Judge erred in evaluating Section 159(2) of the Evidence Ordinance by permitting PW06 to refresh his memory by reading his police statement while giving evidence.
B. The Learned High Court Judge erred in evaluating evidence of PW10 in contrary to Section 25 and 26 of the Evidence Ordinance.

C. The Learned High Court Judge erred in evaluating the entire prosecution case contrary to the principles of circumstantial evidence.
D. The Learned High Court Judge erred in arriving at the conclusion that the Appellant killed the deceased by using P1, the alleged murder weapon in the absence of evidence to prove that P1 was issued to the Appellant.
E. The Learned High Court Judge wrongly evaluated Section 45 of the Evidence Ordinance in evaluating the Government Analyst's evidence.
F. Whether the Learned High Court Judge has failed to properly evaluate the evidence relating to the case to see whether the prosecution has proven the case beyond a reasonable doubt.
G. The Learned High Court Judge erred in evaluating the dock statement without giving due consideration to the prosecution case and to see whether the prosecution has made up a strong case to call for the defence.

The Learned Counsel also extended his argument on the basis that the facts and circumstances of this case only warrants a sentence under the second limb of Section 297 of the Penal Code.

The 4th exception to Section 294 (Murder) of the Penal Code is as follows:

> "Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner".

Explanation: - It is immaterial in such cases which party offers the provocation or commits the first assault.

Section 297 of the Penal Code states as follows:

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment of either description for a term which may

extend to twenty years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

The background of the case albeit briefly is as follows:

On the day of the incident, PW3, a close associate of the deceased, had accompanied the deceased and PW4 Dassanayake to produce bricks at Puliyankulama. After finishing work, when the trio were returning home, they had heard a report of a gun when passing the bunkers along the Vavuniya main road. At that time, the deceased was riding his bicycle in front with a distance of 25-50 meters from the person behind him. Before the report of the gun, a person had flashed a torch from the bunker and inquired about their identity. The witness could not identify the person who had so inquired about their identity. Before he heard the sound of the gunshot, the person who inquired about them had had an argument with the deceased. As nobody had attempted to stop them, he and PW4 had fled the place without looking at the deceased. Therefore, PW3 is unaware as to who shot at the deceased.

PW6 Chandrasekara, has served as a home guard along with the Appellant and PW5. According to him, on the day of the incident, he had reported for duty at 6.00 p.m. as usual and had gone to the assigned bunker to commence his shift. All guards had been issued T56 guns with 120 rounds of ammunition. As per the agreement, the Appellant had agreed to work outside the bunker first. As such he had gone out of the bunker and placed

himself 4-5 meters away from the bunker. Thereafter, this witness had heard about three shots of gunfire in the direction of the road. At this point, as the witness seemed to be evading giving evidence, the statement he made to the police had been shown to him under Section 159(2) of the Evidence Ordinance. After refreshing his memory, PW6 had said that after hearing the sounds of gunfire, he had inquired from the Appellant as to what happened and the Appellant had told him that as the deceased had turned and rode the bicycle at him, he had shot the deceased. This witness had further said that he was aware that a dispute had existed between the deceased and the Appellant over a paddy field.

PW5 Ranbanda was also with PW6 and confirmed that there was, indeed an altercation before he also heard the gunshots.

According to PW10 SI/Priyantha, on the day of the incident he was at the Paluhalmillawe Police Post. The bunkers around the police post, including the bunker in which the Appellant served, came under his supervision. On that day, at about 8.45 p.m. the Appellant had informed him that he had shot the deceased, as the deceased had tried to grab his weapon from him.

However, the Government Analyst was unbale to confirm that the empty cartridges recovered from the scene of crime was fired from the T56 gun recovered from the Appellant.

In this case the Learned High Court Judge in his judgment had considered the altercation which is said to have happened between the Appellant and the deceased, but disregarded the same when he arrived at the final conclusion.

In **Don Shamantha Jude Anthony Jayamaha v. The Attorney General CA/303/2006 and C.A.L.A. 321/2006** decided on 11/07/2012 the Court held that:

> *"It is trite law that even if the accused does not specifically take up the defence of a general or special exception to criminal liability, if the facts*

and circumstances before the court disclose that there were such materials to sustain such a plea then the court must consider whether the accused should be convicted for a lesser offence."

In **Jayathilaka v. The Attorney General [2003] 1 SLR 107** the court held that:

"Though the accused has not taken up the defence of intoxication if such defence arises on the evidence, it is the duty of the jury to consider the same".

In this case there was evidence to show that there was a sudden fight which took place between the Appellant and the deceased. This is further confirmed by the fact that both were not in good terms over an alleged dispute over a paddy field.

The Learned Senior State Counsel in keeping with the highest tradition of the Attorney General's Department informed this court that this is an appropriate case to be considered under Section 297 of the Penal Code.

Hence, considering all the circumstances of this case, I set aside the conviction and sentence imposed on the Appellant on 18.01.2022 by the Learned High Court Judge of Anuradhapura.

I convict the Appellant under Section 297 of the Penal Code and impose 06 years of rigorous imprisonment. A fine of Rs.10,000/- with 06 months default sentence is also imposed on the Appellant. Further, the Appellant is ordered to pay Rs.200,000/- as compensation to the deceased's family with a default sentence of 12 months simple imprisonment.

As the Appellant is in prison since the date of conviction by the Learned High Court Judge, I order the sentence imposed by this Court to be operative from 18.01.2022, the date of judgment.

Subject to the above variation the appeal is hereby dismissed.

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

JUDGE OF THE COURT OF APPEAL

Pradeep Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL