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

In the matter of an Appeal under Section 331 of the Code of Criminal Procedure Act No. 15 of 1979, read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The Democratic Socialist Republic of Sri Lanka

Court of Appeal Case No. CA/HCC/0132/2019

High Court of Kalutara Case No. HC/831/07

Complainant

V.

Maddage Premalal

Accused

AND NOW BETWEEN

Maddage Premalal

Accused–Appellant

V.

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

Respondent

BEFORE : **K. PRIYANTHA FERNANDO, J. (P/CA)**
WICKUM A. KALUARACHCHI, J.

COUNSEL : Chathura Amarathunga for the Accused – Appellant.

Sudarshana De Silva, Deputy Solicitor General for the Respondent.

ARGUED ON : 28.09.2022

WRITTEN SUBMISSIONS
FILED ON : 11.11.2021 by the Accused – Appellant.

05.08.2022 by the Respondent.

JUDGMENT ON : 11.11.2022

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K. PRIYANTHA FERNANDO, J.(P/CA)

1. The accused appellant (hereinafter referred to as the appellant) was indicted in the High Court of *Kalutara* for one count of murder, punishable in terms of section 296 of the Penal Code. Upon conviction after trial, the appellant was sentenced to death. Being aggrieved by the above conviction and the sentence, the appellant preferred the instant appeal.

2. At the argument stage of this appeal, the learned Counsel for the appellant pursued the following two grounds of appeal.

    I. The items of evidence are not sufficient to prove the prosecution's case against the appellant beyond reasonable doubt.

II. The rejection of evidence of the accused is wrongful, and the learned Judge of the High Court has failed to correctly apply the principles governing the evaluation of a dock statement.

3. **Brief facts of the case.**
As per the evidence of the prosecution, the deceased is the father-in-law of the appellant. At the time of the incident, a divorce case that was filed by the daughter of the deceased against her husband, the appellant, was pending before Court. The wife of the appellant had been living with her parents. On the day of the incident, the deceased, the wife of the deceased (PW1), and their grandchild (PW3) who is the daughter of the accused have been watching TV in the night. The PW1 has heard someone calling "පප්පේ පප්පේ". Then the deceased has opened the door. As the deceased opened the door, the appellant has barged inside the house and has assaulted the deceased on the head with a sword. The PW1 has screamed pleading the accused not to kill her husband. Then a neighbor by the name of *Norman* (PW2) has come and helped the deceased, at which time the sword that was held by the appellant has fallen. Thereafter, the deceased was taken to the *Nagoda* hospital. From there, he was transferred to the *Colombo* general hospital where he succumbed to his injuries.

4. In his unsworn statement from the dock, the appellant has stated that, on the day of the incident he has gone to visit his children. His father-in-law (the deceased) has scolded him asking him not to come over to their house hereafter. Then, the deceased has hit him on his head with a sword. He was bleeding from his head. When he started running he has felt dizzy. Thereafter, his mother and his sister have taken him to the hospital.

5. The learned Counsel for the appellant submitted that, the accused was also injured during the incident and has been admitted to a hospital. The learned Counsel contended that, the learned trial Judge should therefore have considered the lesser offence of culpable homicide not amounting to murder on the basis of a sudden fight. The learned Counsel further submitted that, the trial Judge has failed to consider the dock statement made by the accused. The contention of the learned Counsel for the appellant was that, the appellant has also got injured during the sudden fight that happened between the deceased and the appellant and therefore the appellant is entitled to get the benefit of exception 4 to section 294 of the Penal Code.

6. The learned Deputy Solicitor General (DSG) for the respondent submitted that, there is clear evidence that there had been no sudden fight. The appellant has come and assaulted the deceased with a sword causing him fatal injuries. It is the submission of the learned DSG that, although the accused in his dock statement stated that he was injured, and the mother of the accused stated that the appellant was hospitalized as he was bleeding from his head due to the injuries, the appellant has actually not received any injuries.

7. It is incumbent upon the learned trial Judge, to consider any evidence revealed at the trial on the existence of a general or special exception, even though the defence has not taken it up at the trial.

8. In case of ***King v. Bellana Vitanage Eddin 41 NLR 345*** it was 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 on record, although such defence was not raised nor relied upon by the accused."*

9. In the instant case, the evidence led by the prosecution did not reveal any sudden fight. The appellant has previously threatened the family of the deceased. The daughter of the accused (PW3) in her evidence stated that;

> *"ප්‍ර: ආච්චිට, සීයට වෙන කිසිම කරදරයක් විත්තිකාර තාත්තා කරනවා තමුන් ඇහෙන් දැක්කේ නැහැ?"*
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> *"උ: තාත්තා අපිට එන්න කියලා පාරට වන්දියක් ඉල්ලනවාද කියලා අම්මාගේ නඩුවේදී කියලා ඇහුවා. ඔව් කිවුවා එහෙම නම් දෙන්නටම දෙයියන්ගේ පිහිටයි කියන්න කියලා කිවුව."*
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> (Page 149 of the appeal brief)

10. The appellant in his statement from the dock stated that, the deceased struck him at once with the sword causing him injury. The appellant's evidence as well as his mother's evidence was that, the appellant was bleeding from his head. However, the driver of the vehicle that transported the appellant to the hospital has not seen any injury on the appellant. This particular driver was called to give evidence by the defence. This witness has stated that, although the appellant's mother told him that the appellant was injured, he didn't see any injury on the appellant. Two days after the incident, the appellant has surrendered to the police. The police officers have also not observed any injury on the appellant. There is no medico-legal report or any other evidence submitted at the trial with regard to any injury caused to the appellant. Therefore, it is obvious that the appellant being admitted to the hospital was not because of any injury, but an afterthought upon causing fatal injuries to the victim. Further, there is no other evidence to establish or even to suggest a sudden fight for the appellant to be entitled to the benefit of exception 4 to section 294 of the Penal Code. The learned trial Judge in his judgment, has given good and sufficient reasons for the finding that, the prosecution has proved the charge of murder against the appellant beyond reasonable

doubt. Therefore, the ground of appeal no.1 should necessarily fail.

11. The learned trial Judge in his judgment, at pages 28 and 29 of the judgment (pages 362 and 363 of the appeal brief) has adequately discussed and analyzed the defence evidence and he has given sufficient reasons for rejecting the same. Therefore, as mentioned before in this judgment, the version of the appellant, that the deceased struck him on the head with the sword causing him injury cannot be accepted. Thus, the ground of appeal no.2 is devoid of merit.

12. Hence, I affirm the conviction and the sentence imposed on the appellant by the learned High Court Judge.

The appeal is dismissed.

PRESIDENT OF THE COURT OF APPEAL

WICKUM A. KALUARACHCHI, J.

I agree.

JUDGE OF THE COURT OF APPEAL