

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

Dinesh Chathuranga Jayamanna

ACCUSED-APPELLANT

C.A. 19/2011

H.C. Negombo 104/2006

Vs.

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

COMPLAINANT-RESPONDENT

BEFORE: Anil Gooneratne J. &
P. R. Walgama J.

COUNSEL: Indika Mallawarachchi for the Accused-Appellant

Hiranjana Peiris S.S.C. for the Complainant-Respondent

ARGUED ON: 17.11.2014

DECIDED ON: 20.11.2014

GOONERATNE J.

The two Accused were indicted in the High Court of Negombo on a charge of attempted murder, an offence punishable under Section 300 of the Penal Code. The 2nd Accused pleaded guilty to the charge and he was sentenced to 2 years rigorous imprisonment, which term of imprisonment was suspended for a period of 10 years. The 2nd Accused was also fined a sum of Rs. 1000/- which carries a default sentence of 4 months simple imprisonment and the learned High Court Judge ordered a sum of Rs. 10,000/- as compensation payable to the victim which carries a default sentence of 6 months simple imprisonment.

It was submitted on behalf of the 1st Accused-Appellant by the learned counsel for the Appellant that her client was given a custodial sentence after trial, and her client being a Revenue Officer of the Negombo Pradeshiya Sabha was unwilling at that time to plead guilty before the High Court. The learned counsel for the 1st Accused-Appellant at the outset of the hearing of this appeal, indicated to this court that her client does not wish to

contest the conviction, but would urge this court to consider a lenient sentence since her client's involvement in the incident does not warrant a custodial sentence as the main perpetration of the crime and the incident was the 2nd Accused. The learned counsel for the 1st Accused-Appellant states her client was sentenced to 5 years rigorous imprisonment and a fine of Rs. 10000/- was imposed by the learned High Court Judge which carries a default sentence of 6 months rigorous imprisonment and was also ordered to pay compensation to the injured party in a sum of Rs. 80,000/- and in default of payment, 1 year rigorous imprisonment.

The testimony of the injured/victim indicates that he came by bus after work and got down from the bus near the Kandana police station. It was about 6.00 p.m, when the injured arrived near the police station. Having got down from the bus he had to proceed about another mile to get to his house, and he used a cycle to get home from the point of the police station, Kandana. When he reached closer to his house he saw the two Accused persons leaning on to a wall. Thereafter the injured party went near them and inquired about a previous pelting of stones at his house by the 2nd Accused Lakshman. This

resulted in an exchange of words and an exchange of blows between the 2nd Accused and the injured party. At a certain point the 2nd Accused fell on the ground and the 1st Accused-Appellant had to hold the injured party and put his arms round his body to prevent further assault being dealt on the injured party. At that moment itself the 2nd Accused had dealt several blows and had kicked the injured on the stomach. Evidence does not reveal any blows being dealt by the Accused-Appellant to the injured party. The main perpetrator of the incident was the 2nd Accused.

The above facts were not disputed by learned Senior State Counsel. Material placed before this court does not support a custodial sentence. In fact the Accused-Appellant had acted in a way to prevent any blows being dealt to either the 2nd Accused and the injured party. He seems to have been an innocent bystander who was compelled and drawn towards an unwanted commotion. Considering the trivial nature of the offence involving the Appellant and the extenuating circumstances under which the offence was committed we are of the view that it is inexpedient to impose any punishment.

As such we discharge the Accused-Appellant conditionally in terms of Section 306(2) of the Code of Criminal Procedure Act as Amended, and direct that he enter into a Bond without sureties, to be of good behavior for a period of 3 years. We also direct that he pays state costs in a sum of Rs. 1500/-.

Subject to above variation on sentence the Appeal is partly allowed.

JUDGE OF THE COURT OF APPEAL

P.R. Walgama

I agree.

JUDGE OF THE COURT OF APPEAL