

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

In the matter of an Appeal against the Judgment dated 28th October 2022 in the Court of Appeal in case No. CA/HCC/296/2014 in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The Democratic Socialist Republic of Sri Lanka.

**Complainant**

**Vs.**

1. Balachandranprasth Satheesharan
2. Sivapalasutharan Thipaharan

**SC Appeal No: 93/2023**

Supreme Court Special LA No:  
334/2022

Court of Appeal No:  
CA/HCC/296/2014

High Court of Kandy Case No:  
167/2004

**Accused**

**AND**

Balachandranprasth  
Satheesharan

**1st Accused-Appellant**

**Vs.**

The Honourable Attorney General,  
Attorney General's Department  
Colombo 12

**Complainant- Respondent**

**AND NOW**

Balachandranprasth  
Satheesharan,  
2, Allp Sarancoes Villons  
Argenteuil  
95100  
France

**1st**

**Accused-Appellant-Appellant**

**Vs.**

The Honourable Attorney  
General,  
Attorney General's Department  
Colombo 12

**Complainant-Respondent-Res  
spondent**

**BEFORE:**

**Hon. K. Kumudini Wickremasinghe, J.**  
**Hon. Dr. Sobhitha Rajakaruna, J.**  
**Hon. M. Sampath K.B. Wijeratne, J.**

**COUNSEL:**

Thilak Marapana PC with Shanaka  
Ranasinghe PC and Niroshan  
Mihindukulasuriya instructed by  
Sandamali Peiris for the 1st  
Accused-Appellent-Appellant

Anoopa De Silva DSG instructed by Mihiri  
Wickremenayake for the  
Complainant-Respondent-Respondent.

WRITTEN SUBMISSIONS: By the on 1st  
Accused-Appellant-Appellant 18.08.2023  
and 19.06.2025.

By the  
Complainant-Respondent-Respondent on  
18.01.2024 and 10.04.2026.

ARGUED ON: 06.03.2025

DECIDED ON: 17.03.2026

**K. KUMUDINI WICKREMASINGHE, J.**

This is an appeal from a judgment of the Court of Appeal, dated 28th October 2022 which upheld the conviction and sentence of the High Court of Kandy, in case bearing No: HC 167/2004 dated 04th July 2014.

The 1st-Accused-Appellant-Appellant along with the 2nd Accused (hereinafter referred to as the “Appellant” and “2nd Accused”) were indicted in the High court of Kandy for having committed the following offences:

**Count: 01**

That on or about the 06th of October 1997 at Peradeniya, the Petitioner along with the 2nd Accused and persons unknown to the Prosecution were members of an Unlawful Assembly with the Common Object of causing hurt to Selva Vinayage Praga Varapragash and thereby committed an offence punishable in terms of section 140 of the Penal Code;

**Count: 02**

That in the course of the same time, place and transaction whilst being a member of the said Unlawful Assembly Abducted Selva Vinayage Praga Varapragash in order to cause Grievous Hurt or in order to cause Hurt to Selva Vinayage Praga Varapragash and thereby committed an offence punishable in terms of Section 146 read with Section 358 of the Penal Code:

**Count: 03**

That in the course of the same time, place and transaction whilst being a member of the said Unlawful Assembly committed the Murder of Selva Vinayage Praga Varapragash and thereby committed an offence punishable in terms of Section 146 read with Section 296 of the Penal Code.

**Count: 04**

That in the course of the same time, place and transaction the Petitioner along with the 2nd Accused and persons unknown to the Prosecution Abducted Selva Vinayage Praga Varapragash to cause injuries and thereby committed an offence punishable in terms of section 32 read with Section 358 of the Penal code.

**Count: 05**

That in the course of the same time, place and transaction the Petitioner along with the 2nd Accused and persons unknown to the Prosecution committed the offence of Murder of Selva Vinayage Praga Varapragash and thereby committed an offence punishable in terms of section 32 read with Section 296 of the Penal code.

On 04th April 2008, the 2nd Accused indicated his willingness to plead guilty to Counts 4 and 5, whereupon the Prosecution moved to

withdraw the remaining counts on the indictment. The 2nd Accused thereupon pleaded guilty to Count 4, namely the charge of abduction. He further pleaded guilty to a lesser offence in respect of the homicide charge, admitting culpable homicide not amounting to murder, punishable under section 297 of the Penal Code. The Prosecution accepted the plea to the lesser offence on the basis that the requisite element established was one of knowledge rather than intention.

Upon acceptance of the pleas, the learned High Court Judge imposed a sum of Rs. 1,500/- as State costs in respect of Count 4 and a further Rs. 1,500/- as State costs in respect of Count 5. The Court additionally directed the 2nd Accused to enter into a recognizance in the sum of Rs. 50,000/- with two sureties, conditioned upon good behaviour. A further order was made directing the payment of Rs. 100,000/- to PW1, the father of the deceased, with a default sentence of one year simple imprisonment.

Subsequently, following an inquiry under section 241, the trial proceeded in absentia of the Appellant. At the conclusion of the trial so conducted, the learned High Court Judge found the Appellant guilty and imposed a sentence of ten years' rigorous imprisonment in respect of Count 4 and the sentence of death in respect of Count 5.

In his Petition, the Appellant averred that in 1996 he was selected to the University of Peradeniya to pursue a BSc in Engineering and had furnished the aforesaid Jaffna address at the time of enrolment. During his undergraduate studies he had resided at No. 118/1, Kuruduwatta Road, Angunawala, Peradeniya.

He stated that in 1997, upon the admission of a new batch of students, ragging was customarily practised by senior students upon first-year undergraduates. He admitted participation in such ragging

and acknowledged that he, together with several batchmates, had required the deceased, Selva Vinayage Praga Varapragash, to perform “Thoppu Karanam,” an exercise involving squatting whilst holding one’s ears. He maintained that he had no intention whatsoever of causing injury and that the deceased had not complained of any physical discomfort beyond signs of fatigue. He vehemently denied that the deceased had fainted. According to him, it had been customary to treat junior students after ragging, and in this instance refreshments had been provided and he himself had escorted the deceased to a nearby bus stand. He contended that there had been neither intention nor knowledge on his part that such acts would result in death. He further described “Thoppu Karanam” as a ritual practised in Hindu temples in repetitive numbers such as 18, 108, or 1008.

The Appellant stated that a university inquiry had been initiated upon a complaint made by the deceased’s father, a medical practitioner, alleging that his son had fallen ill consequent to ragging. Statements had been recorded from the Appellant and others, they had been warned, and permitted to continue their studies. He asserted that he had believed the matter to have concluded and that he had been unaware of the death of Varapragash until many years later.

He further averred that in October 1997 he had travelled to his native village in the Northern Province to procure urgent medication for a relative who had suffered a heart attack. During this period, military operations and subsequent hostilities had resulted in the LTTE assuming control of the area, thereby preventing his return to Peradeniya. He stated that he had been compelled under threat to assist the LTTE and had effectively remained confined in the Northern Province without communication with the South. Following the

reassertion of control by the Sri Lankan armed forces, he had left the country in 2001 to pursue higher studies. He maintained that he had no knowledge of the deceased's death, of any criminal proceedings, or that he had been wanted in connection therewith until he read a newspaper report dated 5th July 2014.

The Appellant stated that he thereafter learned that a non-summary inquiry had been instituted in the Magistrate's Court of Kandy (Case No. NS 63496/97) against him and seven others on charges including unlawful assembly, abduction, and murder. At the conclusion of that inquiry, he, the 2nd and 6th Accused had been committed to stand trial in the High Court, whilst the remaining accused had been discharged. An indictment had subsequently been preferred in High Court Case No. HC 167/2007 containing charges of unlawful assembly (section 140), abduction (section 146 read with section 358), and murder (section 146 read with section 296 and section 32 read with section 296 of the Penal Code).

He stated that the 2nd Accused had appeared and been enlarged on bail, whilst it had been recorded that the Appellant had left the given address and the prosecution had moved to proceed in terms of section 241 of the Criminal Procedure Code. The Appellant's trial had proceeded in absentia under section 241(a), after evidence was led by police officers and eight prosecution witnesses, with certain depositions marked but, as alleged, not formally proved or certified.

At the conclusion of the trial, by judgment dated 4th July 2014, the learned High Court Judge had found the Appellant guilty of abduction under section 358 and imposed a sentence of ten years' rigorous imprisonment, and further found him guilty of murder under section 296 and imposed the sentence of death.

The Appellant asserted that in his statement to university authorities dated 15th October 1997 he had clearly indicated his permanent address at KKS Road, Jaffna, and that no attempt had been made by the police to locate him there. He contended that had such steps been taken he would have become aware of the proceedings and appeared to defend himself or retained counsel. He maintained that the conduct of the trial in his absence, without notice and without opportunity to cross-examine witnesses or challenge medical evidence, had occasioned grave prejudice.

He further stated that upon learning of the conviction he had instructed counsel to lodge an appeal. Although the High Court had initially refused to accept the Petition of Appeal, the Court of Appeal, by order dated 21st June 2016 in CA PHC APN 97/2014, had directed that the petition be accepted and necessary steps taken. The appeal, thereafter numbered CA 296/14, had been argued in August 2022 and dismissed by judgment dated 28th October 2022.

Being aggrieved by the said judgment of the Court of Appeal, the Appellant had preferred this application to the Supreme Court seeking special leave to appeal to quash and set aside both the judgment of the Court of Appeal dated 28th October 2022 and the judgment of the High Court of Kandy dated 4th July 2014, to acquit him of the charges or, in the alternative, to order a retrial.

This Court by Order dated 22nd June 2023 granted Leave to Appeal on the questions of law stated in paragraph 23 (d) and (e) of the Petition dated 08th December 2022, as set out below.

**1. Did their Lordships of the Court of Appeal misdirect themselves by failing to consider that the Learned High Court Judge failed to consider whether the Accused knew that he**

**caused an injury to the deceased likely to cause his death or whether the act committed by the Accused was sufficient in the ordinary course of nature to cause death of the deceased.**

**2. Did their Lordships of the Court of Appeal err in law when they decided that the act committed by the Petitioner was so imminently dangerous and was likely to cause death and thereby find him guilty of murder.**

My analysis hereafter will be confined to examining the aforesaid questions of law based on which leave was granted.

Both the aforesaid questions of law were intrinsically interconnected, inasmuch as they pertained to the proper construction, analysis, and application of the fourth limb of section 294 of the Penal Code. Each question raised the issue whether the requisite degree of knowledge contemplated under that limb, namely, that the act was so imminently dangerous that it must, in all probability, cause death or such bodily injury as was likely to cause death, had been correctly identified and judicially evaluated. In the circumstances, as both questions turned upon the same statutory ingredients and the legal threshold governing the distinction between murder and culpable homicide not amounting to murder, they were considered together for the purposes of clarity, coherence, and to obviate unnecessary repetition in the analysis.

The Appellant had contended that the learned High Court Judge, although concluding that the prosecution had proved the offence of murder beyond reasonable doubt, had failed to properly address the essential ingredients required under the fourth limb of section 294 of the Penal Code. It was submitted that, in order to sustain a conviction under that limb, the prosecution was required to establish beyond reasonable doubt that the accused committed an act knowing it to be

so imminently dangerous that it must, in all probability, cause death or such bodily injury as was likely to cause death, and that such act was committed without any justification for incurring that risk. The Appellant had argued that this elevated threshold of knowledge, distinguished from mere likelihood, had not been satisfied on the evidence. He had further submitted that the learned High Court Judge had failed to consider whether, in the circumstances, the acts attributed to him more properly fell within section 293 of the Penal Code, particularly in light of the fact that the 2nd Accused had pleaded guilty to culpable homicide not amounting to murder on the basis of knowledge, which plea had been accepted by the Attorney General and the High Court.

The Appellant had relied on the principles enunciated in ***Somapala v The Queen* 72 NLR 121** and ***Jinadasa v Attorney General* 1984 02 SLR 234**, to contend that the distinction between culpable homicide and murder, particularly under the fourth limb of section 294, lay in the degree and quality of knowledge attributable to the accused at the time of the act. He submitted that the Court of Appeal, in affirming the conviction, had erred in law by imputing knowledge to him merely on the basis of the fatal consequence that ensued, without rigorously examining whether, at the time of the alleged acts, he possessed the requisite awareness that the conduct was so imminently dangerous that it must in all probability result in death. It had been urged that the Court of Appeal failed to consider whether the evidence established, at its highest, only knowledge of a likelihood of death sufficient to constitute culpable homicide, rather than the heightened imminence and probability required for murder.

In advancing this submission, the Appellant had drawn support from the comparative exposition in ***Dr. Hari Singh Gour's Penal Law of***

**India**, analysing the distinction between section 299 and section 300 of the Indian Penal Code, provisions corresponding to sections 293 and 294 of the Penal Code, emphasising that while both provisions concerned dangerous acts likely to cause death, the fourth clause of section 300 (and correspondingly the fourth limb of section 294) required proof that the act was so imminently dangerous that it must, in all probability, cause death. He had stressed that the gradation between “*likely to cause death*” and “*must in all probability cause death*” was substantive and determinative, and that not every act falling within the scope of culpable homicide would amount to murder. On the totality of these grounds, he had respectfully urged that the conviction for murder was unsustainable in law.

The Respondent had submitted that Appellant’s central argument rested upon the contention that the Prosecution had failed to establish the fourth limb of section 294 of the Penal Code beyond reasonable doubt. The Prosecution case had been built upon the testimony of several witnesses, including university students, academic and administrative officers, police officers, the father of the deceased, and the Judicial Medical Officer who conducted the post-mortem examination. The evidentiary foundation, in substance, centred upon the testimony of PW5, the undergraduate who had witnessed the incident; the dying declarations made by the deceased to his father and to the Sub-Inspector of Police; and the expert findings of the JMO regarding the physiological cause of death.

The evidence disclosed that the deceased, a first-year engineering student and a well-built, healthy young man of 21 years of age with no prior medical condition, had been subjected to ragging by the Appellant and others on 6th October 1997. According to PW5, the Appellant had compelled the deceased, who was stripped to his

undergarments, to perform repeated physical exercises, namely “dips” or sit-ups, and had continued to direct him to persist despite visible exhaustion. The dying declaration recorded by the Sub-Inspector further revealed that the deceased had been ordered to perform 500 sit-ups, that he had collapsed after approximately 200 repetitions, and that notwithstanding such collapse, the Appellant had revived him by sprinkling water and had compelled him to continue. The deceased had complained of acute pain in his knees, thighs, and lower abdomen, and had subsequently experienced haematuria and progressive deterioration of health.

The medical evidence of the JMO Dr. L.B.L. de Alwis, the Judicial Medical Officer (PW15) who conducted the post-mortem examination on the deceased established that the deceased had sustained multiple contusions and abrasions consistent with physical assault and collapse. Internally, there had been swelling of the brain, liver, and kidneys, and accumulation of fluid in bodily cavities. The cause of death had been certified as acute renal failure consequent to rhabdomyolysis induced by severe muscle injury following extreme physical exertion. The JMO had explained that excessive and cruel physical strain resulted in muscle breakdown, releasing proteins and electrolytes into the bloodstream, thereby causing catastrophic renal failure; he had further opined that such a condition resulted in approximately 90% kidney failure, with only minimal probability of recovery. The Respondent had thus contended that the medical evidence established a direct causal nexus between the forced exertion and the fatal outcome.

In invoking the fourth limb of section 294, the Respondent had emphasised that the provision did not hinge upon intention to kill but upon knowledge that the act was so imminently dangerous that it

must, in all probability, cause death or such bodily injury as was likely to cause death, and that it was committed without justification. It was submitted that the critical moment arose when the deceased collapsed after 200 repetitions. That collapse, it was argued, constituted a manifest warning of imminent physiological danger. By persisting thereafter and compelling further exertion, the Appellant had crossed the threshold into conduct accompanied by knowledge of grave and imminent risk to life. As a second-year engineering undergraduate, the Appellant was said to have possessed the ordinary awareness that extreme and continued physical strain upon a visibly collapsing individual posed serious danger. The Respondent had further submitted that knowledge could be inferred where the act was inherently and imminently dangerous to human life, and that the continuation of such coercive exertion after visible collapse satisfied that standard.

It was further contended that there existed no exculpatory circumstance or justification for the impugned conduct, ragging being devoid of any lawful excuse. In light of the deceased's immediate physical distress, subsequent renal collapse, and eventual death following intensive medical intervention, the Respondent had urged that the act of compelling excessive physical exertion in those circumstances constituted an imminently dangerous act within the contemplation of limb four of section 294. Accordingly, it had been submitted that the Prosecution had proved beyond reasonable doubt that the Appellant possessed the requisite knowledge and that the conviction for murder was properly sustained.

**Section 294 Of the Penal Code:** Except in the cases hereinafter excepted, culpable homicide is murder-

*“Firstly- if the act by which the death is caused is done with the intention of causing death; or*

*Secondly- If it is 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 the harm is caused ; or*

*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; or*

*Fourthly- If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”*

**Punishment for liability under section 294 is set out in section 296 as follows:**

*“Whoever commits murder shall be punished with death”.*

**Section 293 of the Penal Code** is as follows: *“Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.”*

**Punishment for liability under section 293 is set out in section 297 as follows:** *“Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment of either description for a term which may extend to twenty years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause*

*death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”*

The Appellant has been convicted under the fourth limb of section 294 namely: *If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.*

In **Somapala v Queen [1969] 72 NLR 121**, the Court elucidated with precision the degree of knowledge required to attract liability under the fourth limb of section 294 of the Penal Code, drawing a clear and principled distinction between culpable homicide under section 293 and murder under the said limb. The judgment underscored that the element of knowledge, though present in both provisions, differs fundamentally in degree and intensity. While section 293 contemplates an act done with the knowledge that the offender is “*likely by such act to cause death,*” the fourth limb of section 294 requires a far more aggravated mental state, namely, knowledge that the act is so “*imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death.*” The Court observed that “*knowledge, that an act is so imminently dangerous that it must in all probability cause death... is knowledge, not merely of the likelihood of causing death, but of the high probability of causing death,*” thereby emphasising that the statutory threshold is not satisfied by proof of a mere substantial or foreseeable risk. The act itself must be inherently and immediately perilous to human life, and

the accused must have appreciated that its natural and probable consequence was death in an overwhelming sense.

Thus, to establish guilt under the fourth limb, the prosecution must prove beyond reasonable doubt that (i) the accused committed an act of such an imminently dangerous character; (ii) he possessed knowledge that death or fatal bodily injury would, in all probability, result from that act; and (iii) the act was committed without any lawful excuse for incurring such extreme risk. As the Court made clear, many cases falling within the third clause of section 293 will not amount to murder within the meaning of the fourth limb of section 294, for the latter is reserved for those exceptional instances where the accused proceeds in the face of a near-certain fatal consequence.

As held in ***Jinadasa v. Attorney-General* [1984] 2 Sri LR 234**, to establish guilt under the fourth limb of Section 294, the prosecution must prove beyond reasonable doubt that the accused committed an act which he or she knew to be so imminently dangerous that it would, in all probability, cause death or, alternatively, in all probability cause such bodily injury as is likely to result in death. It must further be shown that the accused engaged in such conduct without any lawful excuse or justification for incurring the risk of causing death or grievous bodily harm. This limb is founded on knowledge, in contrast to the first and third limbs which are predicated on intention, and requires proof that the accused was aware of the lethal or dangerously injurious nature of the act (*Somapala v. Queen* (12)).

This gradation in culpability has been consistently recognised in subsequent authority. In ***Chandrasena alias Rale v. Attorney-General* [2008] 2 Sri L.R. 255**, the Court of Appeal, when considering the fourth limb of Section 294 of the Penal Code, observed

that where the prosecution establishes that the accused was aware that his act was so imminently dangerous that in all probability it would cause death or such bodily injury as is likely to cause death and that he committed such act without any lawful excuse or justification, the offence falls within the fourth limb and amounts to murder; in that case the appellant knew that throwing the object was imminently dangerous and acted without any excuse, and was therefore guilty under the fourth limb.

Similarly, in ***King v. Solomon Et Al* [1936] 38 NLR 113**, it was stressed that the inquiry is not whether death in fact resulted, but whether the accused, at the time of the act, appreciated that death was the most probable and almost certain consequence of the conduct undertaken. The law does not permit the mental element to be inferred merely from the tragic outcome; the requisite knowledge must be established independently and beyond reasonable doubt.

The term “*imminently dangerous*” is itself restrictive. It connotes an act which carries an immediate and obvious threat to life, a danger both impending and grave. As explained in authoritative commentary cited with approval in our jurisprudence, many acts may be dangerous and even likely to cause death within the meaning of section 293, yet fall short of being so imminently dangerous as to satisfy the fourth limb of section 294. The distinction lies in the degree of probability: under section 293, death must be a probable consequence; under the fourth limb of section 294, it must be a consequence which, to the knowledge of the accused, would follow in all probability. Thus, not all knowledge-based culpable homicides are elevated to murder; only those marked by extreme and conscious disregard of a near-certain fatal outcome attract that classification.

In ***Farook v. Attorney General* [2006] 3 Sri L.R. 174**, the Court of Appeal undertook a comprehensive examination of the mental elements distinguishing murder from culpable homicide and, in doing so, elucidated the governing principles applicable to the fourth limb of section 294 of the Penal Code. The Court reiterated that murder is established when the act causing death falls within any one of the four limbs of section 294 and none of the statutory exceptions apply. With particular reference to the fourth limb, the Court adopted the formulation that it “*comprehends generally, the commission of imminently dangerous acts which must in all probability cause death.*” The emphasis, therefore, is not upon intention to kill, but upon the character of the act and the degree of probability of death inherent in it.

Drawing from the authoritative exposition in ***Rajwant Singh v. State of Kerala AIR 1966*** and ***Anda v. State of Rajasthan SC 148***, which were expressly relied upon, the Court underscored that murder under the fourth limb requires the presence of a special mens rea distinct from mere likelihood. The act must be of such a nature that it is not merely dangerous, but “*imminently dangerous*”, that is to say, presenting an immediate and overwhelming threat to human life. The probability contemplated is not remote or speculative; it must rise to the level of a high and near-certainty. As articulated in the judgment, the clause is concerned with acts which “*must in all probability cause death,*” thereby signifying a degree of probability substantially greater than that required for culpable homicide under section 293, which speaks only of acts “*likely*” to cause death.

The decision further clarifies that the fourth limb is ordinarily applicable “*to cases in which there is no intention to kill anyone in particular,*” thus distinguishing it from the first three limbs where

intention to cause death or specific bodily injury predominates. The determinative inquiry under the fourth limb is whether the accused possessed knowledge that the act was so imminently dangerous that death would, in all probability, ensue, and whether the act was committed “without any excuse” for incurring such risk. The Court’s reliance on the principle that “*the sufficiency is the high probability of death in the ordinary way of nature*” reinforces that the standard is one of objective gravity coupled with subjective awareness of that grave risk.

Accordingly, distilled from *Farook*, the essential ingredients necessary to establish murder under the fourth limb of section 294 are: first, proof that the accused committed the act which caused death; second, that the act was so imminently dangerous in its nature as to create a very high probability of death or of such bodily injury as is likely to cause death; third, that the accused had knowledge of this high probability at the time of committing the act; and fourth, that the act was committed without lawful excuse for incurring that risk. Only when these cumulative elements are established beyond reasonable doubt does culpable homicide elevate to murder under limb four of section 294.

Applying the foregoing statutory framework to the factual matrix disclosed by the evidence, the critical inquiry is whether the conduct attributed to the Appellant attained the elevated threshold contemplated by the fourth limb of section 294, or whether it falls within the ambit of section 293, which criminalises the causing of death by an act done with the knowledge that it is *likely* to cause death. The distinction is not semantic but substantive, and turns upon the degree of probability and the quality of knowledge attributable to the accused at the material time.

The evidence led at trial establishes that the deceased was compelled to perform repetitive physical exercises commonly described as “Thoppu Karanam” or squatting movements. The testimony of PW5 indicates that the deceased was directed to continue despite visible fatigue and that he collapsed after approximately 200 repetitions. The dying declaration suggests that the total number demanded was 500. The medical evidence of PW15, the Judicial Medical Officer, is of particular relevance in assessing the nature of the act and its physiological consequences. PW15 attributed the cause of death to acute renal failure consequent to rhabdomyolysis induced by extreme muscular exertion. He explained that excessive and sustained muscle strain leads to the breakdown of muscle fibres, releasing myoglobin and electrolytes into the bloodstream, thereby precipitating renal shutdown. Internally, swelling of organs and accumulation of fluid were noted. Importantly, the pathological mechanism described by PW15 was not one of instantaneous or near-instantaneous death, but of progressive systemic failure arising from metabolic derangement following muscle injury.

The medical findings do not disclose injuries of a character ordinarily associated with acts that are inherently and immediately lethal. There was no evidence of fatal trauma to vital organs inflicted by weapon or violent assault, no skull fracture, no intracranial haemorrhage, no cardiac rupture, nor any catastrophic injury which, by its very nature, would in all probability result in death. Rather, the chain of causation, as explained by PW15, involved an exertional process culminating in renal failure over time. The deceased was hospitalised, received treatment, and succumbed subsequent to medical intervention. The physiological deterioration was thus mediated by complex biochemical processes rather than by an act whose fatal consequence was immediate and overwhelming.

In assessing the element of knowledge, it must be borne in mind that the fourth limb of section 294 requires awareness that the act “*must in all probability cause death*” or such bodily injury as is likely to cause death. The evidence before the Court does not establish that compelling repetitive squatting exercises, even in excessive number, constitutes an act which, in the ordinary course of human experience, must in all probability result in death. Physical exertion, even when harsh or coercive, is not per se an imminently lethal act. It may be oppressive, unlawful, and dangerous; it may even create a foreseeable risk of harm. But the test under the fourth limb demands proof of a near-certainty of death, appreciated by the accused at the time of acting.

The collapse of the deceased after 200 repetitions undoubtedly signalled physical distress. However, the fact of collapse does not inexorably establish that death was, in all probability, the natural and inevitable consequence of continued exertion. Human experience recognises that individuals may faint or collapse from exhaustion without fatal outcome. The subsequent development of rhabdomyolysis and renal failure, as described by PW15, is a medically complex consequence of extreme exertion; it is not a phenomenon within the ordinary contemplation of laypersons absent specialised medical knowledge. There was no evidence that the Appellant possessed medical training or awareness of the pathophysiological cascade that would transform muscular strain into renal collapse and death.

When the evidence of PW15 is examined in its entirety, it demonstrates a causal nexus between the forced exertion and the death. It establishes that the act was capable of causing death in the circumstances of this case. It does not, however, establish that the act

was of such a character that death must, in all probability, result. The gradation articulated in section 293, knowledge that the act is *likely* to cause death, aptly captures conduct which, while dangerous and reckless, does not carry with it the stamp of near-inevitability required by the fourth limb of section 294. The medical testimony supports the conclusion that severe muscle injury can precipitate renal failure; it does not elevate the compelled exercise to the category of acts inherently and imminently destructive of life in the overwhelming sense contemplated by the fourth limb.

Furthermore, the acceptance by the prosecution and the High Court of the 2nd Accused's plea to culpable homicide on the basis of knowledge reflects a recognition that the factual substratum was capable of sustaining liability under section 293. While parity of treatment is not determinative of legal classification, it underscores that the evidentiary material was amenable to a construction consistent with knowledge of likelihood rather than knowledge of near-certainty.

Viewed cumulatively, the evidence establishes that the Appellant engaged in unlawful and coercive conduct, that such conduct subjected the deceased to extreme physical strain, and that death ensued as a consequence of complications arising therefrom. The element of knowledge attributable on these facts is that such excessive exertion was likely to cause serious harm and possibly death. It falls short of proving beyond reasonable doubt that the Appellant knew the act to be so imminently dangerous that it must, in all probability, cause death or fatal bodily injury. The statutory distinction drawn between sections 293 and 294 must be maintained with fidelity to legislative intent and established authority.

Furthermore, it is a foundational postulate of criminal jurisprudence that a proper and accurate record of proceedings ensures the integrity

of the trial process, and that the absence or inadequacy of such proceedings may amount to a denial of a fair trial. As has been judicially observed in ***Kukule Kankanamge Sumanathissa v Attorney General CA/HCCA/267/2023 decided on 26.08.2025,*** “*the single most important criterion in evaluating the fairness of a trial is the observance of the principle of equality of arms between the defence and the prosecution. Equality of arms, which must be observed throughout the trial, means that both parties are treated in a manner ensuring a procedurally equal position during the course of a trial.*” This principle is neither ornamental nor aspirational; it is substantive, and it permeates every stage of criminal adjudication. It guarantees not merely the formal right to be present, but the effective opportunity to challenge the prosecution case, to cross-examine witnesses, to test medical and expert evidence, and to place before court material favourable to the defence.

In the present case, the Appellant was tried in absentia pursuant to section 241 of the Criminal Procedure Code. While the law permits such a course in defined circumstances, the procedural permissibility of proceeding ex parte cannot eclipse the substantive requirements of fairness. It is of particular significance that the Appellant has not tendered any statement to the Police and has never, at any stage, participated in the proceedings before the Magistrate Court and the High Court. Under these circumstances, there is a reasonable suspicion whether in fact the Appellant was unaware of the charge against him, as he has not even given a statement to the police. The record discloses that no application was made under section 241(3) of the Code, which provides that where an accused, tried in absentia, subsequently appears before Court and satisfies the Court that his absence was bona fide, the Court is empowered, if the trial has concluded, to set aside the conviction and sentence and order a trial

de novo, unless he had been defended by an Attorney-at-Law during his absence within the meaning of section 241(4). Unfortunately, none of the learned counsel appearing in the matter invoked that statutory safeguard.

A trial conducted without the participation of the accused necessarily deprives him of the opportunity to confront witnesses, to probe inconsistencies, to challenge the scientific basis of expert testimony, and to advance alternative interpretations of the evidence. In a case such as the present, where the central issue turns on the nuanced distinction between knowledge of likelihood under section 293 and knowledge of high probability under the fourth limb of section 294, the ability to rigorously test the prosecution's narrative assumes heightened importance. The assessment of the accused's mental element is a fact-sensitive inquiry, often illuminated through cross-examination, contextual explanation, and the clarification of surrounding circumstances. The absence of such adversarial testing inevitably places the defence at a structural disadvantage and limits the Court to an evaluation of the prosecution case in its unchallenged form.

While the failure to invoke section 241(3) cannot, at this stage, undo the procedural course that was adopted, it remains a matter of concern that the Appellant was never afforded the opportunity contemplated by statute to satisfy Court as to the bona fides of his absence and, if successful, to seek a retrial. This procedural history forms part of the broader matrix within which the question of culpability and sentence must be assessed.

The principle of equality of arms further demands that procedural posture should not translate into substantive prejudice. Absconding, though a serious matter that may justify trial in absentia and may

bear upon questions such as bail or sentence within lawful bounds, cannot by itself justify the imposition of a more aggravated legal classification of the offence. Criminal liability must be determined strictly by reference to the ingredients proved beyond reasonable doubt, not by reference to the accused's procedural default. To elevate an offence from culpable homicide to murder, or to sustain the gravest sentence known to law, solely in circumstances where the accused had no meaningful opportunity to test the prosecution evidence, would risk conflating procedural absence with proof of the requisite mens rea.

Moreover, parity considerations assume relevance in the broader context of fairness. A co-accused who participated in the same transaction was permitted to plead guilty to culpable homicide not amounting to murder. While each case must be assessed on its own evidentiary footing, the principle of equal treatment before the law cautions against the imposition of a harsher penal consequence on an accused merely because he was not present to negotiate, contest, or mitigate. The fairness of the criminal process is measured not by its severity, but by its scrupulous adherence to due process.

In these circumstances, the absence of the Appellant at trial, though legally permitting proceedings to continue, could not be treated as a factor warranting a more severe characterisation of the offence or a harsher punishment. The constitutional and common law commitment to a fair trial demands that an accused be afforded a genuine opportunity to present his defence and to cross-examine the witnesses arrayed against him. Where that opportunity was absent, the Court must exercise particular vigilance to ensure that the ultimate conviction and sentence rest exclusively on properly tested

evidence and the strict satisfaction of the statutory elements, and not, even indirectly, on the mere fact of absconding.

In these circumstances, even taking the prosecution evidence at its highest, the mental element disclosed by the evidence corresponds to knowledge of likelihood within the meaning of section 293, rather than the aggravated knowledge of near-certainty required under the fourth limb of section 294. The offence disclosed by the proved facts is therefore culpable homicide not amounting to murder within the contemplation of section 293 of the Penal Code. Section 293 of the Penal Code is attracted where death is caused by an act done with the knowledge that such act is likely to cause death, even in the absence of any intention to cause death or to inflict a bodily injury of a fatal character. On the evidence before Court, there is no basis to conclude that the Appellant intended to cause the death of the deceased or intended to inflict a fatal injury. The conduct established, compelling the deceased to engage in excessive physical exertion, does not, by its very nature, disclose a deliberate design to kill.

Nevertheless, the continuation of such coercive exertion despite visible exhaustion and collapse demonstrates awareness that the act was dangerous and likely to cause serious harm, and in the circumstances, likely to cause death. The medical evidence confirms that death ensued from the physiological consequences of that exertion. The mental element thus proved corresponds to knowledge of likelihood within the meaning of section 293, rather than the aggravated knowledge of near-certainty required under section 294. The offence is therefore properly reduced to culpable homicide not amounting to murder. In the circumstances, the conviction for murder and the sentence imposed thereon are set aside. However, having regard to the totality of the evidence, including the participation of the

Appellant in the acts which directly contributed to the death of the deceased, I find that the ingredients of culpable homicide not amounting to murder have been proved beyond reasonable doubt. Accordingly, this Court substitutes a conviction under section 297 of the Penal Code for the offence of culpable homicide not amounting to murder and proceeds to impose sentence in accordance with the law.

Now that this Court has set aside the conviction for murder and substituted a conviction for culpable homicide not amounting to murder under section 297 of the Penal Code, it remains to consider the appropriate sentence to be imposed. The starting point of that inquiry is the statutory framework. Section 297 prescribes a maximum term of twenty years' imprisonment where the act is done with intention, and a maximum of ten years where the act is done with knowledge that it is likely to cause death but without intention to cause death. The amplitude of the sentencing range reflects the legislative recognition that culpable homicide not amounting to murder encompasses a wide spectrum of moral blameworthiness. Sentencing must therefore be calibrated to the particular factual matrix, the degree of culpability established, and the broader interests of justice.

In the present case, the conviction rests on knowledge within the meaning of section 293, knowledge that the act was likely to cause death, rather than intention to kill or the aggravated knowledge of near-certainty contemplated by section 294. The conduct in question arose in the context of ragging, a pernicious and unlawful practice that has plagued institutions of higher learning. The evidence establishes that the deceased was compelled to perform excessive and degrading physical exercises, culminating in severe physiological collapse and eventual death from acute renal failure induced by

rhabdomyolysis. The act was undoubtedly grave, reckless, and wholly unjustified. A young undergraduate at just 21 years of age, described as healthy and robust, lost his life in circumstances that ought never to have arisen within a university community.

In determining the sentence, this Court is guided by the well-established principle that punishment must reflect not only the culpability of the offender but also the rights of the victim and the legitimate expectations of society. As observed in **A.G. v. Mendis [1995] 1 SLR 138** and echoed in **Dhananjay Chatterjee v. State of W.B. [1994] 2 SCC 220**, “*the Courts must not only keep in view the rights of the criminal, but also the rights of the victim of crime and the society at large while considering the imposition of an appropriate punishment.*” The tragic death of a young student through an act of ragging implicates not merely the individual offender but the integrity of our educational institutions and the safety of our youth.

A further and significant consideration in the present case is the principle of parity. The 2nd Accused, who stood indicted upon the same transaction and on substantially identical facts, pleaded guilty to abduction and to culpable homicide not amounting to murder and was sentenced by the High Court on that footing. It is a settled principle of sentencing jurisprudence that similarly placed offenders emerging from the same factual substratum ought not to be treated disparately in the absence of clear and compelling distinguishing features. Equality before the law demands not only consistency in punishment, but consistency in the characterisation of culpability.

Upon a careful examination of the record, there is no material before this Court to suggest that the degree of participation or moral blameworthiness attributable to the present Appellant was materially different from that of the 2nd Accused. The acts attributed to both

arise from the same course of conduct and disclose the same level of knowledge within the meaning of section 293. In such circumstances, it would be incongruous in principle to sustain differing classifications of the offence or to impose a fundamentally harsher consequence upon one while the other stands convicted of the lesser offence. The interests of fairness, proportionality, and coherence in the administration of criminal justice therefore require that both accused be treated alike in respect of conviction and sentence.

In determining the appropriate conviction, the Court is obliged to assess the culpability of the accused on the basis of the evidence adduced and the mental element established. That assessment must be undertaken in accordance with the principle of equality before the law. Where two accused persons stand on materially indistinguishable footing as to actus reus and mens rea, parity in conviction necessarily follows. There is no evidence on record to suggest that the present Appellant possessed a higher degree of knowledge or intention than that attributed to the 2nd Accused.

However, unlike the 2nd Accused, the present Appellant did not participate in the proceedings before the High Court or the Magistrate Court. While it has been suggested that he was unaware of the prosecution, no substantive evidence was placed before this Court to establish, on credible grounds, that his absence was *bona fide* or that he lacked knowledge of the proceedings instituted against him. No application was made under section 241(3) of the Criminal Procedure Code to set aside the conviction on the basis of *bona fide* absence. In the absence of such material, the Court cannot proceed on conjecture.

Respect for the administration of justice and for the authority of the courts is a relevant consideration at the stage of sentencing. A

prolonged failure to submit to the judicial process cannot operate as a mitigating factor.

At the same time, sentencing must be proportionate and realistic. The offence was committed in 1997; the conviction in absentia followed in 2014; and this Court now pronounces upon sentence decades after the event. The prolonged lapse of time, the pendency of proceedings, and the extraordinary procedural history of this case are factors of undeniable relevance.

The criminal process itself, hanging over an accused for such an extended period, constitutes a significant punitive burden. Moreover, it has been brought to the attention of this Court that the Appellant is no longer within the jurisdiction. The practical efficacy of imposing a custodial sentence at this juncture is therefore highly questionable. Sentencing must not become an abstract exercise divorced from enforceability and the realities of the case.

However and most importantly, while the lapse of time since the commission of the offence and the complex procedural history are relevant, they do not eclipse the seriousness of the harm caused. Ragging is not a minor disciplinary lapse; it is a coercive and violent practice capable of producing catastrophic consequences. However, the gravity of the consequences cannot be understated.

Ragging is not a trivial campus indiscretion; it is a coercive and degrading practice capable of inflicting profound psychological and physical harm. The enactment of the **Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act, No. 20 of 1998**, was a legislative acknowledgment of the urgent need to eradicate this menace. That statute criminalises ragging in all its forms and reflects a clear public policy that such conduct is

intolerable in a civilised society. The present case stands as a stark illustration of the very mischief that Parliament sought to prevent.

Sri Lanka is also a State Party to international instruments which underscore the protection of life and human dignity, including the **International Covenant on Civil and Political Rights** and the **Convention on the Rights of the Child**, which, though primarily concerned with minors, embodies the broader normative commitment to safeguarding young persons from violence and degrading treatment. Educational institutions must be spaces of learning and growth, not arenas of humiliation and danger. The Court cannot ignore the broader societal imperative to send a clear and unequivocal message that ragging, in any form that imperils life or dignity, will attract serious legal consequences.

In these circumstances, the imposition of a custodial sentence is necessary to reflect the gravity of the offence, to mark the Court's denunciation of ragging practices that endanger life, and to uphold public confidence in the administration of criminal justice. Sentencing must not only punish but it should also deter.

A purely nominal or symbolic sanction would fail to adequately vindicate the loss suffered or to convey the seriousness with which this Court views such conduct. The interests of justice require that the harm suffered by the victim's family be meaningfully acknowledged. The deceased was a young man at the threshold of his professional life, and his untimely death has inflicted irreparable loss upon his parents. Compensation, though incapable of restoring life, is a tangible recognition of that loss and a reaffirmation of the value the law places upon human life.

Accordingly, in line with the treatment accorded to the 2nd Accused and having regard to all mitigating and aggravating factors, the Appellant is sentenced as follows: in respect of count 04, the offence of abduction punishable under Section 358 of the Penal Code, a term of two (02) years rigorous imprisonment and a fine of Rupees Fifty Thousand (Rs. 50,000) and in default a further term of one (01) year simple imprisonment; in respect of the offence of culpable homicide not amounting to murder punishable under section 297 of the Penal Code, a term of seven (07) years rigorous imprisonment and fine of Rupees One Hundred Thousand (Rs. 100,000) and in default a further term of two (02) years simple imprisonment. Both sentences shall run concurrently. With regard to the default sentences, to run consecutively.

Accordingly, this Court directs the Attorney-General's Department and the relevant prosecuting authorities to take all necessary and appropriate steps, in accordance with law, to secure the presence of the Appellant before the appropriate court and to cause the sentences imposed herein to be duly carried into execution. Such steps may include the initiation or continuation of proceedings permissible under the applicable law to give full effect to this judgment.

The Registrar is directed to communicate this Order forthwith to the Attorney-General's Department for compliance. The execution of this sentence is not merely procedural; it is essential to uphold the rule of law and to reaffirm that judicial determinations carry binding force.

In addition thereto, and in order to meaningfully acknowledge the irreparable loss suffered by the family of the deceased, this Court directs that the Appellant shall pay a sum of Rupees Five Million (Rs. 5,000,000/-) as compensation to the next-of-kin of the deceased. In

default of payment, a default sentence of one (01) year simple imprisonment is imposed.

This order of compensation is imposed not merely as reparation in the individual case, but as a solemn reaffirmation that the life and dignity of every student in this country are inviolable, and that practices which endanger them will be met with the firm response of the law.

Therefore, the questions of law on which leave have been granted are answered in the affirmative. The convictions and sentences of the High Court of Kandy and the Court of Appeal are varied and substituted accordingly.

*Appeal Allowed.*

**JUDGE OF THE SUPREME COURT**

**Dr. Sobhitha Rajakaruna, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**M. Sampath K.B. Wijeratne, J.**

I agree.

**JUDGE OF THE SUPREME COURT**