

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

In the matter of an Appeal in terms of
Section 331(1) of the Code of Criminal
Procedure Act No. 15 of 1979 and in
terms of the High Court of Provinces
(Special Provisions) Act No. 19 of 1990

The Democratic Socialist Republic of Sri
Lanka.

Complainant

Vs

Court of Appeal Case No:

CA/HCC/0007/2023

High Court of Gampaha

Case No: **HC/36/2005**

Kahandawala Arachchige Jagath
Pathmasiri *alias* Ambagaha Waththe
Mahathun

Accused

AND NOW BETWEEN

Kahandawala Arachchige Jagath
Pathmasiri *alias* Ambagaha Waththe
Mahathun

Accused – Appellant

Vs

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

Complainant – Respondent

Before : **P. Kumararatnam, J.**
Pradeep Hettiarachchi, J.

Counsel : Neranjan Jayasighe with Randunu Heellage and Pravinika Kularathne
for the Accused-Appellant.

: Hiranjan Peiris, ASG, PC for the State.

Argued on : 13.07.2026

Decided on : 07.08.2026

Pradeep Hettiarachchi, J

Judgment

1. This appeal arises from the judgment and sentence dated 01.07.2022 delivered by the Learned High Court Judge of Gampaha. The Accused-Appellant (hereinafter referred to as “the Appellant”) was indicted before the High Court of Gampaha for the murder of one Mawella Vithange Samantha, an offence punishable under Section 296 of the Penal Code.
2. When the charge was read out to the Appellant, he pleaded not guilty. At his election, the trial was conducted before the Learned High Court Judge sitting without a jury. Upon the conclusion of the trial, the Learned Trial Judge found the Appellant guilty as charged and convicted him accordingly. The Appellant was consequently sentenced to death.
3. It is against the said conviction and sentence that the Appellant has preferred the present appeal. The principal contention advanced on behalf of the Appellant was that the Learned Trial Judge erred in failing to consider whether the Appellant was entitled to the benefit of the exception contained in Section 294 of the Penal Code, despite there being sufficient evidence to reduce the offence from murder to culpable homicide committed in circumstances falling within that section.

4. In view of the aforesaid contention, the principal question that falls for determination is whether the evidence adduced by the prosecution is sufficient to establish that the incident occurred during a sudden fight and, consequently, whether the Appellant is entitled to the benefit of the exception contained in Section 294 of the Penal Code.
5. Indika Samarasinghe (PW1) was the first witness to testify on behalf of the prosecution. According to his evidence, he, the accused, and the deceased were all known to one another. On the day of the incident, they had attended a friend's house where an alms-giving had been organised. Thereafter, they were engaged in playing marbles. PW1 testified that, all of a sudden, he observed several persons running about in confusion. He further stated that he saw the accused remove a knife from the waist of the deceased.
6. Upon seeing the accused armed with the knife, the witness shouted, "No, no," in an attempt to stop him. However, the accused continued to advance towards the deceased while holding the knife. At that point, the witness threw a stone in an attempt to prevent the accused from reaching the deceased, but it missed the accused.
7. PW2, Roshan Kumara, was the second witness to testify on behalf of the prosecution. According to his evidence, on the day of the incident, an alms-giving had been organized at his house. Following the conclusion of the alms-giving, he and several others were playing marbles on a nearby land, where approximately 20 persons had gathered. PW1, PW3, and PW4 were also present at the scene.
8. PW2 further testified that the accused arrived at the scene and engaged in conversation with the deceased and another individual. While they were conversing, PW2 observed the accused suddenly stab the deceased in the abdomen. Upon witnessing the attack, PW2 intervened in an attempt to prevent the accused from inflicting further injuries on the deceased. During the course of his intervention, PW2 sustained a cut to his finger, which he believed had been caused by the weapon used by the accused.
9. Thereafter, the deceased fled from the scene, with the accused chasing after him. Several persons who had gathered at the scene also pursued them. However, PW2 was unable to join the pursuit owing to the injury he had sustained to his finger. While

proceeding to the hospital, PW2 observed the deceased laying on the ground near his land.

10. PW3, Maddumage Sumith, testified that, on the day of the incident, he and several others were engaged in playing marbles. According to his evidence, the people gathered at the scene suddenly began to move. Thereafter, he observed the accused chasing the deceased while armed with a knife. PW4 then inquired from the accused as to what had happened, whereupon the accused attempted to attack PW4 with the knife. At that stage, PW4 restrained the accused by holding his hand in an attempt to prevent the attack. Meanwhile, the deceased managed to flee from the scene. Thereafter, the accused and PW4 became involved in a scuffle, during which PW3, another individual, succeeded in removing the knife from the accused.
11. The next witness called on behalf of the prosecution was PW4, Upul Krishantha. According to his evidence, he and several others were playing marbles when the people gathered at the scene suddenly began to move away. Upon noticing the commotion, PW4 inquired of the accused what had occurred. The accused then suddenly lunged at PW4 with a knife, causing him to fall to the ground. Thereafter, PW3, another individual named Nandana, intervened and rescued PW4 from the attack.
12. PW9, Chaminda Senaka Pieris, testified that, on the day of the incident, he and several others were playing cricket on the road. They then heard a commotion from the location where a group of people had been playing marbles and proceeded to ascertain what had transpired. Upon arriving at the scene, PW9 observed the deceased laying on the ground. Thereafter, he accompanied PW2 to the hospital. During the journey, PW9 inquired of PW2 how he had sustained the injury, to which PW2 replied that he had injured his finger while attempting to intervene and defuse the scuffle between the accused and the deceased.

“ප්‍ර: ඔබට රණ්ඩුවක් ගැන කිව්වේ පැ. ස. 02 ද?

උ: එයත් එක්කනේ මම ඉස්පිරිනාලේ ගියේ.

ප්‍ර: ඔහු තමයි මේ රණ්ඩුවක් ගැන කිව්වේ?

උ: ඔව්.” (at vide page 314 of the Appeal Brief)

13. It is clear from the evidence adduced before the Court; the Appellant has failed to raise a defence based on a sudden fight in terms of exception 4 of Section 294 of the Penal Code. However, it is settled law that there is a duty cast upon a trial judge to consider whether there was evidence before the Court for such an exception to be considered, even if no such defence has been taken. The following authorities reflect the current legal position on this issue.

14. In the case of **King Vs. Belana Withanage Eddin 41 NLLR 345**, the Court of Criminal Appeal held:

“In a charge of murder, it is the duty of the judge to put to the jury, the alternative of finding the accused guilty of culpable homicide not amounting to murder when there is any basis for such a finding in the evidence of record, although such defence was not raised nor relied upon by the accused.”

15. In the case of **King Vs. Vidanalage Lanty 42 NLLR 317**, the Court of Criminal Appeal observed the following;

“There was evidence in this case upon which it was open to the jury to say it came within exception 4 of Section 294 of the Penal Code and that the appellant was guilty of culpable homicide not amounting to murder; however no such plea was put forward in his behalf. In the course of his address the presiding judge referred to this evidence as part of the defence story, but not as evidence upon which a lesser verdict might possible. held: “It was the duty of the presiding judge to so direct the jury that under the circumstances, the appellant was entitled to have the benefit of a lesser offence”

16. Exception 4 of Section 294 of the Penal Code reads 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 and unusual manner.

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

17. The Supreme Court of India, in its judgment of ***Bhagwan Munjaji Pawade v State of Maharashtra, AIR 1979 SC 133***, dealt with a similar situation. In that case, the deceased, who had just returned home, upon observing that his mother was engaged in a heated argument with the appellant, inquired of the appellant as to the reason for the altercation. Thereupon, the appellant attacked the deceased three times on the head with an axe, twice with the blunt side and once with the sharp edge. In the appeal, the Supreme Court held as follows;

“ ‘[F]ight’ postulates a bilateral transaction in which blows are exchanged. The deceased was unarmed. He did not cause any injury to the appellant or his companions. Furthermore, not less than three fatal injuries were inflicted by the appellant with an axe, which is a formidable weapon on the unarmed victim. Appellant, is therefore, not entitled to the benefit of Exception 4, either.”

18. Similar sentiments were expressed by the Indian Supreme Court in the judgment of ***State of Orissa vs Khageswar Naik & Others (2013) SCC 649***, in order to set aside the conviction already entered against the accused for the offence of culpable homicide not amounting to murder on the basis of a sudden fight, and in order to alter the same into a conviction for murder. The Court considered the evidence and decided to interfere with the conviction entered erroneously by the lower Court for the lesser offence on the footing that there was no ‘fight’ between the accused and the deceased, since the evidence indicated that it was only a one-sided attack. The Court stated as follows;

“[I]n the case in hand, the convicts had entered the room of the daughter of the deceased in midnight, molested her and the poor father, perhaps because of his age, could not do anything other than to abuse the convicts. He gave choicest abuses but did not fight with the convicts. Verbal abuses are not ‘fight’ as it is well settled that at least two persons are needed to fight.”

19. In **Pappu vs State of M.P. (2006) 7SCC 391**, the Supreme Court of India held:

“The help of Exception 4 can be invoked only if death is caused

- a. Without premeditation;*
- b. In a sudden fight;*
- c. Without the offenders having taken undue advantage or acted in a cruel or unusual manner; and,*
- d. The fight must have been with the person killed.*

To bring a case within Exception 4, all the ingredients mentioned in it must be found. It is to be noted that the ‘fight’ occurring in Exception to Section 300 of IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passion to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons, it is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case.”

20. In **Bandara v. The Attorney-General [2011] 2 Sri L.R. 55**, the Supreme Court has re-emphasized that an accused who seeks to avail himself of the benefit of reduced culpability on the basis of a sudden fight, in terms of Exception 4, bears the burden of satisfying the Court that the requisite conditions of that exception are fulfilled.

21. Accordingly, in the present appeal, it is incumbent upon the Appellant to establish, on a balance of probabilities, that the incident occurred during a sudden fight within the

meaning of Exception 4 of Section 294, if he is to obtain the benefit of the lesser degree of culpability contemplated therein.

22. The question whether the Appellant has sufficiently discharged their evidentiary burden before the trial court in respect of all the requisite elements can be answered only upon a careful consideration of the evidence placed before that Court.
23. Significantly, in the present appeal, the evidence adduced in the present case indicates that the Appellant acted without premeditation. The testimony of the prosecution witnesses establishes that the Appellant and the deceased were friends and were engaged in conversation immediately prior to the alleged incident. There is nothing in evidence to suggest that the Appellant arrived at the scene with a preconceived plan or prior intention to attack the deceased. Evidently, the Appellant, the deceased, PW1, and the others present at the scene were known to one another. They were playing together when the incident occurred. Furthermore, there was no evidence to suggest the existence of any prior animosity between the Appellant and the deceased. There was certainly no premeditated plan to kill the deceased, and no such motive was ever suggested at the trial. These factors, when considered cumulatively, further support the conclusion that the offence was committed during a sudden fight and without premeditation.
24. In ***King vs. Jinasekara***, 46 NLR 243, held that, “*Where the circumstances showed that the deceased received fatal injuries in the course of a sudden fight without premeditation in the heat of passion upon a sudden quarrel. It was held that the Judge should have asked the jury to say whether the case came within exception 4 of Section 294.*”
25. As stated earlier, although the Appellant did not expressly rely on the defence of sudden fight at the trial, it is nevertheless incumbent upon the Learned Trial Judge to consider the applicability of that defence where the surrounding circumstances and the evidence on record reasonably give rise to such an inference.
26. Furthermore, according to PW9, a sudden fight had erupted between the Appellant and the deceased at the material time. The evidence, when considered as a whole, suggests

that the deceased sustained the fatal injuries in the course of a sudden fight, in the heat of passion upon a sudden quarrel and without premeditation.

27. It is also apparent from the prosecution evidence that, immediately following the incident, the Appellant attempted to attack PW1, PW2, and PW4, when they intervened to rescue the deceased. As stated earlier, there is no evidence that the Appellant had any prior animosity towards any of them. On the contrary, shortly before the alleged incident, they had all gathered at a friend's house, where they consumed liquor together. Thereafter, they began playing marbles, and the alleged incident occurred at the very place where they were playing. These circumstances further indicate that the incident arose spontaneously, with the Appellant having acted while deprived of the power of self-control in the heat of the moment, rather than pursuant to a pre-conceived design.
28. In *Jamis vs. The Queen* 53 NLR 401, held that, “Where the mitigatory plea of grave and sudden provocation is taken under Exception 1 to Section 294, the accused must *inter alia* prove such provocation as is likely to destroy the self-control of an average man of the class of society to which the accused belongs.”
29. In *Gamini Silva vs. Attorney General* (1998) 3 SLR 248, held that, “Although the accused-appellant was not justified in killing the deceased, taking the facts in the instant case, he was entitled to have succeeded in the defence of grave and sudden provocation, although an interval of time had lapsed between the time of provocation and the acts that led to the killing.”
30. Similarly, in the present case, the evidence indicates that the alleged incident unfolded within a very short span of time. The sequence of events demonstrates that there was no sufficient interval for the Appellant to regain his composure or recover the power of self-control. Rather, the circumstances are consistent with the Appellant having acted in the heat of passion during a rapidly developing incident, without any opportunity for reflection.
31. Further, it is true that the deceased sustained 3 stab injuries. However, the multiplicity of injuries, by itself, does not warrant the conclusion that the Appellant acted in a cruel or unusual manner. The determination of that issue must be made in light of the

surrounding facts and circumstances of the case, including the manner in which the incident unfolded, rather than by treating the number of injuries as determinative.

32. In the course of a sudden fight or while acting under the influence of sudden emotion or passion, a person cannot reasonably be expected to exercise the same degree of calm reflection or measured judgment as would be expected in ordinary circumstances. It is therefore entirely conceivable that such a person may continue to strike the other without pausing to assess the precise extent of force being used. Accordingly, the multiplicity of injuries, by itself, is not conclusive of cruelty or unusual conduct.
33. More importantly, the JMO did not express the opinion that the injuries sustained by the deceased were inherently fatal. This aspect of the medical evidence is of considerable significance, not only in assessing the nature and consequences of the injuries sustained by the deceased, but also in determining whether the conduct of the Appellant could properly be characterized as cruel or unusual.
34. Hence, the mere fact that the deceased sustained three stab injuries should not be considered in isolation in determining whether the Appellant acted in a cruel or unusual manner. Such a determination must be made having regard to the surrounding circumstances that led to the Appellant attacking the deceased.
35. To elaborate further, the Court should not allow its assessment to be influenced solely by the number of injuries but must consider the entire factual context in which the incident occurred. Otherwise, the conclusion reached may become artificial and detached from the actual circumstances of the case rather than being founded upon a proper appreciation of the evidence.
36. Unfortunately, these material aspects of the evidence appear to have been overlooked by the Learned High Court Judge in determining the criminal liability of the Appellant for the death of the deceased.
37. If all the evidence adduced at the trial had been duly considered, it would have become plain that the case fell within Exception 4 of Section 294 of the Penal Code. There was more than sufficient evidence of a sudden fight which emanated from a sudden quarrel

between the Appellant and the deceased. There was certainly no evidence of any premeditation or pre-existing malice by the Appellant against the deceased.

38. In the circumstances, I was persuaded that the conviction of murder under Section 296 of the Penal Code could not be sustained in law and on the facts. I considered that on the facts and evidence adduced, a conviction could only be justified for a lesser offence of culpable homicide not amounting to murder under Section 297 of the Penal Code.
39. Accordingly, we set aside the conviction and sentence for murder and substituted it with a conviction for culpable homicide not amounting to murder under Section 297 of the Penal Code. After considering the mitigation plea and submissions in reply, we imposed a sentence of seven years' imprisonment with effect from the date of conviction.
40. In addition, this Court ordered the Appellant to pay a fine of Rs. 25,000.00 with a default sentence of 18 months' imprisonment.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree

Judge of the Court of Appeal