

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

In the matter of an Appeal under Section 331(1) of the Code of Criminal Procedure Act and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka against the Judgment of the High Court of Kalutara dated 28th October 2024.

The Democratic Socialist Republic of Sri Lanka.

Complainant

Vs

Court of Appeal Case No:
CA/HCC/0013-0014/2024
High Court of Polonnaruwa
Case No: **HC/0081/2009**

1. Rathnayake Mudiyansele
Thilakarathne
2. Rathnayake Mudiyansele
Wasantha Kumara

Accused

AND NOW BETWEEN

1. Rathnayake Mudiyansele
Thenakarathne
2. Rathnayake Mudiyansele
Wasantha Kumara

Accused – Appellants

Vs

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

Complainant - Respondent

Before : **P. Kumararatnam, J.**
Pradeep Hettiarachchi, J.
Counsel : Saliya Pieris, P.C., with Pasindu Thilakaratne for the Accused-
Appellants.
: Riyaz Bary, D.S.G. for the State.
Argued on : 09.06.2026
Decided on : 16.07.2026

Pradeep Hettiarachchi, J

Judgment

1. The 1st and 2nd Accused-Appellants (hereinafter referred to as “the 1st and 2nd Appellants”) were indicted before the High Court of Polonnaruwa on a charge of committing the murder of Panahettipola Mudiyanseelage Jagath Kumara Panahettipola, an offence punishable under Section 296 read with Section 32 of the Penal Code. As opted by the Appellants, the trial was conducted before the Learned High Court Judge sitting without a jury. At the conclusion of the trial, the Learned High Court Judge found both Appellants guilty of the charge of murder and, accordingly, sentenced each of them to death.

2. Being aggrieved by the said conviction and sentence, the Appellants have preferred the present appeal. At the hearing of the appeal, Learned Counsel for the Appellants informed the Court that the Appellants would confine their challenge to the sentence on the basis that the incident had occurred in the course of a sudden fight. It was accordingly contended that the Appellants could not properly be found guilty of murder but were entitled to the benefit of the exception set out in Section 294(4) of the Penal Code.
3. It was further contended that, since the deceased had not sustained any individually fatal injury but had died as a result of the cumulative effect of multiple cut injuries, the requisite murderous intention was not established.
4. At the trial before the High Court of Polonnaruwa, the prosecution called six witnesses, including the Interpreter of the High Court, to testify. For the defence, the 1st and 2nd Appellants made dock statements. In addition, the defence called four witnesses.
5. PW3, Mahinda Rathnayake, was the first witness to testify for the prosecution. According to his evidence, on the day of the incident, while he was repairing a tractor, he saw a motorcycle topple over and heard someone screaming. When he proceeded towards the direction from which the screams had come, he observed a crowd of about forty people and saw the deceased lying on the ground with injuries to his body.
6. PW3 further stated that he saw the 1st Appellant cutting the deceased with a knife while the 2nd Appellant was standing nearby. Although the 1st Appellant was armed with a knife, the 2nd Appellant was initially unarmed. However, PW3 stated that the 2nd Appellant subsequently also cut the deceased.
7. According to PW2, Prasad Kumara Rathnayake, when he first observed the incident, the deceased and the two accused were engaged in a fight. The witness testified as follows:

“ප්‍ර: නම එම ස්ථානයට ගිය කිව්වා.

උ: ඔව්.

ප්‍ර: එතොකොට ජගන් දක්නට ලැබුනද?

උ: ඔව්.

ප්‍ර: කොතනද කව්විය සිටියේ?

උ: කොලොන් ගහ ලග.

ප්‍ර: කොහමද සිටියේ?

උ: ජගන් පෙරලිලා සිටිය. 03 දෙනාම පොර බදිනවා.” (*at vide page 159 of the Appeal Brief*)

8. PW2 was the other eyewitness to the incident. He, too, testified that, when he first observed the incident, the deceased and both Appellants were engaged in a scuffle. According to him, there were approximately 60 people in the vicinity at the time.
9. PW2 further stated that the 1st Appellant was armed with a knife, whereas the 2nd Appellant was unarmed. He testified that the 1st Appellant attacked the deceased on the hand with the knife. Significantly, according to PW2, the 2nd Appellant did not assault the deceased or engage in any overt act, but remained at the scene merely as an onlooker.
10. The other evidence of significance to this appeal is the opinion of the Judicial Medical Officer who conducted the post-mortem examination of the deceased. According to her evidence, the deceased had sustained 27 cut injuries. She further opined that there had been a delay in admitting the deceased to the hospital, which resulted in excessive blood loss. In her opinion, had the deceased been admitted to the hospital promptly, there was a possibility that his life could have been saved.
11. At the conclusion of the trial, both the 1st and 2nd Appellants elected to make dock statements.
12. In his dock statement, the 1st Appellant stated that, on the day of the incident, he was travelling on a bicycle to the house of one of his friends when the deceased arrived on a motorcycle, blocked his path, and attacked him with a long knife.

13. According to the 1st Appellant, he sustained an injury to his left hand during the attack. He further stated that, in the course of the struggle, the knife slipped from the deceased's hand. Fearing for his life, he picked up the knife and waved it in self-defense, during which the knife struck and injured the deceased.
14. Thereafter, the 1st Appellant informed one Jayasekara of the incident, who subsequently took him to the hospital. He was admitted to the hospital, and after approximately three to four hours, police officers arrived, took him to the Kaduruwela Police Station, and recorded his statement.
15. Subsequently, the 1st Appellant was produced before the Magistrate and remanded. During his period of remand, he was periodically taken to the Polonnaruwa Hospital to receive treatment for the injury to his left hand.
16. In his dock statement, the 2nd Appellant explained the prior conduct of the deceased and the circumstances in which he came to know about the scuffle. According to him, on the day of the incident, upon being informed that a quarrel had taken place, he went in search of the persons involved and found a gathering of approximately 10 to 15 people.
17. The 2nd Appellant further stated that, when he went to Jayasekara's boutique, he saw the 1st Appellant being taken away in a lorry belonging to Jayatissa. Thereafter, he proceeded to the hospital, where he saw that the 1st Appellant's hand had been bandaged. On the following day, the 1st Appellant underwent surgery and was subsequently taken to the Kaduruwela Police Station. The 2nd Appellant was later taken into custody by the police.
18. The said Jayasekara, who took the 1st Appellant to the hospital, also testified for the defence. According to his evidence, while he was getting ready to visit a relative, the 1st Appellant arrived at his place with a bleeding injury to his hand. They applied ice to the injury and wrapped it with a piece of cloth. When the witness inquired as to how the injury occurred, the 1st Appellant informed him that he had been attacked by the deceased.

19. The witness further stated that, while the 1st Appellant was being taken to the hospital, he observed the 2nd Appellant following them on a motorcycle. Thereafter, the witness took the 1st Appellant to the hospital and returned, as he intended to proceed with his visit to his relative.
20. The next witness called for the defence was Mahinda Abeyrathne, the Assistant Superintendent of Prisons. According to his evidence, the 1st Appellant was remanded on 17.04.2005 under prisoner number 792. He further stated that the 1st Appellant was taken to the Polonnaruwa Hospital for treatment on 19.04.2005 and 26.04.2005.
21. The witness also explained that prisoners are generally treated at the prison hospital and are taken to outside hospitals only when their medical condition cannot be treated within the prison hospital.
22. Priyantha Bandara, the Judicial Medical Officer attached to the Polonnaruwa Hospital, was also called to testify for the defence. He stated that he was unable to locate any admission or discharge records relating to the year 2005.
23. Rev. Dandubedirukke Upananda Thero also testified for the defence. According to his evidence, he came to know about the incident and, on 16.04.2005, visited the hospital to see both the deceased and the 1st Appellant, as they were residents of the same village and were children of families associated with the temple as *dayakas*. When he arrived at the hospital, the deceased had already passed away. Thereafter, he visited the 1st Appellant, who was in Ward No. 10 under police protection. At that time, the 1st Appellant's hand had been bandaged.
24. As is evident from the testimonies of both the prosecution and the defence witnesses, the Appellants and the deceased were engaged in a scuffle at the time of the incident. The evidence further reveals that the deceased was a person of violent and aggressive disposition. It also transpired that, on a previous occasion, the deceased had attempted to assault his own sister and brother-in-law over a land dispute, and it was the 2nd Appellant who intervened to protect them. As a

consequence of that intervention, the deceased had also attempted to attack the 2nd Appellant's house.

25. The fact that the 1st Appellant also sustained injuries during the scuffle is borne out by the evidence, notwithstanding the absence of a Medico-Legal Report. The testimony of the defence witnesses sufficiently establishes that the 1st Appellant was hospitalized following the injuries he received during the incident.
26. Furthermore, the evidence of both PW2 and PW3 clearly establishes that the 1st and 2nd Appellants and the deceased were engaged in a scuffle, during which the deceased sustained the injuries in question. It is also significant to note that the Judicial Medical Officer did not opine that the injuries sustained by the deceased were necessarily fatal. On the contrary, she expressed the view that the deceased died as a result of excessive blood loss and that the delay in admitting him to the hospital materially contributed to his death.
27. The dock statement of the 1st Appellant, when considered together with the evidence of the prosecution witnesses and the witnesses called by the defence, leads to the conclusion that the incident occurred in the course of a sudden fight.
28. The evidence further establishes that the knife used by the 1st Appellant had been brought to the scene by the deceased and not by the 1st Appellant. It was the deceased who first attacked the 1st Appellant with that knife, and after it slipped from the deceased's hand during the struggle, the 1st Appellant picked it up and struck the deceased with the same weapon.
29. In the present case, the 2nd Appellant, in his dock statement, did not expressly invoke the defence available under Section 294(4) but merely denied any involvement in the alleged offence.
30. However, where the evidence adduced by the prosecution itself discloses circumstances capable of bringing the impugned act within the ambit of any of the statutory exceptions, the Court is under a duty to consider the applicability of such exceptions in its evaluation of the evidence, notwithstanding the absence of an

express plea by the accused. The applicability of an exception is to be determined on the totality of the evidence before the Court and does not depend solely upon the defence specifically raising it.

31. It is clear from the evidence adduced before the Court that the Appellants have 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.

32. 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.”

33. 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.”

34. 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 commit the first assault.”

35. 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 his mother engaged in a heated argument with the appellant, inquired of the Appellant 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.”

36. 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 that;

“[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.”

37. 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.”

38. 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.

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

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

40. The question whether the Appellants have 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.
41. It is true that the deceased sustained 27 cut injuries. However, the multiplicity of injuries, by itself, does not warrant the conclusion that the Appellants acted in a cruel or unusual manner. The determination of that issue must be made in the 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.
42. In the present case, it is evident that the deceased was the aggressor who blocked the path of the 1st Appellant while he was riding his bicycle and attacked him with a knife. Having regard to the aggressive conduct and past behaviour attributed to the deceased, it cannot reasonably be expected that the 1st Appellant, faced with such a sudden attack, would have been able to assess with precision the exact degree of force necessary to repel the attack.
43. To elaborate further, 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.
44. More importantly, the JMO did not express the opinion that the injuries sustained by the deceased were inherently fatal. On the contrary, the evidence of the JMO indicates that there was a possibility of saving the deceased's life had he been admitted to hospital without undue delay.

45. 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 Appellants could properly be characterized as cruel or unusual.
46. Hence, the mere fact that the deceased sustained 27 cut injuries should not be considered in isolation in determining whether the Appellants acted in a cruel or unusual manner. Such a determination must be made having regard to the surrounding circumstances that led to the Appellants attacking the deceased.
47. 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.
48. In the impugned judgment, the Learned Trial Judge placed substantial reliance on the testimony of PW7, who had been treated as an adverse witness by the prosecution, and arrived at the conclusion that the Appellants had proceeded to the scene pursuant to a pre-arranged plan and that the incident was therefore a premeditated attack. I am unable to subscribe to that conclusion for the following reasons.
49. Section 154 of the Evidence Ordinance confers upon the Court, in appropriate circumstances, an unfettered discretion to permit the party calling a witness to put questions to that witness which may ordinarily be put in cross-examination by the adverse party. However, such discretion must be exercised judiciously and properly, having regard to the interests of justice. It must be emphasized that when a witness is treated as a hostile or adverse witness under Section 154 of the Evidence Ordinance, it indicates that the credibility and reliability of such a witness require careful scrutiny.

50. Therefore, the evidence of such a witness must be approached with caution. In the absence of independent corroboration, it would be unsafe to base a finding solely upon the testimony of an adverse witness.
51. In a trial of this nature, the extent to which the evidence of such a witness can safely be relied upon, as well as the probative value that may properly be attached to such evidence, becomes a matter of paramount importance.
52. In evaluating such testimony, the Court must carefully consider the reliability of the evidence, the credibility and trustworthiness of the witness, the circumstances that resulted in the witness being treated under Section 154 of the Evidence Ordinance, and whether any portion of his evidence can safely be accepted notwithstanding that certain aspects of his testimony have been found to be false.
53. Two divergent views have emerged regarding the evidentiary value of the testimony of a witness who has been treated as hostile in other legal systems or who has been permitted to be cross-examined under Section 154 of our Ordinance. One view is that such evidence does not become wholly inadmissible and retains some evidentiary value, subject to careful scrutiny. The other view is that once a witness is treated as hostile, his evidence loses all probative value and cannot be relied upon either by the party calling him or by the adverse party.
54. In the ***King v N.A. Fernando 46 N.L.R. 254***, it was held that such evidence should not be disregarded in *toto*, and that the court must leave it to the jury to decide its worth. The court held:

“The fact that a witness is treated as adverse and is cross-examined as to credit does not warrant a direction to the jury that the; a n bound in law to place no reliance on his evidence. It is for the jury to examine the whole of the evidence of such witnesses so far as it affects both parties favourably or unfavourably for what, in their opinion, it is worth.”

55. A contrary view was expressed in *Dahanayake v Kannangara* (72 C.L.W. 62 at 65). T.S. Fernando J. stated that;

“If a witness was disbelieved by the trial judge, it would be wholly unreal to utilize against such party the evidence so given merely because such evidence has been produced or led on his behalf.”

56. Some of the Indian authorities cited below have expressed the view that treating the entire testimony of a hostile witness as worthless would be an erroneous approach. According to that line of authority, the Court is required to examine the evidence in its entirety and may accept such portions of the testimony as it finds to be credible while rejecting those portions that do not inspire confidence. The evidence must therefore be assessed as a whole before determining the weight, if any, that should be attached to it. In *Shridar Mahadev v Emperor A.I.R. (1935) Born. 36. In re Saibana Tippanna A.I.R. Mys 248 at 252 (1966 cr. l.j 1155)* The maxim *Falsus in uno, Folsus in omnibus* does not apply to cases like this. (*Emperor v Johanger Cama A.I.R. (1927) Born. 501*)

57. A contrary line of authority has taken the view that the evidence of a witness who has been treated as hostile or adverse is inherently unreliable and, in the absence of independent corroboration, should not be acted upon. The following cases illustrate that approach. See, *R v Harris (1927) 20 Cr. A.R. 144, R v White (1924) 17 Cr. A.R. 60. Mohobul Khan v Emperor A.I.R. (1928) Cal 690.*)

58. The Indian Supreme Court had stated that if the whole of the testimony is impugned, and in the process stands squarely and totally discredited, the judge should, as a matter of prudence, disregard it too.

59. In *Sat Paul Delhi Administration. A.I.R. (1976).S.C-294*, it was stated;

“In the light of the above principles, it will be seen that, in law, the part of the evidence of the Panch witnesses who were thoroughly cross-examined and contradicted with their inconsistent police statements by the Public Prosecutor,

could be used or availed of by the prosecution to support its case. But as a matter of prudence, on the facts of the case, it would be hazardous to allow the prosecution to do so. These witnesses contradicted substantially their previous statements and as a result of the cross-examination, their credit was substantially, if not wholly, shaken. It was therefore, not proper for the courts below to pick out a sentence or two from their evidence and use the same to support the evidence of the trap witnesses.”

60. Further, in dealing with such evidence, the Indian Supreme Court had held that while it is true that merely because a witness is declared hostile, his evidence cannot be rejected on that ground alone. It is equally well settled that once the prosecution declares a witness hostile, it clearly exhibits its intention of not relying on his evidence, and, therefore, his evidence cannot be treated as the version of the prosecution. [*Keshharam v State of Assam A.I.R. (1978) 1096*]
61. In *Koli Lakhman Bhai Chanabhai v. State of Gujarat (1999) 8 SCC 624*, it was held that the evidence of a hostile witness remains admissible and is open for a Court to rely on the dependable part thereof as found acceptable and duly corroborated by other reliable evidence available on record.
62. In *Administrator, Municipal Board, Gangapur City case 1982 Cr LJ 1399 (Raj)*, it was held that a witness, who goes against his earlier version and decides to support the accused, betraying truth and respect for oath, is not to be treated as a truthful witness.
63. In the present case, the version given by PW7 was neither supported nor corroborated by any independent evidence. Accordingly, it would be unsafe to conclude that the Appellants had pre-planned the offence solely on the basis of PW7's testimony.
64. Furthermore, the defence was not afforded an opportunity to cross-examine PW7, and consequently, there was no opportunity to test the credibility and reliability of

his testimony. It is noteworthy that the Learned High Court Judge failed to consider the probative value of PW7's evidence in its proper perspective.

65. Despite the evidence of both PW2 and PW3 being suggestive of a sudden fight, the Learned Trial Judge concluded that the Appellants had gone to the scene pursuant to a pre-planned arrangement, relying solely on the uncorroborated testimony of PW7. In my view, such an approach amounts to a clear misdirection and cannot be sustained.
66. What emerges from the testimonies of PW2 and PW3 is that the deceased and the two Appellants were involved in a scuffle. Significantly, the prosecution led no evidence as to who initiated the confrontation.
67. In his dock statement, the 1st Appellant stated that it was the deceased who first blocked his path and attacked him with a knife, causing an injury to his hand which required hospital treatment. Although no Medico-Legal Report was produced in support of that injury, the fact that the 1st Appellant had sustained an injury and was admitted to hospital was corroborated by the testimony of the defence witnesses. Viewed in its totality, the evidence lends support to the defence version that the 1st Appellant had himself sustained injuries during the incident.
68. When the evidence of PW2 and PW3 is considered together with the dock statement of the 1st Appellant and the testimony of the defence witnesses, it becomes evident that the circumstances attract the exception embodied in Section 294(4) of the Penal Code relating to a sudden fight. Accordingly, the Appellants are entitled to the benefit of that statutory exception.
69. Unfortunately, these material aspects of the evidence appear to have been overlooked by the Learned Trial Judge in determining the criminal liability of the Appellants for the death of the deceased. More importantly, the conclusion that the Appellants had acted with premeditation and pursuant to a pre-planned design was founded primarily upon the evidence of PW7. Such reliance cannot be sustained in the absence of independent corroboration, particularly in circumstances where PW7

had been treated as an adverse witness, and the defence was deprived of the opportunity to test the veracity of his testimony through cross-examination.

70. As the only evidence relied upon to establish premeditation and a pre-planned attack was the testimony of PW7, it would be unsafe to base such a serious finding solely upon that evidence, particularly in view of the circumstances under which PW7 testified and the fact that his evidence was not subjected to the scrutiny of cross-examination by the defence.

71. Where the evidence of PW2 and PW3 overwhelmingly suggests that the incident occurred in the course of a sudden fight, it would be unsafe to attach decisive weight to the testimony of PW7, particularly when PW7 had been treated as an adverse witness, thereby requiring his evidence to be approached with caution. In the absence of independent corroboration, the evidence of PW7 cannot safely form the basis for a finding of premeditation. Consequently, the conclusion that the Appellants acted with premeditation and are thereby guilty of murder cannot be sustained.

72. For the foregoing reasons, I am of the view that the Appellants are entitled to the benefit of the exception relating to a sudden fight. Consequently, the conviction of the Appellants under Section 296 of the Penal Code cannot be sustained. Accordingly, the convictions for murder and the sentences of death imposed upon the Appellants are set aside. The Appellants are, instead, convicted of culpable homicide not amounting to murder on the basis that the act was committed in the course of a sudden fight.

73. Accordingly, the convictions for murder and the sentences of death imposed on the 1st and 2nd Appellants are hereby set aside. Each Appellant is convicted of culpable homicide not amounting to murder committed in the course of a sudden fight and is sentenced to five (5) years' rigorous imprisonment. Further, this Court ordered that the said sentence shall run from the date of the conviction, i.e., 01.12.2023.

74. In addition, this Court ordered each Appellant to pay a fine of Rs. 25,000/-, and in default of payment thereof, each Appellant shall undergo one years' simple imprisonment.

Judge of the Court of Appeal

P. Kumararatnam, J

I agree,

Judge of the Court of Appeal