

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

G.D. Piyasena Seneviratne

**Accused-Appellant**

**C.A.NO. 72/2006**

**H.C Kegalle No: 1184/96**

Vs.

Hon. The Attorney General

**Respondent**

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BEFORE : SISIRA J. DE ABREW, J (ACTING P/CA) &  
P.W.D.C.JAYATHILAKA, J.

COUNSEL : Udaya Bandara for the Accused-Appellant.  
Harippriya Jayasundera D.S.G for the  
Respondent.

ARGUED AND

DECIDED ON : 23<sup>rd</sup> January, 2014.

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**SISIRA J. DE ABREW, J.(ACTING P/CA)**

The accused-appellant who is on bail is present in Court.

Heard both counsel in support of their respective cases.

The accused-appellant in this case was convicted for attempting to commit the murder of a man named Liyannalage Jayaratne which is an offence punishable under Section 300 Of the Penal Code and was sentenced to a term of 7 years rigorous imprisonment, to pay a fine of Rs.1500/- carrying a default sentence of 03 months imprisonment and to pay a sum of Rs.50,000/- to the victim as compensation carrying a default sentence of 01 year imprisonment. Being aggrieved by the said conviction and the sentence he has appealed to this Court. Facts of this case may be briefly summarized as follows:-

Victim Jayaratne and his family who had been living in Polaramba area went to Dehiattakandiya area for the purpose of establishing themselves in the said village. But they, on and off, were coming to Polaramba area. Injured party was known to the accused-appellant. On the day of the incident around 5.15 in the morning, victim Jayaratne and his wife came to the bus halt with the intention of getting into a bus going to Dehiattakandiya area. But unfortunately for them they missed the bus on that day. While they were waiting at the bus halt, the accused-appellant came and asked the wife of the victim person " Are you waiting to catch a bus?" Then he saw the victim Jayaratne and addressed him in the following language " Are you the one who is here?" Thereafter, he went away and within a few minutes came back armed with a pistol. He fired two shots at Jayaratne. But the 1<sup>st</sup> shot did not strike Jayaratne. The 2<sup>nd</sup> shot struck his stomach area. The wife

of Jayaratne at this stage jumped in front of her husband and told the accused not to shoot her husband and if necessary shoot her. The accused-appellant fired the 3<sup>rd</sup> shot which struck his stomach. Without stopping at that point he fired the 4<sup>th</sup> shot which did not strike Jayaratne. He thereafter went away. Jayaratne at this stage fell on the ground. Wife of Jayaratne thereafter, heard some bottles being dashed on the floor of the dispensary of the accused-appellant which was very close to the bus halt. People gathered in the area took the injured person to the hospital. The accused-appellant too gave evidence in this case. According to him, around 6.00 in the morning of the same day, Jayaratne and some people came to his dispensary and started a fight with him. According to him, the glass doors of his dispensary were damaged. This was the summary of the evidence of the accused-appellant. According to the police officer, around 6.00 a.m. on the same day, the accused-appellant came and lodged a complaint. On the complaint made by the accused-appellant, police officer visited the dispensary of the accused-appellant. According to the police officer's observation 3 bottles in the dispensary of the accused-appellant had toppled and one had crashed on the floor. According to the police officer the floor of the dispensary of the accused-appellant was well polished. He had not noticed any mud patches or any footsteps on the floor of the accused-appellant's dispensary. Police officer says that it was a rainy day. If Jayaratne and some people on a rainy day entered his dispensary

as claimed by the accused-appellant there ought to have been mud patches and footsteps on the floor of the dispensary which was a well-polished one. Thus it appears from the evidence of the police officer, the stand taken up by the accused-appellant in his evidence is untrue. Further, it is pertinent to examine what the accused-appellant told the doctor in his short history. The short history given by the accused-appellant in the Medico Legal Report reads as follows:-

“History of shooting by firearm to face.” According to the police officer there were no any firing marks at the dispensary. Therefore, the stand taken up by the accused-appellant when he was examined by the doctor appears to be incorrect. Further, the learned defence Counsel who appeared at the trial suggested to the prosecution witnesses that the injured person with some others came to shoot him. But the accused-appellant, in his evidence, did not take up such a stand. When we consider all these matters, we hold the view that the evidence given by the accused-appellant in this case cannot be accepted, cannot be acted upon and is not capable of creating a reasonable doubt in the prosecution case. We therefore hold that the learned trial Judge was correct when he rejected the accused-appellant’s evidence.

The wife of the injured person Kamalawathi could not proceed to the police station soon after the incident as she had to take her husband

to the hospital. It appears that around 10.45 a.m. on the same day, she lodged a complaint at the police station with regard to the incident. According to the police officer, by this time, he had received a complaint from the accused-appellant which was at 6.10 a.m. in the morning. On receiving the complaint of Kamalawathi, police officer went and inspected the scene of shooting. He then found a piece of a bullet at the scene of shooting which was near the bus halt. The fact that there was a shooting incident at the bus halt was corroborated by the said observation. Thus, the evidence of victim Jayaratne and his wife Kamalawathie was corroborated by the police observation. There were no contradictions or omissions between the evidence of Kamalawathie and her police statement. There were no contradictions or omissions between the evidence of Jayaratne and his police statement. Thus, I hold the view that the evidence of Jayaratne, the injured person and his wife Kamalawathie satisfies the test of consistency. Kamalawathi made a prompt complaint to the police. Therefore, her evidence satisfies the test of promptness. When we consider all these matters, we hold the view that the learned trial Judge was correct in accepting the evidence of the prosecution witnesses.

Learned Counsel for the accused-appellant contended that the protection of fair trial has not been accorded to the accused-

appellant as the Judge who convicted the accused-appellant has not heard the case. It is true that the Judge who convicted the accused-appellant is not the Judge who recorded the evidence. But according to the law prevailing in this country, the succeeding Judge has the right to act on the evidence recorded by his predecessor. Therefore, I am unable to agree with the contention of the learned Counsel that the accused-appellant was not accorded a fair trial.

Learned Counsel appearing for the accused-appellant further contended that the accused-appellant's evidence had not been considered by the learned trial Judge. But when we consider the judgment of the learned trial Judge we are unable to agree with the said contention as we find that the evidence of the accused-appellant had been considered by the learned trial Judge.

Learned Counsel appearing for the accused-appellant further complained to this Court that the statement of the injured person was a belated one. We agree that it was a belated one but, there were reasons for him to make a belated statement. He was receiving treatment in the hospital. He has also undergone a surgery. Therefore, there was no opportunity for the injured person to make a prompt statement. It appears from the evidence, the police officer had gone on

three occasions to record his statement. When we consider all these matters we hold that the contention of learned Counsel does not hold water. For the above reasons we reject the contentions of learned Counsel for the accused-appellant. We have considered the evidence led at the trial. We are of the opinion that the trial Judge has rightly convicted the accused-appellant. Learned Counsel complained that the offence has been committed in the year of 1989 and it is not fair for this Court to send the accused-appellant to jail after so many years. But we are unable to agree with this view for the following reasons. The charge against the accused-appellant is one of attempted murder. Then suitable punishment must be imposed on him. If we decide to impose a noncustodial sentence on the ground that so many years have passed after the commission of the offence, most of the accused persons would start seeking postponement and try to delay the justice process in order to get noncustodial sentences which would result in an incurable debility in the administration of justice system in this country. Considering all these matters, we affirm the conviction and the sentence and dismiss the appeal.

Counsel submits that the accused-appellant is on bail. The accused-appellant who is on bail should submit to his bail. Registrar of

this Court is directed to send the case record and a copy of this judgment to the relevant High Court.

*Appeal dismissed.*

ACTING PRESIDENT OF THE COURT OF APPEAL

**P.W.D.C.JAYATHILAKA, J.**

I agree.

JUDGE OF THE COURT OF APPEAL

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