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

In the matter of an Appeal against the Judgment of the High Court of Mannar Under Section 331 of the Code of Criminal Procedure Act No. 15 of 1979

The Democratic Socialist Republic of Sri Lanka.

COMPLAINANT

CA Case No :
CA/HCC/129-130/2022

HC of Mannar Case No.
HC/MN/11/18

-Vs-

1. Alfred Sujeewan,
   Kumanayankulam,
   Andankulam
   Mannar

2. Karunadas Anton Prathap
   Kumanayankulam,
   Andankulam,
   Mannar.

ACCUSED

AND NOW BETWEEN

1. Alfred Sujeewan,
   Kumanayankulam,
   Andankulam
   Mannar

2. Karunadas Anton Prathap
Kumanayankulam,
Andankulam,
Mannar.

ACCUSED-APPELANTS

Vs.

Attorney General
Attorney General's Department,
Colombo 12.

COMPLAINT-RESPONDENT

Before: **Hon Justice B. Sasi Mahendran, J.**
Hon Justice Amal Ranaraja, J.

Counsel : Atheek Inan for 1st Accused-Appellant.
Chalaka Vidanage, M.H.E. Sandeepani for 2nd Accused-Appellant.
Azard Navavi, ASG for the Respondent.

Written : 06.10.2023 (by the 1st Accused – Appellant)
Submission On 28.04.2026 (by the Complainant - Respondent)

Argued On: 29.04.2025

Judgment On: 03.06.2026

JUDGEMENT

B. Sasi Mahendran, J.

The Accused- Appellants (hereinafter referred to as the 1st and the 2nd Appellants) were indicted before the High Court of Mannar on the charge of committing the offence of murder of one Kanagaratnam Mahendran on 31.08.2011, 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 29.06.2022, found the 1st Appellant liable under Section 53(2) of the Penal Code and ordered that he be detained for a period of 20 years in an institution established for persons below the age of 18, in lieu of the death sentence. The Learned High Court Judge further found the 2nd Appellant guilty of murder and imposed the sentence of death.

Being aggrieved by the said conviction and the sentences, Appellants sought to challenge their validity mainly on the ground of learned High Court Judge failed to adequately evaluate and give due consideration to the plea of private defence raised on their behalf.

In the instant case, it must be borne in mind that the prosecution case rests entirely on circumstantial evidence, there being no eyewitnesses to the actual incident. Accordingly, the guilt of the Appellants can be established only if the proved circumstances form a complete and unbroken chain leading irresistibly to the conclusion that the Appellants, and none other, committed the offence.

At this juncture I am mindful of the following judgments.

In ***King v. Abeywickrama***, 44 NLR 254, Soertsz J remarked thus:

> *"In order to base a conviction on circumstantial evidence the Jury must be satisfied that the evidence was consistent with the guilt of the accused and inconsistent with any reasonable hypothesis of this innocence."*

In ***King v. Appuhamy***, 46 NLR 128, Kueneman J held thus:

> *"in order to justify the inference of guilt from purely circumstantial evidence the inculpatory facts must be incompatible with the innocence of the accused and*

incapable of explanation upon any other reasonable-hypothesis the that of his guilt."

Having regard to the principles laid down in the above judicial decisions, I hold that in a case of circumstantial evidence, if an inference of guilt is to be drawn, such an inference must be the one and only irresistible and inescapable conclusion that the accused committed the offence.

The prosecution case which gave rise to the conviction is as follows,

PW1, Kanagaratnam Anandagowry, the sister of the deceased, testified that on 01.09.2011 the deceased had left the residence at approximately 9.30 p.m. after having dinner at home, and had gone to the shop where he usually slept. As he had not returned home by the following morning, she went to the shop in search of him. According to the witness, she found the front door of the shop closed. Although she called out to her brother, there was no response. She then proceeded to the rear of the shop and observed that the tin sheet used to close the rear entrance had been cut open, creating an opening. Upon entering the shop through that opening, she found the deceased lying face down on the floor. Thereafter, she had informed the incident army check post nearby

PW2, JMO Dr Mahendrakumara Senanayake, stated that he conducted the post-mortem examination on the body of Kanagaratnam Mahendran on 01.09.2011 at about 11.00 a.m. at the Kurunegala Teaching Hospital. According to the witness, the deceased had sustained no fewer than thirty-nine (39) separate injuries. These injuries were categorized as 27 sharp cut injuries, 5 stab injuries, 2 blunt force cut injuries, 3 abrasions, and 2 contusions. The witness further observed that the injuries were not randomly distributed, but were concentrated on vital and vulnerable parts of the body, including the back of the head, neck, chest, left shoulder, and left hand.

Page 60 of the translated brief,

Q: What types of injuries were found?

A: There were 39 injuries found. Of them 29 injuries were shallow cut injuries. 02 injuries were cut injuries inflicted by attacking with blunt weapons. Five (05) stab injuries. Three (03) were abrasions and two were contusions.

Q: witness, you said there were 27 injuries that were not deep cut injuries?

A: Yes.

Q : in what places or parts were those 27 shallow injuries found?

A: The injuries marked as No 2 & No 3 were found on the rare of the head. The injury No 11, 12, 13, 14, 15 & 16 were found in the upper front part of the chest and injury No 4, 6 and 7 were found in the rear left hand and injuries No 33, 34, 35, 36, 37 and 39 were found on the face and injuries No 17, 18, 19, 6, 23, 24 and 22 & 21 were found on the right of the face. There were found to be not deep-cut injuries.

Q: Witness, in what circumstances that such injuries could be inflicted?

A: Such injuries could take place when attacked with a weapon which is a cutting knife, while fighting parallel to the body.

Q: how could you say that these injuries are shallow injuries?

A: there were no injuries found in the inner tissues.

PW4, OIC Naveen Indrajith Dayananda, stated that upon receiving a telephone message regarding the incident on 01.09.2011, he proceeded to the scene together with six police officers. He further stated that on 03.09.2011, he received information from a private informant that a male child had been admitted to the Adampan Hospital on the night of 31.08.2011 with injuries to both hands and had subsequently been transferred to the Mannar Teaching Hospital for further treatment.

Thereafter, the officer proceeded to the Mannar Hospital, where he observed the 1st Appellant leaving the hospital with both hands in plaster, and the witness suspected him to be connected to the offence and arrested him. While recording the statement of the 1st Appellant together with PC 29030 Jayapriyan, the officer obtained information regarding the involvement of the 2nd Appellant and subsequently arrested him at Aandankulam. According to the statement made by the 1st Appellant, the clothes he had worn at the time of the incident had been kept under the bed in his house. Acting on his directions, the officer recovered and took into custody a light blue six-pocket trouser and a yellow-and-black T-shirt which were marked as "P-4" and "P-4 a" respectively and annexed.

From the statement made by the 2nd Appellant, information was revealed regarding the clothes worn by him at the time of the offence and the travelling bag stolen from the scene of the crime, which was subsequently recovered. The witness stated that, upon examining the bag, he found bank passbooks belonging to the deceased and his relatives. The white and grey three-quarter trouser with six pockets, allegedly worn by the 2nd Appellant at the relevant time and bearing blood stains, was marked as “P-7(a)”. The long-sleeved shirt with yellow, green, and white circles, also allegedly worn by the 2nd Appellant at the time, was marked as “P-7(b)” and produced in evidence.

During cross-examination, it was suggested to the witness that he was giving false, premeditated and pre-planned evidence regarding several important matters, which suggestions were denied by the witness. It was further suggested that, after the admission of the 1st Appellant to the Mannar Hospital, he had been kept under police surveillance for two days. However, the witness stated that no police officers had been stationed at the hospital to monitor the 1st Appellant. The witness was also confronted with the suggestion that the travelling bag allegedly recovered on the statements made by the accused persons had not, in fact, been recovered from them. This suggestion was denied.

At the conclusion of the prosecution case, the 1st Appellant opted to give evidence in his defence. He stated that on 31.08.2011, he and the 2nd Appellant had gone to the deceased's shop to purchase biscuits and soft drinks. According to him, after

the deceased opened the shop, the deceased pulled him inside, attempted to behave indecently towards him, and threatened him with a knife when he resisted. The 1st Appellant stated that a struggle ensued during which both he and the deceased had knives in their possession and that he sustained injuries. He further stated that the deceased pinned him to the ground with a knife, prompting him to call the 2nd Appellant for assistance.

According to him, he was thereafter unaware of what transpired and later observed the deceased lying near the entrance of the shop. He stated that he and the 2nd Appellant escaped through an opening at the rear of the shop and returned to their temporary residence. He further stated that he lost consciousness, was admitted to hospital, and was arrested upon his discharge on 03.09.2011. The 1st Appellant also alleged that he had been guarded and threatened by the police while in custody, denied knowledge of the manner in which his statement was recorded, and disputed the prosecution's evidence regarding the recovery of his clothes.

The 2nd Appellant, substantially corroborating the evidence of the 1st Appellant, stated that upon entering the shop through an opening in the door, he saw the deceased seated on top of the 1st Appellant and attempting to stab him with a knife. Fearing for the 1st Appellant's safety, he picked up a wooden baton and struck the deceased two or three times. According to him, the deceased then attempted to catch hold of him but fell after tripping on the steps. Thereafter, both Appellants escaped through an opening at the rear of the shop. He further stated that, upon returning home, the parents of the 1st Appellant were informed of the incident and arranged for the 1st Appellant to be admitted to hospital. The 2nd Appellant was subsequently arrested by the police on 03.09.2011 at about 10.30 a.m.

The Defence Witness, Dr Anton Cecil, testified that the 1st Appellant had been admitted to hospital on 31.08.2011 and was discharged on 03.09.2011. He further stated that the admission records indicated that the 1st Appellant had been admitted following an assault allegedly carried out by unidentified persons.

Although the prosecution case is founded entirely on circumstantial evidence and there were no eyewitnesses to the incident, it is significant that both Appellants, in their evidence, admitted their involvement in the acts that resulted in the death of the deceased.

Consequently, the central issue for determination is whether the acts committed by the Appellants were justified under the law relating to private defence. In this regard, the principal contention advanced by the learned Counsel for the Appellants is that the learned High Court Judge failed to adequately evaluate and give due consideration to the plea of private defence raised on their behalf. Accordingly, it becomes necessary to examine whether the facts and circumstances established by the evidence satisfy the legal requirements necessary to sustain a plea of private defence.

The right of private defence is a well-recognised exception under the criminal law and is embodied in Sections 89 and 90 of the Penal Code. These provisions confer upon a person the right to protect his own body, the body of another, and property against unlawful aggression. An act committed in the lawful exercise of such right does not constitute an offence, provided that the force used is necessary, reasonable, and proportionate to the danger sought to be averted. However, the right is not an unrestricted one and can be exercised only within the limits prescribed by law.

At this juncture, it is pertinent to refer to the well-established principles governing the right of private defence. Section 89 of the Penal Code provides as follows:

> *89. Nothing is an offence which is done in the exercise of the right of private defence*

However, this right is not absolute and is subject to important statutory limitations. The right of private defence can be invoked only where there exists a real and imminent threat to the person or property concerned. Even in such circumstances, the force employed must be necessary to avert the danger, reasonable in the circumstances, and strictly proportionate to the nature of the threat faced.

The law does not sanction the use of excessive force under the guise of self-defence. Where the force used exceeds what is reasonably required for protection, the plea of private defence ceases to be available and the act complained of may amount to an offence. In this regard, I am mindful of the limitations imposed by Section 92(4) of the Penal Code, which provides as follows:

> *92. (4) The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.*

It is incumbent upon the Accused to demonstrate that the force used was necessary, reasonable, and not excessive in the circumstances. In ***Ntamo and Others v Minister of Safety and Security*** [2001 (1) SA 830 (Tk) at 836], Madlanga AJP held that:

> *"Where the threatened harm can be avoided without the use of force; private defence cannot succeed."*

Further, I am mindful of the observation made by Sisira De Abrew J in the case of Thommeyahakuru Somasiri vs. Republic of Sri Lanka. (CA 112.2006) (Unreported Appellate Judgments 2008. Volume 1 at p.27,

> *"In a criminal case it is difficult for the prosecution to find direct evidence to establish the murderous intention. The murderous intention must be understood from the factors such as,* ***place of injury, the weapon used, number of injuries, gravity of the injury and the force used by the assailants****".* [emphasis added]

In the instant case, the Judicial Medical Officer, PW2, establishes that the deceased sustained as many as 39 injuries, including multiple stab wounds and injuries inflicted on vital parts of the body. The nature, number, severity, and distribution of these injuries unmistakably point to a prolonged and brutal assault rather than an act undertaken solely for the purpose of self-defence. In line with the reasoning given in the above judicial authorities. If I apply the above dictum, the injuries caused on the vital body parts of the Deceased and the force used by the Appellant, it is possible to establish that the Appellants had a murderous

intention. In other words, the medical evidence establishes that the Appellants had a murderous intention to cause the death of the Deceased.

The evidence discloses that the 1st Appellant sustained only minor injuries, which were confined to his hands. This marked disparity in the nature and extent of the injuries sustained by the deceased and the 1st Appellant is wholly inconsistent with the defence version of a mutual struggle or the lawful exercise of the right of private defence. The absence of such corresponding injuries significantly undermines the defence narrative and lends considerable support to the conclusion that the force used against the deceased was grossly disproportionate to any threat that may have existed.

It is a well-established principle that the right of private defence arises only where the use of force is necessary, and the force employed must be reasonable and proportionate to the danger apprehended. The law does not sanction the infliction of excessive harm under the cloak of self-defence. Upon a careful consideration of the evidence in its entirety, I am satisfied that the plea of private defence advanced by the appellants cannot be sustained. The injuries inflicted, the nature of the force employed, and the specific body parts targeted reveal conduct that was neither necessary nor proportionate. On the contrary, they demonstrate a clear murderous intent on the part of the appellants.

Accordingly, I find that the essential ingredients required to sustain a plea of private defence have not been established. Therefore, the defence of private defence advanced by the Appellants fails, and I hold that the learned High Court Judge was correct in rejecting that plea.

Page 313 of the brief,

> "In reality, if the accused persons had inflicted the injuries on the deceased person in order to safeguard themselves from the deceased person, there had been no reason for the accused persons to inform the police or to take action to subject the injured person for medical treatment, which is the opinion of the Court.

> When observing the failure on the part of the accused persons to inform the police with regard to the incident until the police arrested, they, based on the investigations, particularly the 1 accused covering up the incident while being admitted to the hospital, Court is of the opinion that it is an unacceptable argument put forward by the Defense that the incident had not been a premeditated one and an act that occurred during action taken for self-protection."

Furthermore, the recovery of passbooks and money pursuant to the statement of the second appellant, together with the stolen travelling bag retrieved from the scene of the crime, demonstrates his active participation in the commission of the murder of the deceased.

In those circumstances, I am not inclined to interfere with the judgment delivered by the Learned High Court Judge together with the sentencing order and dismiss the appeal.

The Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.
I AGREE

JUDGE OF THE COURT OF APPEAL