

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

**Court of Appeal No:
CA/HCC/0219/2023**

Mannapperuma Mudiyanseelage Susil
Bandara alias Gamini

**High Court of Puttalam
Case No. HC/90/2019**

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

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

COUNSEL : **Radha Kuruwitabandara for the Appellant.
Suharshi Herath, DSG for the
Respondent.**

ARGUED ON : **10/06/2026**

DECIDED ON : **31/08/2026**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General for committing the murder of Meragalpedi Durayalage Thushari Kanchana Weerasinghe which is an offence punishable under Section 296 of the Penal Code. The date of incident is 22.07.2015.

As the Appellant opted for a non-jury trial, the trial commenced before a judge and the prosecution had led thirteen witnesses and marked productions P1- P2 and closed the case. The Learned High Court Judge having been 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 opting to make a dock statement, made a lengthy statement from the dock and closed his case. Having considered the evidence presented by both parties, the Learned High Court Judge had convicted the Appellant as charged and sentenced him to death on 25.09.2023.

Being aggrieved by the aforesaid conviction and the sentence, the Appellant had preferred this appeal to this Court. The Appellant had given consent to argue in his absence. At the time of argument, he was connected via the Zoom platform from the prison.

The background of the case *albeit* briefly is as follows:

The Appellant is the husband of the deceased. After a successful marriage both lived happily and was blessed with two children. About 12 years after their marriage, the couple separated and lived separately. The male child lived with the Appellant at the Appellant's parent's house while the female child lived with the deceased. As the Appellant wanted to reunite with his wife, he sought the assistance from PW07, who was a friend of the Appellant. On the day of the incident, the Appellant and PW7 had gone in a three-wheeler driven by PW6, and had waited at a bus halt until the arrival of the deceased. When the deceased arrived at the bus halt, PW6 had talked about the Appellant's intention of reunification and they had all gotten into the three-wheeler and gone to the Appellant's parent's house for discussion. PW7 got off before they reached the Appellant's parent's house.

PW1, Irangani is the sister of the Appellant who came to her parent's house to look after her father, who was bedridden at that time. The Appellant had expressed his intention of reuniting with his wife and discussed seeking a job in Colombo for the betterment of his children. According to her, the Appellant was calm, and had showed no anger or hostility towards his wife. On a previous occasion as well, the duo had started to live in her parent's house.

The Appellant had arrived at his parent's house at about 5.15pm with the deceased. According to PW1, she had not noticed anything being carried by the Appellant. At that time, the Appellant was calm and quiet and had not shown any anger. At that time, the witness had seen the son of the Appellant making a face and she had walked towards the kitchen. Immediately, she had heard the altercation between the Appellant and the deceased and she had seen the deceased on the ground.

PW6 Karunaratne and PW7 Sunil Shantha had also observed that the Appellant was very calm and quiet when he met the deceased. Even after getting into the three-wheeler, the Appellant had spoken gently with the deceased. According to the witnesses the Appellant had not shown any anger towards the deceased.

According to PW4, Indrani, a neighbour of the Appellant, after the arrival of the three-wheeler she had heard no altercation or verbal exchange between the Appellant and the deceased. However, she had heard the deceased telling the Appellant not to disturb her and two children.

According to PW16, JMO Ajith Jayasena, the deceased had suffered only one fatal stab injury which has resulted the death, whereas the rest of the injuries are minor and surface cut injuries which also can be categorised as defensive injuries.

According to PW9, the investigating officer, he had arrested the Appellant at his partly constructed house. At the time of arrest, as the Appellant seemed to have consumed liquor, steps had been taken to hospitalise the Appellant.

The learned Counsel for the Appellant had raised following grounds appeal on behalf of the Appellant:

1. That the Learned Trial Judge has failed to consider the reliability of the main prosecution witness- PW1 and considering her as an eye witness.

2. That the Learned Trial Judge has failed to evaluate the role that eye witness PW2's testimony would have played.
3. That the Learned Trial Judge has erred in law in deciding that the prosecution case was proved beyond reasonable doubt.
4. That the Conviction and sentence are not safe to stand.

During the argument, the learned Counsel for the Appellant drew to the attention of the Court that as the evidence transpired a sudden fight happened between the Appellant and the deceased, this is an appropriate case to be considered under the 4th exception to Section 294 of the Penal Code. Elaborating further, the learned Counsel for the Appellant also drew to our attention that the evidence led by the prosecution did not reveal that the Appellant had a premeditated plan to kill his deceased wife. According to the witnesses, PW6, PW7 and PW1, the Appellant was calm, quiet, and had expressed no anger when he came with the deceased to his parent's house.

The learned Deputy Solicitor General, endorsing the submission made by the learned Counsel for the Appellant, stated that he too agrees with the learned Counsel for the Appellant that this is an appropriate case to be decided under 4th exception to Section 294 of the Penal Code.

The exception 4 to Section 294 (Murder) of the Penal Code states 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.

In this case the Learned High Court Judge had not considered whether the evidence given by the prosecution witnesses fall under the second limb of Section 297 of the Penal Code.

In the case of **Gurudeniya Lekamgedara Nishantha Bandara v. Hon. The Attorney General**, S.C. Appeal No. 62/2008, (Decided on October 12, 2011) it was held:

“A sudden fight cannot be premeditated as the word ‘sudden’ clearly means that there cannot be any such pre-arrangements. It should also be noted that the lapse of time between the initial argument and the final fight is material for an accused to come within Exception 4, since the lapse of time may grant the opportunity for an accused to premeditate and make arguments for a fight. Such a fight is not spontaneous and therefore cannot be regarded as one that could be described as sudden. If there is lapse of time between incidents prior to the final assault, it is quite clear that the heat of passion upon the quarrel would have subsided and the death on such an instance would be regarded as murder.”

In the case of **Palamura Hewage Harishchandra Kumarasinghe v. Attorney General (CA HCC 0070/2023)** it was identified that:

“Our Courts have considered that to qualify under Exception 4 to Section 294 of the Penal Code, the Accused has to establish that the incident was committed without premeditation in a sudden fight in the heat of an argument.

C. Ananda Grero, Culpable Homicide, Proof and Defences, 1988 at page 69:

“Gour in the Penal Law of India states: "Pre-meditation may be established by direct or positive Evidence or by circumstantial evidence. Evidence of pre-meditation can be furnished by former grudges or previous threats and expressions of ill-feelings; by acts of preparation to kill, such as procuring a deadly weapon or selecting a dangerous weapon in preference to one less dangerous, and by the manner in which the killing was committed. For example, repeated shots, blows or other acts of violence are sufficient evidence of meditation."

In the case of **Jayasinghe Mudiyansele Lakshman Jayasinghe v. Hon. Attorney General (CA HCC 0121/2023)** it was held:

“In the course of a sudden fight, when the passions are high, one cannot expect a person, who is so overwhelmed and involved in the incident to be rationally inflicting calculated number of injuries. Thus, causing multiple injuries is quite natural, and is to be expected. In the circumstances of this incident, the evidence does not show any form of advantage being taken by the accused or of acting in a cruel manner. It is just that he had acted so in the heat of passion.”

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 determinent 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”

In this case, the Appellant is the husband of the deceased. As the deceased had refused to stay with the Appellant, a sudden fight had erupted between the Appellant and the deceased. Given the sudden nature of the incident, as no time had lapsed between the fight and the fatal blow, it can be deduced that there was no premeditation. He had no intention to commit the offence, but due to sudden fight he had dealt one fatal stab blow on the deceased. The Appellant was 39 years old and was remanded, and was in remand for some time before he was granted bail by the High Court.

Considering all the circumstances of this case, I set aside the sentence imposed on the Appellant and substitute it with the following sentence:

I impose a term of 10 years rigorous imprisonment with a fine of Rs.10,000/. This will carry a default sentence of 06 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 25/09/2023.

Subject to the above variation in the sentence, the appeal is dismissed.

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL