

**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/0343/2025**

**High Court of Kalutara
Case No. HC/744/2013**

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

COMPLAINANT

Vs.

1. Kompagnnage Pathmasiri Fonseka
alias Piyadasa
2. Kompagnnage Rangana Premanath

ACCUSED

AND NOW BETWEEN

Kompagnage Pathmasiri Fonseka
alias Piyadasa

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

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

COUNSEL : **Neranja Jayasinghe with Randunu**
Heellage for the Appellant.
Riyaz Bary, DSG for the Respondent.

ARGUED ON : **08/06/2026**

DECIDED ON : **06/08/2026**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) with his son the 2nd Accused were indicted by the Attorney General on the following charges:

1. On or about 18th June 2010 the accused committed the murder of Abeysinghe Mudiyansele Samanatha which is an offence punishable under Section 296 read with Section 32 of the Penal Code.
2. At the same time, place and in the course of the same transaction causing grievous hurt to Abeysinghe Mudiyansele Ajantha thereby committed an offence under Section 315 read with Section 32 of the Penal Code.

As the Appellant and the 2nd Accused opted for a non-jury trial, the trial commenced before a judge and the prosecution had led three witnesses and marked production X1- X2 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 and the 2nd Accused had opted to make a dock statement and closed their case. Having considered the evidence presented by both parties, the Learned High Court Judge had convicted the Appellant under Section 297 of Penal Code on the basis of knowledge and sentenced him to 15 years rigorous imprisonment with a fine of Rs.25,000/-. The fine was subjected to default sentence of 06 months simple imprisonment.

For the second count, the Appellant was sentenced to 03 years rigorous imprisonment with a fine of Rs.10,000/- subject to a default sentence of 06 months simple imprisonment being imposed.

Additionally, a compensation of Rs.1,000,000/- was imposed with a default sentence of 02 years rigorous imprisonment payable to the two children of the deceased. Further, Rs.200,000/- was ordered to be paid to the victim PW2. This carries a default sentence of 02 years rigorous imprisonment.

The 2nd Accused was acquitted from both the charges.

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

The deceased and PW2 and PW3 are close relations as the deceased had been married to PW3 and is the brother of PW2. The 2nd Accused is the brother-in-law of PW2 as he had lived with the wife of PW2's brother who had passed away. The 2nd Accused, PW2 and the deceased were neighbours at the time of the incident.

On the day of the incident, the 2nd Accused and PW2 had consumed liquor at the premises of PW2. PW5 had also joined them later. After consuming liquor, all of them had gone to the deceased's house and had a friendly chat for a brief period of time. Afterwards, PW2 and PW5 had come to PW2's house and the 2nd Accused had gone to his house.

After some time, as the 2nd Accused had started a fight with his wife, PW2, PW3 and PW5 had gone to his house to inquire as to why he was fighting with his wife. As it was revealed that the 2nd Accused had thrown his child on a bed, PW2 had assaulted the 2nd Accused at his residence.

Hearing the commotion, the deceased had also come there but PW3 had taken the deceased and PW2 away and put them into PW2's house. The 2nd Accused had kept on yelling abusive language and he had taken a stone to attack. Hearing the commotion, the Appellant had arrived at PW2's compound with his wife and two children. When the 2nd Accused tried to go

to PW2's compound where the deceased was at that time, it was prevented by the Appellant. But the 2nd Accused had managed to enter PW2's house and he had attacked the deceased with a stone which had struck the right hand of the deceased. The deceased in return, had picked up a pole and a fight had ensued between the 2nd Accused, the deceased and PW2. At that movement, the Appellant had picked up a mamoty from PW2's compound and had attacked PW2 and the deceased. The deceased had received one fatal blow and PW2 had sustained injuries due to the attack of the Appellant with a mamoty.

According to the JMO who held the post mortem, five injuries on the deceased's body were noted. Out of five, four are abrasions. The fatal injury was on the deceased's head and categorised as a contusion which is 0.5cm in length damaging the skull bone of the deceased.

PW2 had sustained a non-grievous injury as a result of this attack.

According to the Learned Counsel for the Appellant, although the Learned High Court Judge rightly held that the incident had taken place due to a sudden fight, this has not been reflected in the sentence. Further, it was contended that the mitigation submitted on behalf of the Appellant was not take into cognisance when the Appellant was sentenced.

The Learned Deputy Solicitor General admitted that the sentence imposed in this case is excessive.

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 very correctly considered the evidence given by the prosecution witnesses and had arrived at the finding under the second limb of Section 297 of the Penal Code.

In the case of ***Gurudeniya Lekamgedara Nishantha Bandara v. Attorney General*** (S.C. Appeal No.62/2008), it was held:

“The following requisites must be satisfied:

- 1. it was a sudden fight;*
- 2. there was no premeditation;*
- 3. the act was committed in a heat of passion; and*
- 4. the assailant had not taken any undue advantage or acted in a cruel manner”*

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 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”

In this case, the Appellant is the father of the 2nd Accused who had been acquitted by the Learned High Court Judge. The Appellant had arrived at the scene after hearing the commotion. He had no intention to commit the offence, however, due to sudden fight he had dealt one blow on the deceased using the blunt side of a mamoty. The Appellant was 73 years old and was remanded for 9 months before he was granted bail before the High Court trial.

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

For the first count, I impose a term of 04 years rigorous imprisonment with a fine of Rs.10,000/-. This will carry a default sentence of 06 months simple imprisonment. I impose a compensation of Rs.300,000/- payable to the deceased's two children. In default, 01-year simple imprisonment is imposed.

For the second count, I impose a term of 01-year rigorous imprisonment with a fine of Rs.5,000/-. This will carry a default sentence of 06 months simple imprisonment. I impose a compensation of Rs.50,000/- payable to PW2, Abeysinghe Mudiyanselage Ajantha. In default, 06-months simple imprisonment is imposed.

Further, I order the sentences imposed on counts one and two to run concurrently.

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 29/08/2025.

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 Kalutara along with the original case record.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL