

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an appeal under and in terms of Section 331 of the Code of Criminal Procedure Act No. 15 of 1979 and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No:

CA/HCC/0087/2021

High Court of Rathnapura Case No:

HC/117/2016

Complainant

Vs

D. Ariyaratne *alias* Frank Wilfred
Ariyaratne

Accused

AND NOW

D. Ariyaratne *alias* Frank Wilfred
Ariyaratne

Accused - Appellant

Vs

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

Respondent

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

Counsel : Palitha Fernando, P.C. with I.W. Gunawardena for the Accused -
Appellant.
Shanaka Wijesinghe, A.S.G., P.C. for the state.

Argued on : 05.02.2025

Decided on : 02.04.2026

Pradeep Hettiarachchi, J

Judgment

1. The Accused-Appellant (hereinafter referred to as “the Appellant”) was indicted before the High Court of Ratnapura for committing the murder of Wadivel Tholassi Amma, an offence punishable under Section 296 of the Penal Code. At the conclusion of the trial, the Learned High Court Judge found the Appellant guilty and convicted him accordingly. The Appellant was thereafter sentenced to death.
2. Being aggrieved by the said conviction and sentence, the Appellant has preferred this appeal, contending that the circumstances of the case do not warrant a conviction for murder but, at most, constitute the offence of culpable homicide not amounting to murder.
3. There is no dispute that the Accused-Appellant caused the death of the deceased. Learned Counsel for the Appellant contended that the Learned Trial Judge failed to consider the applicability of Exception 4 to Section 294 of the Penal Code, which, on the evidence, indicated that the Appellant had acted with knowledge rather than intention, and therefore ought to have convicted the Appellant under Section 297 of the Penal Code.

4. Section 294 of the Penal Code sets out the circumstances in which a homicide, though otherwise amounting to murder, may be mitigated to culpable homicide not amounting to murder. The section enumerates several exceptions which, while not absolving the offender of criminal liability, may operate to reduce the nature of the offence.
5. It is noteworthy that, in the present case, no evidence has been adduced by either the prosecution or the defence to bring the alleged act of the Appellant within any of the exceptions enumerated in Section 294 of the Penal Code. Nevertheless, the Appellant submitted that the circumstances of the present case, when considered in their entirety, do not indicate that he entertained any murderous intention at the time of the incident. In such circumstances, it was contended that the court may convict the Appellant of the offence of culpable homicide not amounting to murder on the basis that he possessed only the knowledge that his act was likely to cause death.
6. It was further submitted that, as evidenced by the medical testimony, the Appellant had used only moderate force on the deceased. This, it was contended, indicates that the Appellant did not entertain the murderous intention contemplated under Section 294 of the Penal Code and that, at most, it indicates that the Appellant had the knowledge that his act was likely to cause death when he assaulted the deceased, which would bring the act within the ambit of culpable homicide not amounting to murder rather than murder.
7. There are no eyewitnesses to the incident. The principal item of evidence relied upon by the prosecution against the Appellant is the dying declaration made by the deceased, in which she stated that she had been struck by the Appellant with a wooden stick.
8. In this regard, the medical evidence of the Judicial Medical Officer (JMO), who conducted the post-mortem examination on the deceased, assumes considerable importance. According to the JMO, there were eleven injuries observed on the body of the deceased. Out of these injuries, injury Nos. 3, 9, and 11 were categorized as grievous injuries, whereas the remaining injuries were not of a grievous nature. The JMO further testified that injury No. 3 was sufficient in the ordinary course of nature to cause death.

9. It is also evident that the deceased had remained in the hospital for five days prior to her demise. Significantly, none of the injuries were categorized as necessarily fatal. At the time of the alleged incident, the deceased was 89 years of age and was suffering from certain complications relating to her kidneys and other internal organs due to her advanced age. It is noteworthy that the cause of death, as stated in the post-mortem report, was multiple blunt force injuries.
10. Furthermore, the JMO testified that the deceased was suffering from hypertension, which, in his opinion, may also have contributed to her death. The testimony of the JMO also indicates that the force used by the Appellant in inflicting the blows on the deceased was moderate.
11. It can be observed from the circumstances of the case that the attack appears to have been committed in a moment of anger and impulse rather than pursuant to any premeditated intention to cause death. It is also significant to note that the deceased succumbed to her injuries five days after the incident due to the cumulative effects of those injuries. Her advanced age also appears to have contributed to the cause of death.
12. This circumstance further demonstrates the presence of *knowledge* rather than *intention*. In criminal law, there is a clear distinction between “Intention” and “Knowledge”. Intention denotes a deliberate desire to bring about a particular consequence, such as death. Knowledge, on the other hand, implies an awareness that a particular act is likely to cause death, even though such a consequence may not have been desired.
13. In *Jai Prakash vs. State (Delhi Administration) [(1991) 2 SCC 32]*, this distinction was extensively discussed as follows:

It is the 'Knowledge' or 'Intention' with which the act is done that makes difference, in arriving at a conclusion whether the offence is culpable homicide or murder. Therefore, it is necessary to know the meaning of these expressions as used in these provisions... ..

The 'Intention' and 'Knowledge' of the accused are subjective and invisible states of mind and their existence has to be gathered from the circumstances, such as the, weapon used, the ferocity of attack, multiplicity of injuries and all other

surrounding circumstances. The framers of the code designedly used the words 'intention' and 'knowledge' and it is accepted that the knowledge of the consequences which may result in doing an act is not the same thing as the intention that such consequences should ensue. Firstly, when an act is done by a person, it is presumed that he must have been aware that certain specified harmful consequences would or could follow. But that knowledge is bare awareness and not the same thing as intention that such consequences should ensue. As compared to 'Knowledge', 'Intention' requires something more than the mere foresight of the consequences, namely the purposeful doing of a thing to achieve a particular end."

14. In the present case, the evidence suggests that the Appellant had knowledge that his act was likely to cause death, but there is insufficient material to establish a deliberate intention to kill. Moreover, the death of the deceased was not instantaneous but occurred several days later, apparently due to complications arising from the injuries, which further indicates that the injuries, although serious, were not necessarily inflicted with the intention of causing death.

15. In these circumstances, the offence, in my view, cannot properly be brought within the ambit of Section 294 of the Penal Code but would more appropriately fall within the scope of Section 297 of the Penal Code.

16. In the case of ***The King vs. Aldon (1943) 44 NLR 575***, it was held;

“Where, in a charge of murder, the Court of criminal appeal is satisfied that there was some doubt as to whether the jury were of opinion that the accused had a murderous intention or merely the knowledge that what he did was likely to cause death,- Held, that the accused should be given the benefit of the doubt and sentenced under the latter part of section 297 of the Penal Code.”

17. In ***Kumarasinghe vs. The State 77 NLR 217***, (At pg. 218-219) it was held further, that,

“ In the instant case, in the absence of any evidence which could bring into operation any of the five Exceptions specified in s. 294 of the Penal Code, the only alternatives open to the Jury were, either to convict the prisoner of the offence of culpable homicide not amounting to murder on the ground that he had only the knowledge that his act was likely to cause death or else to convict him of murder if they were

convinced that he had acted with a murderous intention. The distinction between such “knowledge” and “murderous intention” was not brought to the notice of the Jury in the passage from the charge cited above.”

18. In ***Farook vs. Attorney General (2006) 3 Sri L. R.174***, it was held:

“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.”

19. The difference between the offence of murder and culpable homicide not amounting to murder is well explained in ***Rajwant Singh vs. State of Kerala AIR 1966 SC 1874***. Hidayatullah J considering the offences of culpable homicide not amounting to murder and murder; said

“Two offences involve the killing of a person. They are the offence for culpable homicide and the more heinous offence of murder. What distinguishes these two offences is the presence of a special mens rea which consists of four mental attitudes in the presence of any of which the lesser offence becomes greater. These four mental attitudes are stated in S. 300, I. P.C as distinguishing murder from culpable homicide. (S. 294 of our Penal Code) Unless the offence can be said to involve at least one such mental attitude it cannot be murder. The first clause says that culpable homicide is murder if the act by which death is caused is done with the intention of causing death. An intention to kill a person brings the matters so clearly within the general principle of mens rea as to cause no difficulty. Once the intention to kill is proved, the offence is murder unless one of the exceptions applies, in which case the offence is reduced to culpable homicide not amounting to murder. The Appellants here did not contemplate killing the Lt. Commander. The second clause deals with acts done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom harm is caused. The mental attitude here is twofold. There is first the intention to cause bodily harm and next there is the subjective knowledge that death will be the likely consequence of the intended injury. English Common Law made no clear distinction between intention and recklessness but in our law the foresight of the death must be present. The mental attitude is thus made of two elements (a) causing an intentional injury

*and (b) which injury the offender has the foresight to know would cause death. Here the injury or harm was intended . . . They intended that the Lt. Commander should be rendered unconscious for some time but they did not intend to do more harm than this. Can it be said that they had the subjective knowledge of the fatal consequence of the bodily harm they were causing. We think that on the facts of the case the answer cannot be in the affirmative. The third clause discards the test of subjective knowledge. It deals with acts done with the intention of causing bodily injury to a person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. In this clause the result of the intentionally caused injury must be viewed objectively. If the injury that the offender intends causing and does cause is sufficient to cause death in the ordinary way of nature the offence is murder whether the offender intended causing death or not and whether the offender had a subjective knowledge of the consequences or not. As was laid down in **Virsa Singhe vs. State of Punjab** for the application of this clause it must be first established that an injury is caused, next it must be established objectively what the nature of that injury in the ordinary course of nature is. If the injury is found to be sufficient to cause death one test is satisfied. Then it must be proved that there was an intention to inflict that very injury and not some other injury and that it was not accidental or unintentional. If this is also held against the offender the offence of murder is established” (emphasis added).*

20. In **Anda vs. State of Rajasthan AIR 1966 SC 148 at 151**, Hidayatullah J, 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 offense does not fall within murder but, within culpable homicide not amounting to murder or something less.”
21. Hence, it is pertinent to consider the Appellant’s arguments in light of the aforementioned authorities. Evidently, this was not a premeditated or calculated killing. The sequence of events reveals that the Appellant offered a glass of arrack to the deceased and, when the deceased refused it, the assault took place in a fit of anger. Thus, the incident appears to have arisen out of impulse and anger rather than from a pre-planned intention to kill.

22. Moreover, the deceased did not die on the spot or immediately after the assault. As evidenced by the testimony of the Judicial Medical Officer (JMO), the deceased received medical treatment and survived for five days following the incident. Death ultimately ensued due to the cumulative effects of the injuries sustained, coupled with her advanced age and hypertension, and not as an immediate or inevitable consequence of the assault itself. In other words, the injuries did not result in instantaneous death, which further suggests that the act of the Appellant was committed with knowledge that it was likely to cause death rather than with the intention to cause death.
23. The Learned Trial Judge, in his judgment, has concluded that the Appellant entertained a murderous intention based on the testimony of the JMO, who stated that the injuries were intentional. In my view, this amounts to a clear misdirection by the Learned Trial Judge. The mere fact that the JMO opined that the injuries were intentional does not, by itself, establish a murderous intention.
24. In determining whether the Appellant entertained a murderous intention or merely possessed knowledge, several factors must be taken into account, including the part of the body on which the injuries were inflicted and their extent, the weapon allegedly used, the number of blows delivered, whether the death was instantaneous, the duration of the assault, the circumstances under which the assault took place, and the prior and subsequent conduct of the Appellant.
25. Only then would the court be able to distinguish between knowledge and murderous intention. As emphasized in *Kumarasingha vs. Attorney General* (supra), if the evidence does not manifest the presence of any of the five exceptions specified in Section 294, yet demonstrates that the Appellant acted only with knowledge, the Appellant must be convicted of culpable homicide not amounting to murder.
26. In the instant appeal, ostensibly, there is no evidence that would bring into operation any of the exceptions stipulated in Section 294. Nevertheless, the evidence adduced does not establish that the Appellant entertained a murderous intention.
27. In such a situation, it would be unsafe to convict the Appellant of murder, as the evidence presented is not sufficiently strong to lead to the inescapable conclusion that the Appellant acted with a murderous intention.

In *Nandkumar Nandu Manilal Mudaliar vs. State of Gujarat 2025 INSC 1302* the Indian Supreme Court held that the Appellant's act did not constitute murder under Section 302 IPC but amounted to culpable homicide not amounting to murder under Section 304 Part I. The Court observed that although the stab wounds inflicted were serious and sufficient in the ordinary course of nature to cause death, the incident occurred suddenly during a quarrel, in a state of anger and without premeditation or intention to kill. The Court noted that the deceased died thirteen days later due to septicemia and that the circumstances demonstrated knowledge but not intention, thereby requiring conversion of the conviction from Section 302 to Section 304 Part I.

28. The Honourable Court observed that the attack was done in anger and impulse, not with pre-planned intent to kill. Hence, it was culpable homicide, not murder. The Hon'ble Court explained the key difference between "Intention" and "Knowledge" under criminal law: Intention means the person wanted to cause death, whereas Knowledge means the person was aware that his act could likely cause death, even if he did not desire it.
29. Referring to the case *Kesar Singh vs. State of Haryana 2008 (15) SCC 753* the Hon'ble Court held:

"If a person acts with intention to cause death or such injury likely to cause death, it falls under Section 304 Part I and, if there is no intention, but only knowledge that the act might cause death, it falls under Section 304 Part II."

30. In the present case, although the injuries are sufficient to cause death in the ordinary course of nature, the evidence does not lead to the conclusion that the Appellant acted with a murderous intention. However, the Learned Trial Judge has failed to distinguish between murderous intention and knowledge and has erroneously arrived at a finding of murder solely on the basis of the evidence of the JMO, who stated that the injuries were intentional.
31. In view of the foregoing analysis of the evidence and the applicable legal principles, I am of the opinion that the evidence adduced by the prosecution has failed to establish beyond a reasonable doubt that the Appellant had acted with the murderous intention

of causing the death of the deceased as contemplated under Section 294 of the Penal Code. In these circumstances, the conviction for murder cannot be sustained.

32. However, the evidence clearly establishes that the Appellant had the knowledge that his act was likely to cause death. Accordingly, the conviction of the Appellant under Section 296 of the Penal Code is set aside and substituted with a conviction for culpable homicide not amounting to murder under Section 297 of the Penal Code.
33. Hence, I set aside the death sentence imposed on the Appellant and substitute it with a custodial sentence of ten (10) years' rigorous imprisonment. Furthermore, I order the Appellant to pay a sum of Rs. 500,000.00 as compensation to the family of the deceased. In default of payment, the Appellant shall undergo a further term of two (2) years' imprisonment. It is further ordered that the term of imprisonment shall run from the date of conviction.
34. Accordingly, the appeal is partly allowed.

Judge of the Court of Appeal

P. Kumararatnam, J

I agree,

Judge of the Court of Appeal