

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

CA Appeal No. 171-172/2007

Don Wickramasinghelage Chandraratne Jayasekara

Rotambange Saman Kumara

Accused - Appellants

Vs

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

Respondent

C.A. 171-172/2007

H.C. Amparai Case No: 1109/06

Before : Vijith K Malalgoda, P.C. J. (P/CA) &
H.C. Madawala,J.

Counsel : Dr. Ranjit Fernando for the 2nd Accused-
Appellant.
Anuja Premaratne for the 1st Accused-
Appellant.
Wasanth Bandara ASG. P.C. for the
respondent.

Argued &

Decided on : 12.06.2015

Vijith K Malalgoda P.C. J. (P/CA)

Both Accused-Appellants in this case were indicted in the High Court of Ampara on a count of attempted murder.

Both counsel appearing for the Accused-Appellants had informed that at the outset that they would not be challenging the conviction in this case but would only be canvassing the

sentence imposed. According to them, the incident had taken place on the 05.06.2004 at a place called Galwanguwa in the District of Ampara. The injured in this case was a cashier attached to the Multi Purpose Co-operative Society of Ampara. The 1st Accused was an interdicted store keeper of the same co-operative Society. During the time the incident took place he was having a shop closer to the work place of the injured. On the day in question the first Accused had invited the injured to join with him, so that he could drop him at his place after the work. The injured after his day's work met the 1st Accused and on his invitation got into a three wheeler which was driven by the 2nd Accused. They have proceeded for some distance and half way through the 1st Accused had purchased some liquor and a bottle of beer. They were taking the drinks on their way and according to the witness the three wheeler had diverted it's way and went towards a jungle area. Closer to a place called Galwanguwa the 2nd Accused had stopped the three wheeler and indicated that he could not drive any further. At this stage the 1st Accused had taken the wheel whilst the 2nd Accused decided to come and sit with the injured. According to the injured, when the 2nd accused came and sat with him, all of a sudden he realize that the 2nd

Accused is causing an injury to his neck. This had happened within few seconds. The movement he release this, he got down from the three wheeler and ran on the road calling for help. For his fortunate, there was a police barrier in a close proximity and the police officers at the barrier had come for his rescue. The three wheeler proceeded on the road without the orders of the Police but one Police Officer had managed to chase behind the Three Wheeler in a Motor Cycle and manage to apprehend the 1st Accused at a place about 1 ½ k.m., away from the place of the incident. The 2nd Accused had surrendered to Uhana Police at 10.00 p.m. on the same day. The position taken up by the two accused were that they never intended to commit any offence on that day and it was not a pre planed attack on the injured. In support of their position, the counsel brings to this notice of this Court, that the weapon used is only a part of a paper cutting blade which is 5 ½ c.m. by 2 c.m. This blade had been recovered on a section 27 statement made by the 2nd Accused. The counsel further submits that the 2nd Accused was not identified at the parade which was held few days after. The position taken up by the both Counsel for the Accused-Appellants were that the injury caused to the Accused is only a

superficial cut injury on the neck of the injured, where the injured was discharged after treatment from the hospital on the following day. Under these circumstances, the Counsel submit that a sentence of 16 years imposed on the two Accused are excessive and move that the Court to reduce the sentence to a reasonable term. However, the learned Additional Solicitor General whilst objecting to the said application submitted that this was a pre planned act. According to him the 1st Accused was facing a disciplinary inquiry at that time and had to pay back a large sum of money to the co-operative Society. His position was that the motive for this offence was in order to take money from the safe of the co-operative Society. According to the witness, the witness was having the key to the room where the safe was kept and one key for the safe was also with him on that day. Eventhough, the witness refers in his evidence for two keys, he has not specifically said that the both keys were necessary to open the safe. However, the fact that both the room key and one key for the safe was with the injured is an admitted fact. The position taken up by the learned Additional Solicitor General was that the 1st accused was searching for the injured from around 3.00 p.m. on that day, making inquiries about the injured and

finally met him after his office hours and offered a lift to him, saying that he will drop him at home. Half way through the deviated their journey, consumed some liquor and went towards a jungle area. The incident had taken place under these circumstances and he further submits that eventhough, the Medical Report indicates only a superficial cut on the neck of the injured, the Doctor has specifically said in his evidence that this injury is in serious nature because, it is 10 c.m. cut injury right across the neck. When considering the submissions made by Counsel for both parties, we are mindful of the facts place before this Court by the learned Additional Solicitor General to the effect that the injured in this case had a narrow escape on this occasion and for his fortunate there was a Police barrier in the close proximity to the scene of crime. Under these circumstances, we observe that the learned trial Judge had reason to impose a sentence of 16 years. But however, considering the fact that the Accused-Appellants had decided not to canvass the conviction before us, without wasting the time of this Court, we decide to reduce the jail term imposed on both Accused-Appellants up to 14 years R.I. The rest of the sentence will remain uncharged and we further make order to implement

the said sentence from the date of conviction that is from 22.06.2007. Subject to the above variation in the sentence, the appeal stands dismissed.

Registrar is directed to forward the record to the High Court of Ampara in order to implement the sentence.

PRESIDENT OF THE COURT OF APPEAL

H.C.J.Madawala,J.

I agree.

JUDGE OF THE COURT OF APEPAL

Jmr/-