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

In the matter of an Appeal under in the High Court of Balapitiya in CRI-1412/11 in terms of section 331 of the Criminal Procedure Code No. 15 of 1979.

CA CASE No: HCC 204/2024

HC of Balapitya Case No: CRI-1412/11

Democratic Socialist Republic of Sri Lanka

Complainant

-Vs-

1. Jayaratne Sumanaratne alias Kapila
2. Karuna Pedige Asoka Priyantha Kumara

Accused

AND NOW

Jayaratne Sumanaratne alias Kapila

80 A, Parassagoda

Uragasmanhandiya

1st Accused-Appellant

v.

The Attorney General

Attorney General's Department

Colombo 12

Respondent

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

Amal Ranaraja, J

Counsel : Mohan Senevirathne with Nandana Malkumara and Selina Pathirana for the 1st Accused- Appellant

Hiranjan Peiris, PC, ASG for the State

Written Submissions On: 30.10.2025 (by the Accused-Appellant)

25.02.2026 .(by the Respondent)

Argued On: 03.03.2026

Judgment On: 15.05.2026

JUDGEMENT

B. Sasi Mahendran, J.

The Accused- Appellant (hereinafter referred to as the Appellant), along with the 2nd Accused, Karuna Pedige Asoka Priyantha Kumara, were indicted before the High Court of Balapitiya on the charge of committing the offence of murder of one Pathirana Rajapakse Mudiyanselage Mallika on 30.08.2007, punishable under Section 296 read with Section 32 of the Penal Code.

Upon conclusion of the trial, the Learned High Court Judge, by judgment dated 18.01.2024, found the Appellant not guilty of the charge of murder under Section 296 of the Penal Code but convicted the Appellant of a lesser offence punishable under Section 317 of the Penal Code. The Appellant was sentenced to 7 years of rigorous imprisonment and a fine of Rs. 20,000/- and 6 months of rigorous imprisonment in default.

Being aggrieved by the said conviction and the sentences, Appellant sought to challenge the validity on the following grounds,

1. Whether the Learned Judge of the High Court erred himself by finding the accused guilty for an offence punishable under S.317 of the Penal Code on a dying deposition made by the deceased of this case (Inadmissible evidence)
2. Whether the Learned Judge of the High Court had erred in law by considering the statements made by the deceased on 6th September 2007 to PW 9 at the Government Hospital Elpitiya, as a legally admissible dying deposition.

Based on the evidence presented before the Learned Judge of the High Court, the prosecution primarily relied upon circumstantial evidence, particularly the dying declarations made to PW 9 and PW 2. Before undertaking an analysis of the evidence concerning these declarations, it is essential to first examine the manner in which our Courts have treated and accepted dying declarations as admissible evidence.

It is pertinent to reproduce the sentiments expressed by His Lordship H.N.G. Fernando J in ***Queen v. Anthony Pillai*** 68 CLW 57 with regard to how the Court could act on such dying declarations.

> *"The failure on the part of the Learned Trial Judge to caution the jury as to the risk of acting upon a dying declaration, being the statement of a person who is not a witness at the trial, and as to the need to consider with special care the question whether the statement could be accepted as true and accurate had resulted in a miscarriage of justice."*

This dictum was considered by Hos Lordship Sisira de Abrew J in ***Gamini Mahaarachchi vs. The Attorney General,*** CA 106/2002, Decided On 22.08.2007, held that:

> *"When a dying declaration is sought to be produced as an item of evidence against an accused person in a criminal trial. the Trial Judge or the jury as a case may be, must bear in mind on the following weakness;*
>
> *1. Statement of the deceased person was not made under oath.*
>
> *2. Statement of the deceased person has not been tested by cross-examination vide King vs. Asirivadan Nadar 51 NLR 322 and Justin Pala vs. Queen 66 NLR409*
>
> *3. That the person who made the dying declaration is not a witness at the trial.*
>
> *As there are inherent weaknesses in a dying declaration which I have stated above, the trial Judge or the jury as a case may be, must be satisfied beyond reasonable doubt on the following matters;*
>
> *a. Whether the deceased in fact made such a statement*
>
> *b. Whether the statement made by the deceased was true and accurate*
>
> *c. Whether the statement made by the deceased person could be accepted beyond reasonable doubt.*
>
> *d. Whether the evidence of the witness who testifies about the dying declaration can be accepted beyond reasonable doubt.*
>
> *e. Whether the witness is telling the truth.*
>
> *f. Whether the deceased was able to speak at the time the alleged declaration was made.*

g. Whether the deceased was able to identify the assailant."

(Similar legal principles related to dying declarations were considered by His Lordship Sisira De Abrew in *Ranasinghe v Attorney-General* [2007], 1 S.L.R 218)

This was followed by His Lordship Achala Wengappuli J in ***Korinvige Anura Lakshman Silva alias Pechchei alias Chooti vs. The Attorney General,*** CA No. 288/2013 decided on 04.05.2018 and held that:

> "It is the contention of the accused-appellant that the dying deposition on which he was convicted fails to satisfy these stringent tests, in view of the inconsistencies referred to above and therefore the prosecution has failed to prove its case against him."

With these authorities in mind, it is pertinent to delve into the facts as revealed at the trial Court in terms of the two dying declarations made by the deceased.

PW2, Maddumage Nyanasena, the husband of the deceased, testified that on the day before the alleged incident, an argument had taken place between the witness and his sister, who is the Appellant's wife. On the same day at around 11.00 p.m. that night, two police officers came to the witness's house, struck him on the back with a pole, questioned him regarding the dispute, and instructed him to come to the police station the following morning.

The following morning, before going to the police station, the witness was asleep while the deceased had gone to a nearby shop at around 6.30 a.m. to buy bread. Shortly afterwards, the witness heard the deceased screaming that someone had thrown acid at her. According to the witness, while the deceased was running towards him, she stated that the bass who worked in Appellant's house had attacked her with a pole and that the appellant had thrown acid on her.

When the witness awoke, he observed the deceased running towards him after having been attacked with acid, requesting him to pour water on her body. Thereafter the deceased was taken to the hospital by her uncle. Thereafter, after being discharged from Alpitiya Hospital, the deceased was taken by her daughter

to Makandura Hospital for further treatment. While at Makandura Hospital, the deceased requested to take a bath. With the permission of a nurse, the witness transported the deceased by three-wheeler to her daughter's nearby house for that purpose. After assisting her to bathe, the witness returned her to the hospital, where she succumbed to her injuries approximately half an hour later.

PW 9, PC Nandana Kumara Weerawardana, acting under the orders of the OIC, went to Alpitiya Hospital on 6 September 2007 at 16.10 hours to record a statement from the deceased. Before obtaining the statement, the witness inquired into the deceased's mental and physical condition to ensure that she was capable of giving a statement. At that time, the deceased was preparing to leave the hospital with her daughter. According to the statement given by the deceased, the appellant and his wife, Somalatha, who was also her sister-in-law, lived in a neighbouring house. On 28 August, an argument had taken place with them, and thereafter, the Appellant's wife went to the police station and lodged a complaint.

On the following morning, before going to the police station, she went to a nearby shop to buy bread. While returning home from the shop, the accused approached her carrying a pole and attacked her from behind. Upon being attacked, she attempted to run towards her house. At that moment, the appellant brought a light green coloured mug containing acid and threw it at her.

> ප්‍ර :- මහත්මයා ඔබට පසුව මියගිය අය ප්‍රකාශ කළ කාරණය ඇයි විසින් අත්සන් කර ඔබ වෙත ලබා දී තිබෙන ප්‍රකාශයේ කොහොම ද සටහන් වෙලා තිබෙන්නේ ඇයගේ වචන වලින් ?
>
> උ :- පසුගිය මාසේ අගෝස්තු මාසේ 28 වෙනිදා මගේ පුරුෂයයි, එයාගේ නංගි වන සෝමලතා යන අය සමඟ රණ්ඩු වුණා. ඉතිං ඒ අවස්ථාවේ මගේ මහත්තයා එයාගේ නංගිට අතින් පහරවල් දෙකක් ගැහුවා. මම ඒ රණ්ඩුව බේරුවා. ඉතිං එදා ඇය පොලිසියට ගිහින් තිබුණා. එම පැමිණිල්ලට පොලිසියෙන් අපිට එන්න කියා තිබුණා. ඉතිං එදා සවස මම පොලිසියට ගියේ නැහැ. නමුත් ඊට පසුව දා උදේ මම පොලිසියට යන්න ලැස්ති වුණේ. ඉතිං මම එදා රෑ මගේ මහත්තයක් එක්ක අපේ ගෙදර සිටියේ. අපේ ගෙදර ළඟ සුමනරත්න කියන අයගේ ගෙදර ඉදන් රතිඤ්ඤයක් පත්තු කරලා දැම්මා. ඒවත් අහගෙන අපි ගෙදර ඇතුළට වෙලා සිටියා. නිදා ගෙන අවදි වෙලා උදෙන් න්ම පොලිසි යන්න ලැස්ති වුණා. උදේ 6.00 ට විතර පොලිසි යන්න ලැස්ති වුණේ. උදෙන් ම ලැහැස්ති වෙලා මම පාන් ගෙන්න ගියා. කමලා ගේ කඩෙන් පාන්

ගෙඩියක් අරගෙන ගෙදරට එන්න එනකොට කපිලගේ ගේ හදන ගෙදර ළඟ ඉදලා බාස් පොල්ලක් අරගෙන ආවා. පාරට ඇවිත් මට පොල්ලෙන් ගැහුවා. මම පල්ලමට බහින කොට තමයි පොල්ලෙන් ගැහුවේ. ගැහුවේ පිටිපස්සෙන් ඇවිත් ගැහුවේ. මම ටග්ගලා හැරිලා බලන කොට කපිලගේ ගෙදර සිටින බාස් තමයි ගැහුවේ. ගහන කොට තොට පුළුවන් ද වණ්ඩිකම් කරන්න කියලා අහලා තමයි පොල්ලෙන් ගැහුවේ. ඒ පොලු පාර මගේ වම්පස උකුල් ඇටේ ට වැදුනා. තුවාල වුණේ නැහැ. ඒ එක්ක ම මම මගේ ගෙදර යන්න දුවන්න හදන කොටම මගේ මහත්තයාගේ නංගිගේ පුරුෂයා වන කපිල එක පාරටම ලා කොළ පාට ජෝගුවකින් ගෙනවිත් ගැහුවා ඒ ජෝගුවෙන් ගෙනත් ඇසිඩ් ගැහුවා. මම ඉඳගෙන ඉන්න කොට තමයි කපිල ගැහුවේ. එයා ගහපු ඇසිඩ් වලට මගේ මුළු ඇහම පිච්චෙනවා වගේ දැණුනා. මම ඒ වේලාවේ කෑ ගහගෙන ගෙදරට ගියා. ඒ ප්‍රහාරය වැදුනේ මගේ ඇගේ දකුණු පසට. දකුණු පස මුහුණට, ඇහට වම්අතට, හැම තැනට ම වැදුණා

After the statement was recorded, the deceased was discharged from Alpitiya Hospital and remained at home for approximately two weeks. During this period, the wounds on her body became infected. Consequently, she was taken to Makandura, where her daughter resides, and was admitted to the Sada Lanka General Hospital for further treatment.

The main argument put forward by the counsel for the appellant was whether both statements made by the deceased fall under the dying declaration under Section 32(1) of the Evidence Ordinance.

It is pertinent to refer to Section 32 (1)of the Evidence Ordinance.

> *32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the court unreasonable, are themselves relevant facts in the following cases:-*
>
> > *(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's*

death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceedings in which the cause of his death comes into question.

It is true that when she made a statement to PW 9, she was expecting to leave the hospital, which means she was not expecting death. The question is whether the statement made by the person is only applicable when that person is under the expectation of death. This was considered by E.R.S. Coomaraswamy in ***The Law of Evidence,*** Volume 1, page 464.

Differences between English Law and Our Law

The subsection differs from the English Law on this matter in the following respects:

(1) Under English Law, the declarant should have been in imminent danger of death and should himself have abandoned all hope of recovery. This question is immaterial in our law, for Section 32(1) expressly states that the statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death.

(2) In English Law, such statements are admissible only in cases of homicide, that is, murder or manslaughter. They are not admissible in cases other than homicide.

They would not be admissible, for example, in cases of robbery, or procuring abortion.

But in Sri Lanka, Section 32(1) expressly makes such statements relevant, whatever may be the nature of the proceedings in which the cause of death comes into question. The admissibility is not confined to cases of homicide. Thus, it would apply in a case of robbery, or rape, or even actionable wrong.

According to section 32(1) of the Evidence Ordinance, it is clear that the '*statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death*". In the present case, the deceased sustained acid burns covering approximately 40–50% of her body as a result of the attack. She was subsequently admitted for medical treatment; however, due to the extensive nature of the burns and the resulting complications, her condition deteriorated, ultimately leading to her death.

The statement made by the deceased to both PW9 and PW2 directly related to the acid attack perpetrated upon her, which constituted the very transaction cumulating in her death, which was done by the Appellant.

The following judgments have examined the admissibility of statements made without anticipating death, which may fall within section 32(1) of the Evidence Ordinance.

In the case of ***The King v. Asirvadan Nadar*** NLR 51, 322 at page 324, Gratiaen J, held that;

> *"It is important to remember that in this country, unlike in England, statements, untested by cross-examination, which are made by a deceased person as to the cause of his death or as to the circumstances which resulted in it are admissible in evidence whether or not they were made in expectation of death- i.e., at a time when every motive to falsehood is silenced and the mind is induced by the most powerful considerations to speak the truth "-R. v. Woodcock [168 E. R. 352.]. Under our Evidence Ordinance the sense of impending death which is believed to provide " a situation so solemn as to create a special guarantee of veracity " is not insisted upon."*

In the case of ***Ummukulathumma v Uthumalebbe***, 47 NLR, 139 at page 141, Wijeyewardena J held that,

> "In the local case, similar evidence was rejected on the ground that section 32(1) of the Evidence Ordinance is limited to statements made by a person after the event, which resulted in his death.
>
> The Privy Council has dissented from this view. Lord Atkin in delivering judgment, said: —
>
> .....
>
> > that he was setting to the place where the accused lived, and to meet a person, the wife of the accused, who lived in the accused's house appears clearly to be a statement as to some of the circumstances of the transaction which resulted in his death. The statement was rightly admitted. "

The ***King v. Marshall Appuhamy***, 51 NLR 272 at page 274, Jayetileke S.P.J held that;

> *"The transaction in this case is the one in which the deceased was murdered on September 19, 1949. The transaction cannot be restricted to the physical cause of death. If the events prior to the death can be taken into account, as indeed they can be, according to the judgment of Lord Atkin, the transaction would include the connected events which culminated in death. Whether there is a proximate relation between the commencement of the transaction and the ending thereof is a matter to be determined on the facts of each case. Here there is a clear connection between the complaint made by the deceased, the warning given by Ana Maria to the appellant, and the actual stabbing. The majority of us are of opinion that the statement made by the deceased was a statement as to some of the circumstances of the transaction which resulted in her death within the meaning of section 82 (1) and was rightly admitted in evidence. We would accordingly dismiss the appeal."*

Pakala Narayan swami v King-Emperor (1939) 1 AER 396, page number 401

"The first question with which their Lordships propose to deal is whether the statement of the widow—that on Mar. 20 the deceased had told her that he was going to Berhampur, as the accused' s wife had written and told him to go and receive payment of his dues—was admissible under C the Indian Evidence Act, 1872, s. 32(1). That section provides as follows:

> *Statements written or verbal of relevant facts made by a person who is dead ... are themselves relevant facts in the following cases (1) when the statement is made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.*
>
> *Such statements are relevant whether the person who made them was or was not at the time when they were made under expectation of death and whatever may be the nature of the proceeding in which the cause of his death comes into question.*

A variety of questions as to the effect of this section has been mooted in the Indian courts. It has been suggested that the statement must be made after the transaction has taken place, that the person making it must be at any rate near death, and that the "circumstances" can only include the acts done when and where the death was caused. Their lordships are of opinion that the natural meaning of the words used does not convey any of these limitations. The statement may be made before the cause of death has arisen, or before the deceased has any reason to expect to be killed. The circumstances must be circumstances of the transaction. General expressions indicating fear or suspicion, whether of a particular individual or otherwise, and not directly related to the occasion of the death, will not be admissible. However, statements made by the deceased that he was proceeding to the spot where he was in fact killed, or as to his reasons for

so proceeding, or what he was going to meet him, would each of them be circumstances of the transaction, and would he so weather the person was unknown, or was not the person accused. Such statement might indeed be exculpatory of the person accused. "Circumstances of the transaction" is a phrase, no doubt, that conveys some limitations. It is not as broad as the analogous use in "circumstantial evidence," which includes evidence of all relevant facts. It is, on the other hand, narrower than res gestae. Circumstances must have some proximate relation to the actual occurrence, though as, for instance, in a case of prolonged poisoning they may be related to dates at a considerable distance from the date of the actual fatal dose. It will be observed that " the circumstances " are those of the transaction which resulted in the death of the declarant. It is not necessary that there should be a known transaction other than that the death of A the declarant has ultimately been caused, for the condition of the admissibility of the evidence is that " the cause of [the declarant's] death comes into question." In the present case, the cause of the deceased's death comes into question. The transaction is one in which the deceased was murdered on Mar. 21 or Mar. 22, and his body was found in a trunk proved to be bought on behalf of the accused. The statement made by the deceased on Mar. 20 or Mar. 21—that he was setting out to the place where the accused lived, and to meet a person, the wife of the accused, who lived in the accused's house—- appears clearly to be a statement as to some of the circumstances of the transaction which resulted in his death."

In light of the above judgments, I am of the view that the Learned High Court Judge did not err in law in admitting both statements made by the deceased to PW 2 and PW 9 as admissible evidence under section 32(1) of the Evidence Ordinance.

For the above-mentioned reasons, I am disinclined to interfere with the judgment of the learned High Court dated 18.01.2024 and uphold the sentence and the conviction against the Appellant.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja J,
I AGREE

JUDGE OF THE COURT OF APPEAL