

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

**In the matter of an Appeal in terms of
Section 331(1) of the Code of Criminal
Procedure Act No. 15 of 1979**

Democratic Socialist Republic of Sri
Lanka

Complainant

Court of Appeal Case No:

Vs,

CA/HCC 280/2023

High Court of Balapitiya

Case No. CRI 1561/2013

1. Opatha Withanage Sarath Kumara
2. Hikkaduwe Vithanage Ruwan Kumara
3. Kariyawasam Bovithanthri Nishantha
4. Subayahakuru Champika
5. Gallage Sujeewa Pushpakumara

Accused

And Now Between

Gallage Sujeewa Pushpakumara

Accused-Appellant

Vs,

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

Complainant-Respondent

Before: **Amal Ranaraja, J.**

Dr. Sumudu Premachandra, J.

Counsel: Asela Serasinghe for the 5th Accused-Appellant

Janaka Bandara, D.S.G. for the State.

Argued on: 15.07.2026

Judgment on: 07.09.2026

Judgment

Amal Ranaraja. J,

1. The accused-appellant (hereinafter referred to as ‘appellant’) has been indicted in the High Court of *Balapitiya* in Case No. HC/1561/13, with four others. The charges in the indictment are as follows;

01. On or about the 18th of February, 2010, within the jurisdiction of this Court, in *Marakgoda*, you, along with the now deceased second accused, were members of an unlawful assembly with the common intention of causing injury to one *Warapitiyage Piyasena*; thereby you have committed an offence punishable under Section 140 of the Penal Code of Sri Lanka.

02. At the time, place and course of action of the above first charge, a member of several members of the aforementioned unlawful assembly, caused the death of *Warapitiyage Piyasena*, and had knowledge of the possibility of this offence

occurring in achieving the aforementioned common intention; thereby at the commission of such offence, you, along with the now deceased second accused, by being members of such unlawful assembly, have committed an offence punishable under Section 296 read with Section 146 of the Penal Code.

03. At the time, place and course of action of the above first charge, you, along with the now deceased second accused, caused the death of *Warapitiyage Piyasena*, thereby you have committed an offence punishable under Section 296 read with Section 32 of the Penal Code of Sri Lanka.

2. At the conclusion of the trial, the learned High Court Judge has convicted the appellant of the first and the third charges, and sentenced him as follows;

- i. First Charge – Sentenced to 6 months rigorous imprisonment and also imposed a fine of Rs. 5000.00, with a term of 5 months simple imprisonment in default.
- ii. Third Charge - Sentenced to death.

3. The appellant, aggrieved by the conviction, disputed judgement, together with the sentencing order, has preferred the instant appeal to this Court.

4. The appellant contends that the evidence presented by the prosecution only indicates that the appellant struck the head of the deceased on the road, while the deceased was already on the ground. That this evidence does not demonstrate an assault involving the weapon allegedly in appellant's possession. Consequently, the prosecution has failed to adduce sufficient material to establish the appellant's murderous intent. Hence, the learned High Court Judge has misdirected himself in

convicting the appellant of murder, an offence punishable under Section 296 of the Penal Code of Sri Lanka (the third charge).

5. Upon reviewing the disputed judgement, it is apparent that the learned High Court Judge has convicted the appellant of murder, under the third limb of Section 294 of the Penal Code of Sri Lanka;

294. *Except in the cases hereinafter excepted, culpable homicide is murder –*

Firstly –

Secondly –

Thirdly – If it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death;”

6. On a plain reading of the third limb’s provisions, for charges under such limb, the prosecution must establish that the accused possessed a specific mental element, i.e. the intention to inflict bodily injury. This injury must inherently be of a kind that, in the ordinary course of nature, is sufficient to cause death.
7. In *Vithana Vs. The Republic* 2007 1 SLR 169, Sisira Abrew J, in interpreting the third limb to Section 294 of the Penal Code of Sri Lanka has held as follows;

“The ingredients that must be proved by the prosecution in order to prove a charge of murder under the 3rd limb of Section 294 are that:

(i) The accused inflicted a bodily injury on the victim.

(ii) The victim died as a result of the above bodily injury.

(iii) The accused had the intention to cause the bodily injury.

(iv) The above injury was sufficient to cause the death of the victim in the ordinary course of nature”

8. Dr. U.C.P. Perera, a medico-legal specialist, who has conducted the postmortem examination of the deceased, mentioned in the relevant charge, has provided the following opinion;

හිසට එල්ල වූ මොට බලයක් හේතුවෙන් මොලයේ ආවරණ තුළ දැඩි ලෙස රුධිරය ගැලීමෙන් හා මොලය තුවාලවීමෙන් මරණය සිදු වී ඇත. (vide Postmortem report marked පැ 01 in page 299 of the Brief),

Meaning the death was caused by a traumatic brain injury and subdural haemorrhage, resulting from blunt force applied to the head. Dr. Perera has testified that the blunt force applied to the head of the deceased, could have resulted from the head being grabbed and then struck against the road. He has stated that he could not exclude this specific possibility.

9. Furthermore, Dr. Perera has indicated that the brain injury and subdural haemorrhage were in the ordinary course of nature, sufficient to cause the death of the deceased.

10. In *King vs. Thajudeen* 6 NLR 16, Bonser CJ has stated,

“But it was urged that they did not intend to break the man’s rib and therefore they could not be convicted of grievous hurt. No doubt they had not in their mind at the time they struck him their baton and with their fists any definite idea that they were going to break his ribs or any particular rib; but when people cause injuries to a man, their intent

must be judged by the result of their action. They must be deemed in law to have intended what they did”.

Therefore, the Court can deem that the appellant intended to cause the injury to the head of the deceased together with the underlying injuries, set out in detail in “පි.1” which has been classified to inherently be a kind that, in the ordinary course of nature, is sufficient to cause death.

11. Considering the matters discussed above, the appellant’s contention lacks merit. Accordingly, I am not inclined to interfere with the conviction, disputed judgement, together with the sentencing order and proceed to affirm the same.

12. I dismiss the appeal but make no order regarding costs.

Appeal dismissed.

13. The Registrar of this Court is directed to send this Judgement to the High Court in *Balapitiya* for compliance.

Judge of the Court of Appeal

Dr. Sumudu Premachandra, J.

I agree

Judge of the Court of Appeal