

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an Appeal in terms of Section 331 (3) of the Code of Criminal Procedure Act No.15 of 1979, read with Article 139 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The Democratic Socialist Republic of Sri Lanka.

Complainant

Court of Appeal Case No:

CA/ HCC/0247/25

High Court of Anuradhapura

Case No: **85/2017**

Vs

1. Dahanage Gamini (deceased)
2. Dahanagedara Ajith Polpitiya.

Accused

AND NOW BETWEEN

1. Dahanagedara Ajith Polpitiya.

Accused - Appellant

Vs

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

Complainant-Respondent

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

Counsel : Janith Perera for the Accused-Appellant.
Yuhan Abeywickrama D.S.G. for the State.

Argued on : 12.03.2026

Decided on : 11.06.2026

Pradeep Hettiarachchi, J

Judgment

1. The Accused-Appellant (hereinafter referred to as “the Appellant”) has preferred the present appeal against the conviction and sentence dated 26.06.2025 entered by the Learned High Court Judge of Anuradhapura.
2. The Appellant was the 2nd Accused in Case No. HC-85-2017 before the High Court of Anuradhapura, in which he had originally been indicted together with one Dahanage Gamini, the 1st Accused, on two counts of murder. However, prior to the commencement of the trial, the 1st Accused died. Consequently, the indictment was amended, and the trial proceeded solely against the Appellant, who had originally been the 2nd Accused in the High Court case.
3. The trial was heard by the Learned High Court Judge without a jury and, at the conclusion of the trial, the Appellant was acquitted of the charges contained in the indictment. Nevertheless, the Learned Trial Judge found the Appellant guilty of culpable homicide not amounting to murder in causing the death of Ran Banda under Section 297 of the Penal Code.

4. The findings of the Learned Trial Judge were based on Exception 4 to Section 294 of the Penal Code, namely that the death had been caused in the course of a sudden fight. Accordingly, the Appellant was sentenced to six years' rigorous imprisonment and was further ordered to pay a fine of Rs. 50,000/-, with a default sentence of one year's simple imprisonment.
5. Being aggrieved by the said conviction and sentence, the Appellant has preferred the instant appeal. The following are the grounds advanced by the Appellant.
 - a. The Learned Trial Judge failed to consider the evidence of right of private defence emanating from the prosecution case;
 - b. The Learned Trial Judge failed to consider and evaluate the prosecution case properly;
 - c. The Learned Trial Judge erred in law by his failure to consider that the prosecution has not proved its case beyond reasonable doubt;
 - d. The Learned Trial Judge failed to consider the evidence favorable for the defence; and,
 - e. The Learned Trial Judge did not evaluate the defence evidence from the correct perspective and rejected the same on the wrong premise.
6. Additionally, the Appellant argued that PW2 is not a credible witness.
7. The only eyewitness who testified at the trial was PW2, who was the 1st deceased's sister. The 1st Accused was the father of the Appellant. According to PW2, on the day of the incident, she and the 1st deceased, Sakunthala Priyadharshani, had gone together to attend the maternity clinic, as both were pregnant at the time. On their way back home, Sakunthala had an argument with the 1st Accused.
8. After returning home, the 2nd deceased, Ran Banda, came there and informed PW2 that he had received a telephone call stating that the 1st Accused was approaching with a knife. At that moment, the 1st Accused arrived at the scene and kicked PW2, causing her to fall down. Thereafter, the 1st Accused stabbed Sakunthala several times and fled the scene.

9. After the 1st deceased had been stabbed by the 1st Accused, the 2nd deceased, Ran Banda, ran to his house and returned carrying an axe. At that moment, the 2nd Accused, who is the Appellant in the present appeal, allegedly grabbed the axe from Ran Banda and attacked him with it.
10. During the testimony of PW2, the defence marked several contradictions and also highlighted certain omissions in her statement to the police. Since the Appellant has contended that PW2 is not a credible witness, it becomes necessary to consider whether the testimony of PW2 is in fact riddled with such infirmities as would render his evidence unworthy of credit.
11. It is in evidence that the deceased, Sakunthala, had an argument followed by a scuffle with the wife of the Appellant while the former was returning from the clinic. The contradiction marked as D1 relates to the distance from the culvert at which the said argument and scuffle allegedly took place.
12. Needless to say, such a contradiction does not go to the root of the matter, as the incident in question occurred well prior to the actual incident involving the stabbing and hacking of the two deceased persons.
13. The contradiction marked as D2 relates to the question of who closed the door after PW2 went inside the house. In her testimony, PW2 stated that one of her uncles had taken her inside and closed the door. However, it was suggested to PW2 during cross-examination that, in her statement to the police, she had stated that she herself closed the door.
14. This contradiction also relates to an event that occurred after the deceased Sakunthala had already been stabbed. Therefore, it is not a material contradiction that goes to the root of the case, nor does it undermine the credibility of PW2.
15. It is also pertinent to emphasize that none of these alleged contradictions or omissions were formally proved by the defence in accordance with the law.

16. The omissions highlighted by the defence were denied by PW2. Therefore, since the defence failed to call the relevant Police Officer who recorded PW2's statement in order to prove the existence of the alleged contradictions and omissions, they carry no material bearing on the credibility of PW2's evidence.
17. Due to the foregoing reasons, I see no grounds to disbelieve the testimony of PW2. It is also significant to note that the alleged incident had occurred in 2011, whereas PW2 testified before the High Court in 2023, namely 12 years after the incident. Therefore, it cannot logically be expected that PW2 would narrate each and every event relating to the crime with mathematical precision, and her evidence must be analyzed and evaluated within that context.
18. Moreover, the medical evidence adduced through the Judicial Medical Officer amply demonstrates the brutality of the attack on the deceased Sakunthala. She was in an advanced stage of pregnancy when she was brutally stabbed to death with the unborn child in her womb.
19. PW2 firmly stated that she saw the deceased, Ran Banda, being attacked by the Appellant with an axe which had been grabbed from Ran Banda. The credibility of that aspect of her evidence was not shaken during cross-examination.
20. It is significant to emphasize that the Appellant, in his testimony, admitted that he came to the scene and, upon seeing his father being pursued by Ran Banda armed with an axe, he attacked Ran Banda with a knife in order to defend his father. In other words, the Appellant's defence was that he acted in the exercise of the right of private defence.
21. It is noteworthy that the Appellant did not advance this defence during the cross-examination of PW2. It was never suggested to PW2 that the Appellant acted in order to prevent his father from being attacked by Ran Banda.
22. Therefore, the position taken up by the Appellant in his testimony appears to be an afterthought and is therefore difficult to accept.

23. The evidence of PW2 unequivocally established that it was the Appellant who attacked the deceased, Ran Banda, after grabbing the axe from him. Although the defence marked two alleged contradictions during the cross-examination of PW2 and also highlighted certain omissions, none of them were admitted by PW2, nor were they proved by calling the relevant Police Officer who recorded PW2's statement.
24. A careful examination of the testimony of PW2 reveals no inherent improbabilities or material inconsistencies that would render her evidence unworthy of credit. Accordingly, the prosecution has established beyond reasonable doubt that it was the Appellant who attacked the deceased, Ran Banda.
25. It was also contended that the Learned Trial Judge failed to consider that evidence of the right of private defence had emanated from the prosecution case itself. The evidence discloses that the Appellant pursued the deceased, Ran Banda, and when the latter fell to the ground, the Appellant attacked him with the axe that had been grabbed from the deceased.
26. If the Appellant had caused the death of the deceased, Ran Banda, in the exercise of the right of private defence, no offence would have been committed by reason of Section 89 of the Penal Code. However, if the Appellant exceeded the right of private defence, he committed an offence falling within Exception 2 to Section 294, punishable under Section 297 of the Penal Code.
27. In the present case, the evidence clearly establishes that the Appellant pursued Ran Banda and attacked him twice with a knife before the axe was grabbed from Ran Banda. The evidence of PW2 in this regard, although subjected to cross-examination, remained intact.
28. PW2 firmly stated that she witnessed the Appellant attacking Ran Banda with the axe after the latter had fallen to the ground. Once the Appellant had grabbed the axe from Ran Banda and thereby disarmed him, it is pertinent to ask whether there was any necessity to attack Ran Banda with the same axe.

29. In circumstances where the axe had already been taken from Ran Banda, and the Appellant himself was armed with a knife while the 1st Accused was also present armed with a knife, it cannot reasonably be contended that the Appellant had reasonable grounds to apprehend that death or grievous hurt would otherwise ensue.
30. It is trite law that the right to private defence cannot be used to kill the wrongdoer unless the person concerned has a reasonable cause to fear that otherwise death or grievous hurt might ensue.
31. In ***Buta Singh vs. The State of Punjab (1991) 2 SCC 612***, the court noted that a person who is apprehending death or bodily injury cannot weigh in golden scales in the spur of the moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons. In moments of excitement and disturbed mental equilibrium, it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate with the danger apprehended to him; where assault is imminent by use of force, it would be lawful to repel the force in self-defence, and the right of private defence commences as soon as the threat becomes so imminent. Such situations have to be pragmatically viewed and not with high-powered spectacles or microscopes to detect slight or even marginal overstepping. Due weightage has to be given to, and a hyper-technical approach has to be avoided in considering what happens on the spur of the moment on the spot and keeping in view normal human reaction and conduct, where self-preservation is the paramount consideration. But, if the fact situation shows that in the guise of self-preservation, what really has been done is to assault the original aggressor, even after the cause of reasonable apprehension has disappeared, the plea of right of private defence can legitimately be negative. The court dealing with the plea has to weigh the material to conclude whether the plea is acceptable. It is essentially, as noted above, a finding of fact.
32. In ***James Martin vs. State of Kerala AIR ONLINE 2003 SC 829***, held that;

“Under Section 105 of the Indian Evidence Act, 1872 (in short 'the Evidence Act'), the burden of proof is on the accused, who sets up the plea of self-defence, and, in the absence of proof, it is not possible for the Court to presume the truth

of the plea of self-defence. The Court shall presume the absence of such circumstances. It is for the accused to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution. An accused taking the plea of the right of private defence is not necessarily required to call evidence; he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden. Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the Court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record.”

33. In ***Tissera vs. Edwin (1929) 30 NLR 410***, held as follows;

“What the court has to consider is not the weapon used but the injury inflicted. The injuries inflicted here were non-grievous, and the fact that they were caused with a gun does not take away the right the accused had of causing hurt to the complainant to prevent him from taking away the nuts or till he was arrested.”

34. In ***Nickappu vs. Bastian (1907) 1 A.C.R. Supplement p. xiv***, the plea of private defence was rejected by the court on the ground that the right of self-defence is confined in each case to the requirements of the actual situation in which the accused finds himself and that he is entitled to take only such steps as are necessary for the purpose of defending his property or of securing the punishment of the offender.

35. Accordingly, the result of rejection of the plea of private defence is that the accused's aggression is without lawful excuse and therefore involved him in criminal liability.

36. In *Kirinellis (1946) 47 NLR 445*, held as follows;

“we have considered the language used by the trial judge. The jury may have understood that if the accused in fact exceeded the right of private defence, he was to be convicted of the offence of murder, and they would never have applied their minds to the question whether the accused had an intention to do more harm than was necessary for the purpose of defence. This intension is a special intention, and has not been explained to the jury.”

37. In light of the foregoing authorities and the evidence led at the trial, it is evident that the conduct of the Appellant went far beyond the limits of the right of private defence recognized by law. Although the evidence suggests that the initial confrontation may have given rise to a right of private defence, such right ceased once the Appellant had disarmed the deceased, Ran Banda, by grabbing the axe from him, while the Appellant himself remained armed with a knife and was accompanied by the 1st Accused who was also armed with a knife. In these circumstances, there could not have existed any reasonable apprehension of death or grievous hurt warranting the continued use of lethal force against the deceased.

38. The conduct of the Appellant clearly demonstrated that the Appellant acted not for the purpose of self-defence, but as the aggressor. As observed in the authorities referred to above, the right of private defence is strictly confined to what is necessary in the circumstances, and once the apprehension of danger ceases, any further aggression loses the protection of law. The evidence of PW2, which remained unshaken in cross-examination, firmly establishes that the Appellant repeatedly attacked the deceased even after he had fallen to the ground.

39. Accordingly, this court is of the view that the plea of private defence is wholly unavailable to the Appellant. Upon consideration of the foregoing analysis of law and facts, I find no merit in the arguments advanced on behalf of the Appellant. Accordingly, there is no basis to interfere with the judgment of the Learned High Court Judge, and the conviction and the sentence are affirmed.

40. It is further directed to the Registrar of the High Court to take all necessary steps to give effect to this Order.

41. Accordingly, the appeal is dismissed.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree

Judge of the Court of Appeal