

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

In the matter of a petition of appeal
in terms of section 331 (1) of the
code of criminal Procedure Act No 15
of 1979

High Court (Gampaha)
Case No: 6/99

Democratic Socialist Republic of Sri
Lanka

(Complainant)

Vs:-

C.A Application No. 225/06

01. Bulughamulla Pathirannehelage
Sarathchandra
02. Hettithanthrige Deerasinghe
alias Ukkun.
03. Hapuhinne Gedara Indra kumara
alias Shantha
04. Rathnayake Kaluarachchilage
Amarasinghe Sisira Kumara
05. K. Susantha Perera
06. B.P. Alexander alias Gamini

Accused

And Between

01. Bulugahamulla Pathirannehelage
Sarathchandra

02. Hapuhinne Gedara Indra kumara
alias Shantha

Accused Appellant

Vs:-

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

RESPONDENT

BEFORE : SISIRA J DE ABREW, J
P.W.D.C. JAYATHILAKE, J

COUNSEL : Saliya Peiris with Thanuka Nandasena for
the Accused Appellant
Harippriya Jayasundara D.S.G.
for the Respondent

Argued On : 11.07.2013, 12.07.2013

Decided On : 17.09.2013

P.W.D.C. Jayathilake J.

Sepala, Lionel and Senil are brothers of the same family. They were residing in the same house situated at Mallawa. Three of them with several others went to watch a musical show held to celebrate the Sinhala Hindu New Year on 14.04.1987. They waited till the musical show started. As Sepala was an invitee he went to give a cash present to the organizers. All of a sudden Pallewela Gamini assaulted Lionel. Lionel asked him why he was assaulted. Without giving a reply Gamini assaulted Lionel again. Then Lionel too assaulted Gamini.

At that time, Several persons, including, Sisira, Shantha and Sarath cut with razor knives Lionel's face, the back of the left side, right hand, upper part of the left arm, near the right eye, chin, neck and across the ear. They cut Senil too. Having come to know that his brothers were being attacked, Sepala rushed to the scene. While he was arriving at the scene, he was stabbed from behind and hacked in the face and neck by the said group.

According to the medical evidence, all cut injuries inflicted on Senil, Lionel and Sepala were minor injuries, but the stab injury on Sepala was a grave one which could have been fatal in ordinary course of nature.

The 1st Accused Appellant and several others were indicted for unlawful assembly under Section 140, attempt to murder under Section 300 read with 146, Voluntarily causing hurt by dangerous weapons or means under Section 315 read with 146, attempt to murder under Section 300 read with Section 32, Voluntarily causing hurt by dangerous or means under Section 315 read with Section 32 of the penal code. Some of them were dead at the time of the trial and the rest were convicted after trial before High Court and Sentenced.

The learned trial judge in his judgment has evaluated the evidence of witnesses individually, and thereafter, considering the summing up of evidence of all witnesses separately and as a whole, he had come to several conclusions. Among those conclusions, one is that it has very clearly proved that the 1st Accused Appellant, 3rd and 4th Accused and the other accused persons who were dead at the time of trial had assaulted the victims in the case. Based on the said conclusion, the trial judge has decided that the said Accused had become the members of unlawful assembly and caused injuries on victims in the case.

Therefore, he has convicted the 1st Accused Appellant and 3rd and 4th Accused for count No: 1, 2, 3, 4, 5 and 6 of the indictment. Namely for unlawful assembly under section 140, for Attempted to murder under section 300, for voluntarily causing hurt to Abeysekara Hettige Nimal by dangerous weapons or means under section 315 with 146, for causing hurt to Hettiarachchi Appuhamilage Kumarathunga by dangerous weapons or

means under section 315 with 146, for causing hurt to Ginadasa Artigala by dangerous weapons or means under section 315 with 146, for causing hurt Hettiarchchi Appuhamilage Senil Kumarathunga by dangerous weapons or means under section 315 with 146, of the Penal Code. Accordingly, the 1st Accused Appellant had been sentenced to a term of six months for count 1, five years for count II, five years for count III, two years for count IV, two years for count V, two years for count VI, but altogether five year rigorous imprisonment and a fine of Rupees 100,000 was imposed and in default another 3 month imprisonment for every rupees ten thousand.

Being aggrieved by said convictions and the sentence the 1st Accused Appellant has appealed to this court.

The argument raised on behalf of the 1st Accused Appellant was that learned trial judge had not evaluated the evidence of the case as a whole. As a result, he had not seen inter-se differences of the said evidence. The learned counsel submitted that Sepala had not stated any involvement of the 1st Accused Appellant in an act of crime, even though Lionel narrated that the 1st Accused Appellant cut Sepala with razor knife. He further argued that the other witnesses had not mentioned any act of assault by the 1st Accused Appellant. Therefore Sepala shouldn't have been believed, the counsel stresses.

Although it was Sepala who had been injured most seriously, his brother Lionel was the person who had suffered most. Lionel had to undergo several plastic surgeries, to restore his former appearance. But, still he has difficulty in speaking.

While giving evidence, at one stage of the trial, Lionel had wailed, expressing his agony due to the injustice done to him.

As submitted by the learned D.S.G Appeared for the Respondent it is an accepted principle in criminal justice, that each and every witness needn't witness each and every act of the people involved in the crime. Therefore it is impossible for this court to agree with the submission made by the learned counsel that Lionel's evidence should not be believed for the reason the other witness had not seen certain things that Lionel had stated in his evidence. On the other hand medical evidence corroborates the injuries on victims which are said to have been caused by the accused spoken to by Sepala and Lionel.

The incident had taken place on 14.04.1987. Accused have been convicted on 04.08.2006. The point raised by the learned counsel for the 1st Accused Appellant that to incarcerate a person for an offense after laps of such a long period cannot be considered in this case when considering the seriousness of injuries caused to the victims.

For the above reasons this court holds the view that there is no ground to interfere with the judgment of the learned trial judge. Accordingly the court dismisses the appeal of the 1st Accused Appellant. This court affirms the conviction and the sentence imposed by the trial judge and dismisses the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

SISIRA J DE ABREW, J

I agree.

JUDGE OF THE COURT OF APPEAL