

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an Appeal filed in terms of
Section 331(1) of the Code of Criminal
Procedure Act No. 15 of 1979, read with
Article 138(1) of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

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

Complainant

Vs

Peleda Arachchilage Suresh Kumara

Accused

Court of Appeal Case No:

CA/HCC/0093/2025

High Court of Embilipitiya Case

No: **HC/79/2020**

AND NOW BETWEEN

Peleda Arachchilage Suresh Kumara

Accused-Appellant

Vs

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

Complainant-Respondent

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

Counsel : Savini Udugampola for the Accused-Appellant.
Shanil Kularathne ASG for the State.

Argued on : 23.06.2026

Decided on : 03.09.2026

Pradeep Hettiarachchi, J

Judgment

1. The Accused-Appellant in the present appeal was indicted before the High Court of Embilipitiya for the murder of one Bamunusingha Arachchige Sumith Bandara, an offence punishable under Section 296 of the Penal Code.
2. The trial was conducted before the Learned Judge of the High Court sitting without a jury. At the conclusion of the trial, the Learned Trial Judge found the Appellant guilty of the charge of murder and convicted him accordingly. Consequently, the Appellant was sentenced to death.
3. Being dissatisfied with the said conviction and sentence, the Appellant has preferred the present appeal. The grounds of appeal advanced on behalf of the Appellant are as follows:
 - a) The Learned Trial Judge erred in law and facts by failing to treat PW2 as an accomplice and proceeded to rely on his uncorroborated testimony;
 - b) The Learned High Court Judge has failed to evaluate the credibility of the prosecution witnesses; and
 - c) The Learned High Court Judge has failed to consider the admitted fact that at the material time the deceased and PW1 were all under the influence of liquor.

4. Additionally, the Appellant contended that the facts of the case attracted the exception relating to a sudden fight under Section 294(4) of the Penal Code. Accordingly, it was submitted that the Appellant ought to have been convicted of the lesser offence of culpable homicide not amounting to murder rather than murder.

Consideration of the grounds of appeal:

Has the Learned Judge relied on uncorroborated testimony of an accomplice?

5. The sole eyewitness to the alleged offence in the present case was PW2 R. Wijerathne. According to his testimony, at the request of the appellant, he accompanied the deceased and the appellant on a hunting trip to the Uda Walawe Forest Reserve. After proceeding approximately one kilometer into the jungle, the deceased retrieved a gun and gunpowder from a place within the forest. On the first day, they spent the night in a cave. On the following day, they proceeded further into the jungle towards the Uda Walawe Tank. Having spotted a deer, the deceased fired a shot; however, the shot did not hit the target. Thereafter, they proceeded to a place known as “Lamputhel Gala” and prepared breakfast.
6. In the meantime, the Appellant and the deceased cleaned the gun and reloaded it. At that stage, an argument arose between the Appellant and PW2, during which the Appellant assaulted PW2. Thereafter, the deceased reprimanded the Appellant for assaulting PW2, which resulted in a verbal altercation between the deceased and the Appellant. During the course of this exchange, the Appellant threatened to shoot the deceased. The deceased then challenged the Appellant and told him to shoot if he was capable of doing so. The Appellant thereafter took the gun, aimed it at the deceased, and fired a shot, which struck the deceased on his chest.
7. Thereafter, PW2 ran away, but the Appellant pursued him and handed over the gun to him. They agreed to inform Kithsiri, from whose place the deceased had joined them for the hunting trip, that they had been raided by Wildlife officials and had escaped, but that they did not know what had happened to the deceased.
8. Subsequently, the Appellant and PW2 emerged from the forest. PW2 proceeded to his sister’s residence at Kolambageara, while the Appellant went to Kowetiya. PW2 met the brothers of the deceased at the Quarry Junction in Kolambageara, and upon their

inquiry, PW2 informed them of the incident. Thereafter, PW2 was handed over to the police by them.

9. It is to be noted that PW2 was never treated as an accomplice by the prosecution. Although PW2 was initially arrested, he was subsequently released when it became apparent that he had no involvement in the killing of the deceased.
10. In view of the first argument advanced by the appellant, the most important question that must be considered is whether PW2 Wijerathne is an accomplice or not. Who is an accomplice? Basnayake CJ in *Peiris Vs Dole* 49 NLR 142 at page 143 made the following observation.

“An accomplice is one who is a guilty associate in crime or who sustains such relation to the criminal act that he could be charged jointly with the accused. It is, admittedly, not every participation in a crime which makes a party an accomplice in it so as to require his testimony to be confirmed.”

11. Basnayake CJ in the above judgment considered the following passage of the judgment in the case of *Emperor Vs Burn* 11 Bombay Law Reports 1153, which reads as follows.

“No man ought to be treated as an accomplice on mere suspicion unless he confesses that he had a conscious hand in the crime or he makes admission of the facts showing that he had such a hand. If the evidence of a witness falls short of these tests, he is not an accomplice; and his testimony must be judged on principles applicable to ordinary witnesses.”

12. In the case of *Chetumal Rekumal v. Emperor (1934) AIR Sindh 185 at 197; 1934 SCC On Line Sind JC 52*, the question as to who could be considered an accomplice and the extent of involvement required to confer such status was considered in the following terms:

“An accomplice is one who is a guilty associate in crime or who sustains such relation to the criminal act that he could be charged jointly with the accused. It is, admittedly, not every participation in a crime which makes a party an accomplice in it so as to require his testimony to be confirmed.”

13. The *Black's Law Dictionary* defines **accomplice** as 'a person who is in any way involved with another in the commission of a crime, whether as a principal in the first or second degree or as an accessory'. [Bryan A Garner, *Black's Law Dictionary* (9th Ed, West 2009)]

14. *Davies v. DPP [1954] AC 378, [1954] UKHL J0115-1* is a landmark House of Lords case that defines who qualifies as an accomplice and establishes the legal rule requiring a judge's warning to a jury about the danger of convicting on uncorroborated accomplice evidence. The House of Lords articulated:

"...that persons who are particeps criminis in respect of the actual crime charged, whether as principals or accessories before or after the fact in felonies or persons committing, procuring or aiding in the case of misdemeanours are accomplices."

15. In the present case, the uncontradicted evidence of PW2 does not suggest any complicity on his part in the commission of the alleged offence. According to the evidence adduced at the trial, PW2's only involvement was that he accompanied the Appellant and the deceased on the hunting trip to the Uda Walawa Forest Reserve.

16. The mere fact that PW2 was detained in police custody for a short period does not, in the absence of any evidence establishing his participation in the commission of the offence, whether as a principal offender or by aiding and abetting, render him an accomplice to the crime. The evidence clearly establishes that his role was that of a witness and not that of a participant in the commission of the offence.

17. Accordingly, having considered the totality of the evidence, I am of the view that PW2 does not fall within the definition of an accomplice. The evidence falls well short of establishing the degree of involvement necessary to characterize him as an accomplice. Thus, since PW2 does not fall within the category of an accomplice, the first ground of appeal does not warrant any further consideration and must necessarily fail.

Has the Learned trial Judge failed to evaluate the credibility of the prosecution witnesses?

18. The most vital witness for the prosecution was PW2 Wijerathne, who was also the sole eyewitness to the crime. His evidence unfolded the sequence of events that led to the killing of the deceased. Although PW2 was cross-examined by the defence, the credibility of his evidence remained intact. No material contradictions or omissions that went to the root of the matter were discernible in his testimony.
19. In fact, the medical evidence and the evidence relating to the observations made by the police officers who visited the scene of the crime further corroborated the evidence of PW2. The Judicial Medical Officer, in his testimony, confirmed that the cause of death was due to gunshot injuries and adequately explained the basis upon which he arrived at that conclusion.
20. The appellant's presence at the scene of the crime was further established by the DNA Report marked as P22, which was admitted in evidence under Section 420 of the Code of Criminal Procedure Act. It is noteworthy that the item submitted for DNA analysis was a razor recovered from the scene of the crime. The DNA report unequivocally confirmed that the strands of hair found lodged in the razor originated from the appellant.
21. This item of evidence substantially undermined the credibility of the appellant's dock statement. In his unsworn statement, the Appellant claimed that although he had accompanied the deceased and PW2 into the jungle, he had stopped on the way to answer a call of nature. He further stated that, upon returning, he was unable to locate the deceased and PW2 and therefore came out of the forest alone.
22. In light of the foregoing analysis, I find no material discrepancies, inconsistencies, or infirmities in the prosecution's evidence that would justify rejecting it. The Learned High Court Judge adequately analyzed and evaluated the credibility of the prosecution evidence in its proper perspective before finding the Appellant guilty of the offence.
23. It is trite law that an appellate court is slow to interfere with a trial Judge's findings on the credibility of witnesses and the evaluation of evidence. It is only in exceptional circumstances, where the trial Judge has reached conclusions that are plainly erroneous

or unsupported by the evidence adduced at the trial, that an appellate court will interfere with such findings.

24. In ***Alwis vs. Piyasena Fernando (1993) 1 Sri. L R 119***, it was held that:

"It is well established that findings of primary facts by a trial Judge who hears and sees witnesses are not to be lightly disturbed on appeal."

25. Similar sentiments were articulated in ***Dharmasiri vs. Republic of Sri Lanka [2010] 2 Sri. L.R.241***, where it was held that:

"Credibility of a witness is mainly a matter for the trial Judge, the Court of Appeal will not lightly disturb the findings of a trial Judge with regard to the credibility of a witness unless such findings of the trial Judge are manifestly wrong."

26. In the Court of Appeal decision of ***Kumar de. Silva and 2 others vs. Attorney General [2010] 2 Sri LR 169***, Sarath de. Abrew J had held that;

"Credibility is a question of fact, not of law. The acceptance or rejection of evidence of witnesses is therefore a question of fact for the Trial Judge."

27. In ***Ariyadasa V. Attorney General [2012] 1 Sri LR 84***, the Court of Appeal held that;

"Court of Appeal will not lightly disturb a finding of a Judge with regard to the acceptance or rejection of a testimony of a witness, unless it is manifestly wrong, when the Trial Judge has taken such a decision after observing the demeanour and deportment of a witness....."

28. In the present case, the Learned trial Judge did not arrive at any erroneous conclusion that would warrant the intervention of this Court. The findings of the Learned trial Judge are fully supported by the evidence adduced at the trial, and at no stage did he reach any conclusion that was contrary to either the evidence or the applicable law. Hence, the issue of the credibility of the prosecution evidence does not warrant any further consideration by this Court, as no material misdirection of fact or law, nor any error warranting appellate intervention, is discernible in the impugned judgment.

Whether the Learned Trial Judge has failed to consider the admitted fact that at the material time the deceased and PW1 were all under the influence of liquor:

29. As admitted by PW2, the Appellant, the deceased, and PW2 had consumed illicit liquor in the morning before breakfast. Although the Appellant did not rely on intoxication as a defence at the trial, the Court must nevertheless consider whether the evidence establishes that, at the time of the shooting, the Appellant was so intoxicated that he was incapable of comprehending the nature and consequences of his actions.

30. Where the prosecution evidence does not suggest that the Appellant acted under such a degree of intoxication as to be incapable of appreciating the nature and gravity of the offence charged, the burden rests heavily on the Appellant to establish such a defence by adducing cogent and convincing evidence sufficient to satisfy the Court.

31. Section 78 of the Penal Code reads:

Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of reason of knowing the nature of the act, or that he is intoxication doing what is either wrong or contrary to law:

Provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

32. A plain reading of the above provision makes it clear that, in order to invoke the protection afforded by Section 78 of the Penal Code, the intoxicating substance must have been administered to, or introduced into, the accused without his knowledge or against his will. In the present case, the evidence clearly establishes that the Appellant, the deceased, and PW2 voluntarily consumed illicit liquor. Accordingly, even if it is assumed that the Appellant shot the deceased while under the influence of intoxication, he would not be entitled to the protection afforded by Section 78 of the Penal Code.

33. In case of “**Director of Public Prosecutions vs. Beard** (1939) 1 MLJ 255, the defendant pleaded to being drunk while committing rape and murder of a thirteen-year-old girl. The honorable court decided that intoxication could only be invoked as a defence if the

accused was unable to establish the mens rea. It implies that the involuntarily intoxication, or mens rea is not existent in involuntary intoxication.

34. It was laid down in the case of **Basdev vs State of Pepsu, 1956 AIR 488, 1956 SCR 363** that,

“In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will”.

35. **R v Lipman [1970] 1 QB 152**, the defendant, having voluntarily consumed LSD, had the illusion of descending to the centre of the earth and being attacked by snakes. In his attempt to fight off these reptiles he struck the victim (also a drug addict on an LSD “trip”) two blows on the head causing injuries to her brain and crammed some eight inches of bedsheet into her mouth causing her to die of asphyxia. He claimed to have had no knowledge of what he was doing and no intention to harm her. His defence of intoxication was rejected at his trial and he was convicted of unlawful act manslaughter. His appeal to the Court of Appeal was dismissed. Widgery LJ said:

“For the purposes of criminal responsibility we see no reason to distinguish between the effect of drugs voluntarily taken and drunkenness voluntarily induced.”

36. In **DPP v Majewski [1977] AC 142**, the defendant had been convicted of various counts alleging actual bodily harm, and assaults upon police officers. The offences had occurred after the defendant had consumed large quantities of alcohol and drugs. The trial judge had directed the jury that self-induced intoxication was not available as a defence to these basic intent crimes. The defendant was convicted and appealed unsuccessfully to the Court of Appeal and the House of Lords. Lord Elwyn-Jones LC referred to the case of *Beard* in which Lord Birkenhead LC concluded that the cases he had considered establish that drunkenness can be a defence where the accused was at the time of the offence so drunk as to be incapable of forming the specific intent necessary for such crimes. Lord Elwyn-Jones LC then said that before and

since *Beard's* case, judges had taken the view that self-induced intoxication, however gross and even if it produced a condition akin to automatism, cannot excuse crimes of basic intent.

37. In *R v Allen [1988] Crim LR 698*, the defendant had drunk wine not knowing that it was extremely strong home-made wine. He then committed sexual offences, but claimed that he was so drunk that he did not know what he was doing. The Court of Appeal held that this did not amount to involuntary intoxication. He was thus treated as if he were voluntarily intoxicated.
38. The evidence adduced at the trial does not suggest that the Appellant became intoxicated involuntarily or that the intoxicating substance was administered to him without his knowledge or against his will. On the contrary, the evidence overwhelmingly establishes that the Appellant, the deceased, and PW2 voluntarily consumed illicit liquor.
39. Furthermore, the Appellant's subsequent conduct in suggesting to PW2 that they should inform others that the deceased had been apprehended by officers of the Department of Wildlife Conservation clearly demonstrates that he remained in full possession of his mental faculties and appreciated the nature and gravity of his actions. This conduct further indicates that, at the time of the offence, the Appellant was not so intoxicated as to be incapable of forming the specific intent necessary for the commission of the offence charged.
40. Accordingly, even if the Learned trial Judge did not expressly address the issue of intoxication, that omission has occasioned no prejudice to the Appellant and has had no bearing on the correctness of the ultimate conclusion reached in the impugned judgment.
41. Accordingly, the third ground of appeal advanced on behalf of the Appellant is devoid of merit and must also fail.
42. It was also contended on behalf of the Appellant that the Learned Trial Judge erred in failing to consider the applicability of Exception 4 to Section 294 of the Penal Code, as

the evidence disclosed that the shooting may have occurred in the course of a sudden fight, having regard to the circumstances surrounding the incident.

43. The evidence clearly establishes that the Appellant first assaulted PW2 following an altercation between them concerning a bag containing their belongings. However, there is no evidence that the Appellant had any quarrel or physical confrontation with the deceased, nor is there any evidence that the deceased said or did anything capable of provoking the Appellant. On the contrary, the evidence discloses that the deceased merely admonished the Appellant, stating that it was improper for him to assault PW2. In response, the Appellant immediately aimed the firearm at the deceased, threatened to shoot him, and then discharged the weapon.

44. Accordingly, it is evident that there was no fight between the Appellant and the deceased. At the time the Appellant aimed the firearm at and threatened the deceased, there had not even been any verbal altercation between them. The principles governing the applicability of Exception 4 to Section 294 of the Penal Code have been explained in the following authorities.

45. 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.

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

47. A similar view was articulated 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,

“[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.

48. The evidence adduced at the present trial is not suggestive of a sudden fight within the meaning of Exception 4 to Section 294 of the Penal Code. Even if there had been a fight, it was between the Appellant and PW2, and certainly not between the Appellant and the deceased. Accordingly, the ground of appeal advanced on behalf of the Appellant based on the applicability of Exception 4 is devoid of merit.

49. In the circumstances, none of the grounds of appeal advanced by the Appellant persuade this Court to set aside or vary the judgment of the Learned trial Judge. The evidence was adequately analyzed and evaluated, and the conviction of the Appellant for the offence of murder is fully supported by the evidence adduced at the trial.
50. Accordingly, the conviction and sentence imposed by the Learned High Court Judge of Embilipitiya on 17.12.2024 are hereby affirmed. Consequently, the appeal stands dismissed.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree,

Judge of the Court of Appeal