CHANDRASENA ALIAS RALE
v
ATTORNEY-GENERAL

COURT OF APPEAL
RANJIT SILVA, J.
SISIRA DE ABREW, J.
CA 34/2002
HC RATNAPURA 119/93
MAY 21, 22, 2007

Penal Code Sections 293, 294 and 295 – Section 419 – proving a charge of murder? Requirements – Expert opinion – Is it only a guide ? Sufficient to cause death – Proof? – Nexus between the injuries and cause of death Third and fourth limb of Section 294.

The accused-appellant was convicted of the murder of one P and of the offence of causing mischief to the boutique of PS..

In appeal it was contended that (1) the identity of the accused-appellant had not been established (2) that the prosecution had failed to prove the charge of murder – that the death of the accused was not the direct result of the injuries caused by the burns but was on account of some supervening circumstances (septicemia) not resulting from injuries. (3) that the prosecution failed to establish a charge of murder under the third limb of Section 294.

Held:

(1) At the time of the incident witness Premarathne, who knew the appellant for nearly 10 years, saw the appellant running away from the compound of the boutique. In the light of the above evidence, there was no question that Premarathne making mistake about the identity of the appellant.

(2) "Sufficient to cause death" in the ordinary course of nature means the injury, if left to the nature without resorting to proper medical remedies and skillful treatment has resulted in death.

(3) A medical witnesses called in as an expert is not a witness of fact. His evidence is really of an advisory character given on the facts submitted to him. Whilst the opinion of expert being a guide to Court it is the Court which must come to its own conclusion with regard to the issues of the case. A Court is not justified in delegating its function to an expert and acting solely on latter's opinion.

(4) The victim in the instant case died due to septicemia following infected ulcers, infected ulcers caused as a result of the burns infected by an act of the appellant – there is direct *nexus* between the burns and the cause of death. In a case of murder even if the death of the victim was not directly due to the injuries inflicted by the accused but due to other conditions such as septicemia occurred a result of the injuries inflicted by the accused, it is justifiable to conclude and should conclude that it was the act of the accused that caused the death of the victim.

Held further

(5) In order to establish a charge of murder under the third limb of Section 294 the prosecution must prove the following ingredients beyond reasonable doubt.

(1) Accused inflicted bodily injury to the victim.
(2) The victim died as a result of the above bodily injury.
(3) Accused had the intention to cause the above body injury.
(4) Injury was sufficient to cause the death of the victim in the ordinary course of nature

Per Sisira de Abrew, J.

"The victim was in her boutique at the time of the incident. The prosecution case was that the appellant threw an object like a bottle. Immediately thereafter the victim was in flames and the boutique was engulfed in flames. Thus the appellant knew that it was imminently dangerous that it must in all probability cause death of the inmates of the boutique by his act and bodily injuries have been caused to the victim which were not only likely to cause death but are sufficient in the ordinary course of nature to cause death. This act was done by the appellant without any excuse. Thus in my view the appellant was guilty of murder under the fourth limb of Section 294.

APPEAL from the judgment of the High Court of Ratnapura.

Cases referred to:

1. *Queen* v *Mendis* 54 NLR 177.
2. *Abeysundara* v *Queen* 74 NLR 169.
3. *Sumanasiri* v *A.G.* (1999) 1 SLR 309.
4. *Rex* v *Mubila* (1956) SALR.31
5. *Ruhunuge Palitha* v *AG* CA 1/2004 decided on 15.5.2007.
6. *Virsa Singh* v *State of Punjab* AIR 1958 (SC) 465 at 467.
7. *Charles Perera* v *Motha* 65 NLR 294.
8. *Gratiaen Perera* v *Queen* 61 NLR 522.
9. *Sudarshan Kumar* v *State of Delhi* AIR 1974 SC Vol. 61 page 2328.
10. *Queen* v *Mendis* 54 NLR 177.
11. *Abeysundara* v *Queen* 74 NLR 169.
12. *R* v *Smith* 1959 2 All ER 193 at 198.
13. *Regina* v. *Blaue* (1975) 1 WLR 1411.
14. *R.* v *Jordan* (1956) 40 Cr. App. Rep. 152.
15. *Lord* v *Pacific Steam Navigation Co. Ltd.* (1943) 1 All E.R. 211 at 215.
16. *Virsa Singh* v *State of Punjab* AIR 1958 Vol. 45 at 465.
17. *Rajwant Singh* v *State of India* AIR 1966 SC 1874.
18. *Hajinder Singh* v *Delhi Administration* AIR 1968 SC 867.
19. *State of Maharashtra* v *Arun Savalaram* 1989 Cri. LJ 191.
20. *Rajwant Singh* v *State of Kerala* AIR 1966 SC 1874 at 1878.

Ranjith Abeysuriya PC with *Thanuja Rodrigo* for appellant.
Menaka Wijesundara SSC for Attorney-General.

July 19, 2007

SISIRA DE ABREW, J.

The accused appellant (the appellant) was convicted of the murder of a woman named Premawathi and of the offence of causing mischief to the boutique of Podisingho (an offence under Section 419 of the Penal Code). On the 1st count the appellant was sentenced to death and on the 2nd count he was sentenced to five years rigorous imprisonment.

Facts

The case for the prosecution may be quite briefly summarized as follows:

Podisingho, the father of Premawathi, was running a boutique. Premawathi too worked in the boutique especially doing the cashier's work. Around 7.00 p.m. on 26th of September 1991, Jayawardene a son of Podisingho, on seeing his father's boutique on fire, ran towards the boutique and saw his father and sister Premawathi

suffering from extensive burn injuries. Premawathi who was suffering from extensive burn injuries told him that Chandrasena attacked her with a glass bottle. Premawathi told the same thing to Jayawardene when she was being taken to the hospital. Chandrasena, the appellant, is also referred to 'Rale'. When Premarathne one of the brothers of Premawathi was approaching the boutique he heard from a distance of 20 feet from the boutique a sound of a chimney being broken. As he rushed to the scene he saw the appellant running away from the compound of the boutique. Premawathi who was in flames told him that Rale attacked her. In order to douse the fire he covered her body with a gunny bag. At that time the boutique, which was usually illuminated by three lamps, kept at various places, was in flames. Premawathi who was rushed to the hospital died after seventeen days.

Identity of the appellant

Learned President's Counsel for the appellant contended that the identity of the appellant had not been established by the prosecution. Learned President's Counsel, however, did not challenge the reception of the dying declaration as evidence. At the time of the incident, Premarathne, who knew the appellant for nearly ten years, saw the appellant running away from the compound of the boutique. In the light of the above evidence, there was no question that Premarathne making a mistake about the identity of the appellant. Premawathi, the deceased, in her statement marked P1 made to IP Sirinil de Silva stated that Rale alias Chandrasena came to the boutique and threw a glass object to her face and immediately thereafter a fire broke out; that her clothes caught fire; and that she too was in flames. Premawathi who was elder to Premarathne should also know the appellant since she, in her dying declaration, referred to the appellant in both names. Learned President's Counsel, referring to Jayawardene's evidence at page 86, contended that the deceased Premawathi, in her dying declaration, had told that it was a person like Chandrasena who attacked her. This was in response to a question by the defence on the same premise. Considering the question and the answer at page 86 of the brief, I have to express the view that there is no merit in this contention and therefore the same is rejected.

In the light of the above evidence, I hold that the identity of the appellant had been established beyond reasonable doubt. I therefore

reject the contention of the learned President's Counsel.

The other ground urged by the learned President's Counsel as militating against the maintenance of the conviction of murder was that the prosecution had failed to prove the charge of murder. It was contended by the learned President's Counsel that the death of the deceased was not the direct result of the injuries caused by the burns but was on account of some supervening circumstances (septicemia) not resulting from the injuries and therefore the appellant could not be held guilty of murder. He further contended that there was no great antecedent probability of death resulting from the injuries inflicted, as opposed to mere likelihood of death and as such the prosecution had failed to prove the charge of murder under limb three of Section 294 of the Penal Code. He sought to strengthen his argument by drawing our attention to the fact that the victim died seventeen days after the infliction of the injuries. It was his argument that appellant, at the most, could have been convicted of attempted murder or culpable homicide not amounting to murder. In support of his argument he cited *Queen* v *Mendis*(1) and *Abeysundara* v *Queen*(2). Learned SSC cited *Sumanasiri* v *AG.*(3)

Section 294 of the Penal Code

I now turn to the above contentions. In order to appreciate these contentions it is necessary to consider Section 294 of the Penal Code which is reproduced below:

"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."

Explanation 2 to Section 293 of the Penal Code states as follows:

" Where death is caused by bodily injury ,the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented ".

The meaning of 'sufficient to cause death in the ordinary course of nature'.

'Sufficient to cause death in the ordinary course of nature', in my view, means "the injury, if left to the nature without resorting to proper medical remedies and skillful treatment, has resulted in death. This view is supported by the following opinions. Justice Jayasuriya, in *Sumanasiri* v *AG (supra)* citing the case of *Rex* v *Mubila*(4) at 31 remarked thus; "Where death is caused by a bodily injury, the person who cases such bodily injury, shall be deemed to have caused death although by resorting to proper remedies and skillful treatment death might have been prevented."

"If a wound is inflicted and death results the person who inflicted the wound will be held to have caused the death although the victim may have neglected to use proper remedies or have refused to undergo a necessary operation". Vide Haulsbury's Laws of England – 4th edition Vol.ii, Criminal Law, Evidence and Procedure page 616.

Expert's opinion is only a guide to Court. Court must come to its conclusion with regard to the issues of the case.

In the instant case, the death of the deceased was due to septicemia following superficial ulcers. According to the doctor who performed the post-mortem, 65% of the surface of the body was burnt and in the anterior side burns were found from face to waist and in the posterior side from neck to waist. The entire face except eyes was burnt. The death has resulted due to infected burn injuries even after treatment for seventeen days. Septicemia sets in as a result of the germs getting collected on the wounds. This was the evidence of the doctor. Although the doctor did not, in his evidence, use the exact words the injuries were 'sufficient to cause death in the ordinary course of nature', if this position was clear from the doctor's evidence the absence of such words should not disturb the findings of Court. In my view, that is a decision that should be reached by Court on the evidence placed before Court, if not, the sacred and important decision whether the accused should be convicted for the charge of

murder or not is abdicated to the doctor by Court. I may pose here to ask a simple question. In a case of murder where severance of the neck of the victim to a degree of 75% could be seen and is testified by the doctor who performed the post-mortem but the opinion whether the injury was sufficient to cause death in the ordinary course of nature was not elicited, does one need an expert medical opinion to say that such an injury was sufficient, in the ordinary course of nature, to cause death. In such a case if the accused is acquitted of the charge of murder due to the absence of the said medical opinion such a decision inevitably lead to absurdity. In my view, on the available evidence, if the Court can come to its independent decision, then Court should not turn a blind eye to such evidence and shirk its responsibility on the basis that the words set out in law had not been expressed by the medical expert. In such a situation, it should be open for Court to come to its independent decision with regard to the fact in issue. If the Court below had not come to specific finding on a matter of this nature that does not mean that the Court of Appeal should blindly follow the path of the court below and shirk from its responsibility. The Court of Appeal in such a situation can come to the right conclusion on the available evidence.

The opinion expressed by His Lordship Justice Ranjith Silva in the case of *Ruhunuge Palitha* v *AG*[5] lends support to the above contention. His Lordship remarked thus: "It does not matter whether the Prosecution failed to elicit in evidence from the medical officer that there was great antecedent probability for the injury to cause death. The outcome of a case to my opinion should not depend on some specific words uttered by a medical expert and must be left to the decision of the Judge." One must, in this regard, should not forget the fact that the injury was sufficient to cause death in the ordinary course of nature must be proved objectively as observed by the Indian Supreme Court in *Virsa Singh* v *State of Punjab*[6] at 467. His Lordship Justice Bose in the above case commenting on the question whether the injury should be sufficient to cause death in the ordinary course of nature observed thus: "This part of the enquiry is **purely objective** and **inferential** and has nothing to do with the intention of the offender." (Emphasis added).

For the above reasons, I am of the opinion that it is open for Court on the evidence led at the trial and with the assistance of medical jurisprudence, to come to the conclusion whether the injuries were

sufficient to cause death in the ordinary course of nature. In my view primary function of Courts is to arrive at the correct decision on the evidence placed before Courts. Thus failure by the medical expert to pronounce certain words stated in law should not shut the sacred duty being performed by Courts. This principle is equally applicable to the Court of Appeal as well. In *Charles Perera* v *Motha*[7] Basnayake CJ held thus: "The evidence of a handwriting expert must be treated as only a relevant fact and not as conclusive of the fact of genuineness or otherwise of the handwriting in question. The expert's opinion is relevant but only in order to enable the Judge himself to form his own opinion."

In *Gratiaen Perera* v *Queen*[8] Sinnathamby J. remarked thus: "A Court is not justified in delegating its function to an expert and acting solely on latter's opinion."

Sarkar on Evidence 15th edition Vol. 1 page 901 dealing with medical opinion states thus: If the oral evidence leads to a positive conclusion one way or the other the opinion of experts have to yield or have to be accepted or rejected in accordance with the finding arrived at on appraisal of direct oral evidence . ...A medical witness called in as an expert is not a witness of fact. His evidence is really of an advisory character given on the facts submitted to him." The above judicial decisions and legal literature will show that whilst the opinion of expert being a guide to Court it is the Court which must come to its own conclusion with regard to the issues of the case.

When more than 50 percent of the surface of the body is burnt, are the injuries fatal?

In the present case, what is the medical evidence placed before Court in this regard? Both sides of the body were burnt. Burns on the anterior side from face to waist and on the posterior side from neck to waist were found. Sixty five percent of the surface of the body was burnt. Burns were infected and septicemia was set in as a result of the infected burns. She was given medical treatment for 17 days and died in the General Hospital Ratnapura.

'Sufficient to cause death in the ordinary course of nature means the injury, if left to the nature without resorting to proper medical remedies and skillful treatment, resulting in death. In the present case, the injuries even after being treated in Godakawela Hospital and General Hospital at Ratnapura resulted in the death of the victim.

Thus it can't be said that the injuries were not sufficient to cause death in the ordinary course of nature. This position goes to show that the injuries were sufficient to cause death in the ordinary course of nature.

Modi in his book titled "Medical Jurisprudence and Toxicology" 12th edition page 184 referring to burns of a human body states thus: "There is marked fluid loss resulting in shock when over 20 percent of the body is affected and usually over 50 percent is fatal." Modi at the same page states thus: "Burns of the genital organs and lower part of the abdomen are often fatal." "... In supportive cases death may occur after five six weeks or even longer." (*ibid* pg. 186.)

Taylor says that after the fourth day of the injury, "the chief danger to life is the occurrence of sepsis in the burned areas." (See Taylor's Principles and Practice of Medical Jurisprudence 12th edition Vol. I page 331.)

Supreme Court of India in *Sudarshan Kumar* v *State of Delhi,*(9) considering the above medical jurisprudence affirmed the conviction of murder of a victim who died of Septicemia following infected ulcers caused by acid burns which were inflicted by the accused twelve days before the death.

In *Sudarshan Kumar's* case *(supra)* the facts are as follows:

"The accused poured acid on the body of the deceased who died in consequence thereof. It was very clear from the medical evidence that the injuries caused to the deceased were of a dangerous character and were sufficient collectively in the ordinary course of nature to cause death. The medical evidence was clear that 35% of the surface of the body of the deceased was burnt as a result of the injuries received by her and that if the burns exceeded 30%, the same would be dangerous to life. It was also clear from the prosecution evidence and the dying declaration of the deceased that the accused threatened the deceased that if she did not marry him, she will have a lingering death. Supreme Court of India held: "that the act of the accused in pouring acid on the body was a pre-planned one and he intended to cause the injury which he actually caused. As the injuries caused were sufficient in the ordinary course of nature to cause death, the accused was guilty of an offence punishab under Section 302. The fact that the deceased lingered for about 12 days would not show that the death was not the direct result of the act of the accused in throwing acid on her. So also the fact that the deceased developed

symptoms of malaena and respiratory failure and they also contributed to her death could not in any way affect the conclusion that the injuries caused by the acid burns were the direct cause of her death."

Section 302 of the Indian Penal Code prescribed the punishment for those who are guilty of murder.

In the present case, burns were found from face/neck to waist. That is, according to the doctor, 65 percent of the surface of the body. In my view, prosecution has placed sufficient evidence for court to conclude that the injuries found on the body of the deceased were sufficient to cause death in the ordinary course of nature. In the light of the above medical jurisprudence and the legal literature, in the present case I ask the question: Were the injuries sufficient to cause death in the ordinary course of nature? This question has to be answered in the affirmative. Thus, there is no doubt that the injuries were sufficient in the ordinary course of nature to cause death.

The person who inflicted the injury will be held to have caused the death of the victim if the nexus between the injuries and the cause death is established.

Premawathi, the victim in the instant case, died due to septicemia following infected ulcers. Infected ulcers were caused as a result of the burns inflicted by an act of the appellant. Thus direct nexus between the burns and the cause of death is established.

In *Queen* v *Mendis Gratiaen*[10] J. held: "Where toxaemia supervened upon a compound fracture which resulted from a club blow inflicted by the accused and the injured person died of such toxaemia -

Held that as the injured man's death was not immediately referable to the injury actually inflicted but was traced to some condition which arose as a supervening link in the chain of causation, it was essential in such cases that the prosecution should, in presenting a charge of murder, be in a position to place evidence before the Court to establish that 'in the ordinary course of nature'. there was a very great probability (as opposed to a mere likelihood) (a) of the supervening condition arising as a consequence of the injury inflicted, and also (b) of such supervening condition resulting in death."

In *Abeysundara* v *Queen*[11] Alles, J. remarked: "The accused-appellant, who was charged with murder, was convicted at the trial of culpable homicide not amounting to murder. The deceased, who was stabbed on the abdomen by the appellant, was operated on the same day and the injuries were healing at the time of her death nearly two weeks later. A post-mortem examination showed that death was due to cardio-respiratory failure following extensive broncho-pneumonia of the lung. According to the medical evidence, broncho-pneumonia was a possibility and not a probability, and there was a reasonable doubt whether the death of the deceased was, as a result of the injuries inflicted by the appellant.

Held, that, on the medical evidence led, the charges of murder or culpable homicide not amounting to murder should have been withdrawn from the consideration of the jury. Accordingly, the verdict should be altered to one of attempted culpable homicide not amounting to murder."

In *Abeysundara's* case (*supra*) there was a reasonable doubt whether the death was as a result of the injuries inflicted by the appellant. But in the instant case, I have pointed out the existence of the direct nexus between the burns caused by the appellant and the cause of death and as such *Abeysundara's* case has no application here.

In *Sumanasiri* v *Attorney-General* (*supra)* His Lordship Justice Jayasuriya held: "Death was traceable to the direct cranio-cerebral injury inflicted by the first accused-appellant on the head of the deceased with a heavy sledge hammer using considerable force. The prosecution case thus comes within the purview of clause 3 to Section 294 of the Penal Code. An accused person is liable not only for the direct consequences of his act but he is equally liable for the consequences of any supervening condition which is directly traceable to his act."

In *R* v *Smith*[12] at 198, Lord Parker CJ, stated thus; "It seems to the Court that, if at the time of death the original wound is still an operating cause and a substantial cause, then the death can properly be said to be the result of the wound, albeit that some other cause of death is also operating."

In *Regina* v *Blaue*[13] the facts are as follows: "The defendant stabbed young woman of 18 with a knife, which penetrated her lung.

She was taken to hospital where she was told that a blood transfusion and surgery were necessary to save her life. She refused to have blood transfusion on the ground that it was contrary to her religious belief as Jehovah's Witness and she died the following day. The cause of death was bleeding into the pleural cavity, which would not have been fatal if she had accepted medical treatment when advised to do so. The defendant was charged with murder. The judge, in directing the jury on the issue of causation, said that they might think that they had little option but to find that that the stab wounds were still an operative or substantial cause of death when the victim died. The defendant was convicted of manslaughter on the ground of diminished responsibility. The prosecution admitted at the trial that had she had a blood transfusion when advised to have one she would not have died. The evidence called by the prosecution proved that at all relevant times she was conscious and decided as she did deliberately, and knowing what the consequences of her decision would be. The contention of the defence was that her refusal to have blood transfusion had broken the chain of causation between the stabbing and her death." *Held:* "dismissing the appeal, that the death of the victim was caused by a loss of blood as a result of the stab wounds inflicted by the defendant and the fact that she had refused a blood transfusion did not break the causal connection between the stabbing and the death; that since the criminal law does not require the victim to mitigate her injuries, and since assailant was not entitled to claim that the victim's refusal of medical treatment because of her religious beliefs was unreasonable, the jury were entitled to find that the stab wounds were an operative or substantial cause of death."

In *R* v *Smith* (*supra*) the deceased person who was a soldier received two bayonet wounds from the accused, one in the arm and one in the back. The injury in the back, unknown to any body, had pierced the lung and caused haemorrhage, A fellow member of his company (another soldier) tried to carry him to the Medical Reception Station. On the way he tripped over a wire and dropped the victim. He picked up him again, went a little further, and fell causing the victim to be dropped again. Ultimately the victim was, with the help of the others, brought into the Medical Reception Station. The Medical Officer at the station and his orderly who were trying to cope up with a number of other urgent cases did not appreciate the seriousness of the victim's condition. He died after he had been in the station about

an hour which was about two hours after the original stabbing. There was evidence that there was a tendency for a wound of this sort to heal and for haemorrhage to stop. Dr. Camps, who gave evidence for the defence, said that his chances of recovery were as high as seventy five percent. It was contended on behalf of accused if there had been any other cause whether resulting from negligence or not and if something had happened which impeded the chances of the victim recovering then the death had not resulted from the wound inflicted by the accused. Lord Parker CJ rejecting the said argument and affirming the conviction of murder said: "It seems to the Court that if at the time of death the original wound is still an operating cause and a substantial cause, then death can properly be said to be the result of the wound, albeit that some other cause of death is also operating. Only if it can be said that the original wound is merely the setting in which another cause operates, can it be said that death does not result from the wound. Putting it another way, only if the second cause is so overwhelming as to make the original wound merely part of its history can it be said that death does not flow from the wound."

Lord Parker CJ, in the above case, did not follow *R* v *Jordan*[14]. Referring to that case Lord Parker CJ said: "The Court is satisfied that *R* v *Jordan* was a very particular case depending on its exact facts. It incidentally arose in the Court of Criminal Appeal on the grant of an application to call further evidence, and, leave having been obtained, two well-known medical experts gave evidence that in their opinion death had been caused, not by the stabbing, but by the introduction of Terramycin after the deceased had shown that he was intolerant to it and by the intravenous introduction of abnormal quantities of liquid. It also appears that, at the time when it was done, the stab wound, which had penetrated the intestine in two places, had mainly healed. In those circumstances the Court felt bound to quash the conviction..."

It is pertinent to quote a passage from the judgment of Lord Wright. In *Lord* v *Pacific Steam Navigation Co. Ltd., the Oropsea*[15] where His Lordship said that to break the chain of causation" "It must always be shown that there is something which I will call extraneous, something unwarrantable, a new cause coming in disturbing the sequence of events, something that can be described as either unreasonable or extraneous or extrinsic." This quotation was cited with approval and applied by Lord Parker CJ in *R.* v *Smith* (*supra*).

In *Mendis's* case (*supra*) both accused attacked the deceased with

a sword and a club and the deceased received a compound fracture in his right leg. The death of the deceased was due to toxaemia from gas gangrene following the compound fracture of the right leg. Medical opinion was that gangrene which was quite a common infection in Ceylon was brought by bacterial infection. Thus the operating and substantial cause appears to be the compound fracture of the leg. Therefore it is possible to argue that in *Mendis's* case the causal connection between death and the compound fracture was not broken. On a comparison, the judgment in *Mendis's* case does not accord with the sacred and respected views expressed by Lord Parker CJ in *R* v *Smith* (*supra*). The judgment of Lord Parker CJ was followed in *Regina* v *Blaue* (*supra*). Justice Jayasuriya, having considered the *Mendis's* case, applied the *dicta* of Lord Parker CJ in *Sumanasiri* v *AG (supra)*. Justice Gratiaen in *Mendis's* case stated thus: "As the injured man's death was not immediately referable to the injury actually inflicted but was traced to some condition which arose as supervening link in the chain of causation ..." Thus, if, in a case where the injured man's death was immediately referable to the injury actually inflicted by the accused, the judgment delivered in *Mendis's* can't have an application to such a case. In the present case I have, earlier, pointed out the establishment of direct nexus between the burns inflicted by the appellant and cause of death. Further according to Modi's Medical Jurisprudence (supra) page 184 if the body is burnt over 50% such injuries are fatal. Medical Jurisprudence by Taylor (supra) page 331 says that 'the chief danger to life is the occurrence of sepsis in the burned areas'. It is therefore seen that the death of the deceased in the instant case, was immediately referable to the injuries inflicted by the appellant. Thus the judgment delivered in *Mendis's* case has no application to this case.

In the present case I would like to apply the dictum of Lord Parker CJ and hold that the death of the deceased was caused as a result of the act of the appellant.

In the light of the above judicial decisions, I hold that in a case of murder even if the death of the victim was not directly due to the injuries inflicted by the accused but due to other conditions (such as septicemia) occurred as a result of the injuries inflicted by the accused it is justifiable to conclude and should conclude that it was the act of the accused that caused the death of the victim.

When a victim died of septicemia following infected ulcers occurred as a result of burns inflicted by the accused, the contention that the accused should be exonerated from the charge of murder on the basis that he did not inflict the injuries that caused the death namely septicemia is wholly untenable and should be rejected.

Since the learned President's Counsel advanced an argument before us that the prosecution had failed to establish the charge of murder under third limb of Section 294 of the Penal Code, I would like to consider whether this argument is tenable. In this regard, I must consider the ingredients that must be proved under third limb of Section 294 of the Penal Code. This matter was considered at length by the Indian Supreme Court in *Virsa Singh* v *State of Punjab*(16). Indian Supreme Court discussing the third limb of Section 300 of the Indian Penal Code which is in terms identical with Section 294 of the Ceylon Penal Code observed as follows: "To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 'thirdly';

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say that it was not accidental or unintentional or that some other kind of injury was intended.

Once these elements are proved to be present, the inquiry proceeds further and ,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the inquiry is purely objective and inferential and has nothing to do with the intention of the offender. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under Section 300 thirdly. It dose not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature .... Once the intention to cause bodily injury actually found to be present is proved, the rest of the inquiry is purely objective and the only question is whether, as a matter of purely objective inference, the

injury is sufficient in the ordinary course of nature to cause death." This judgment was cited with approval in so many later cases such as *Rajwant Singh* v *State of Kerala*[17], *Hajinder Singh* v *Delhi Administration*[18], and *State of Maharashtra* v *Arun Savalaram*[19].

In *State of Maharashtra* v *Arun Savalaram (supra)* Indian Court observed thus: "For the application of this clause it must be first established that an injury is caused, next it must be established objectively what the nature of that injury in the ordinary course of nature is. If the injury is found to be sufficient to cause death one test is satisfied. Then it must be proved that there was an intention to inflict that very injury and not some other injury and that it was not accidental or unintentional. If this is also held against the offender the offence of murder is established."

Their Lordships of the Indian Supreme Court considered the provisions of Section 300 of the Indian Penal Code in *Rajwant Singh* v *State of Kerala*[20] at 1878 and remarked thus: "Third clause the intention of causing bodily injury to a person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. In this clause the result of the intentionally caused injury must be viewed objectively. If the injury that the offender intends causing and does cause is sufficient to cause death in the ordinary course of nature the offence is murder whether the offender intended causing death or not and whether the offender had a subjective knowledge of the consequences or not."

In order to establish a charge of murder under third limb of Section 294 of the Penal Code, prosecution must prove the following ingredients beyond reasonable doubt.

1. The accused inflicted a bodily injury to the victim.
2. The victim died as a result of the above bodily injury.
3. The accused had the intention to cause the above bodily injury.
4. The above injury was sufficient to cause the death of the victim in the ordinary course of nature.

Conclusion

In the instant case, the fact that the appellant caused injuries to the victim was proved. The appellant came to the boutique and threw an object similar to a glass bottle. Immediately thereafter Premawathi

was in flames and the boutique was engulfed in flames. Thus the intention of the appellant to inflict injuries to Premawathi was proved. I go one stop further and say that the intention of the appellant was not only to inflict bodily injury but to cause death of the victim. Thus it is clear that the appellant had done this act with the intention of causing death of the deceased. The injuries inflicted by the appellant were sufficient to cause death in the ordinary course of nature. The victim died as a result of the injuries inflicted by the appellant. Thus the prosecution had proved the aforementioned four ingredients in limb three of Section 294 of the Penal Code beyond reasonable doubt. Applying the principles enunciated in *Virsa Singh* v *State of Punjab (supra)*, I hold that the charge of murder had been established under limb three of Section 294 of the Penal Code. I therefore reject the contention of the learned President's Counsel that the prosecution had failed to establish the charge of murder Section 294 of the Penal Code.

It is worthwhile to consider whether the act of the appellant comes under the 4th limb of Section 294 of the Penal Code which reads as follows: *"Except in the cases hereinafter excepted, culpable homicide is murder.*

Firstly - (omitted)

Secondly - (omitted)

Thirdly - (omitted)

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."

The victim was in her boutique at the time of the incident. The prosecution case was that the appellant threw an object like a bottle. Immediately thereafter the victim was in flames and the bo utique was engulfed in flames. Thus the appellant knew that it was imminently dangerous that it must in all probability cause death of the inmates of

the boutique. By his act bodily injuries have been caused to the victim which were not only likely to cause death but are sufficient in the ordinary course of nature to cause death. This act was done by the appellant without any excuse. Thus, in my view the appellant was

guilty of murder even under the fourth limb of Section 294 of the Penal Code.

Evidence led at the trial revealed that the appellant threw a glass object to the deceased's face. Immediately thereafter a fire broke out and the deceased was in flames. This shows that the appellant has done an act with the intention of causing death of the deceased. According to 1st limb of Section 294 if the act by which the death is caused is done with the intention of causing death then the accused is guilty of murder. Thus the appellant was guilty of murder even under the 1st limb of Section 294 of the Penal Code. I am unable to find fault with the learned trial judge who found the appellant guilty under the 1st limb of Section 294.

For the above reasons the grounds urged by the learned President's Counsel are untenable and should fail. Hence, I uphold the conviction and the sentence imposed on the appellant and dismiss the appeal

Appeal dismissed.

RANJITH SILVA, J. - I agree

Appeal dismissed.