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

In the matter of an Appeal under and in terms of Section 331 of No. 15 1979 Code of Criminal Procedure Act read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read also with the Provisions of No. 19 of 1990 High Court of the Provinces (Special Provisions) Act.

High Court of Trincomalee
Case No. HCT 622/2014

Hon. Attorney General

Court of Appeal Case No.
CA 128-129/2015

COMPLAINANT

Vs.

1. Vairamuthu Rasa Alias Kunjan
2. Kapilarathna Devadhas

ACCUSED

AND NOW BETWEEN

1. Vairamuthu Rasa Alias
   Kunjan
2. Kapilarathna Devadhas

ACCUSED – APPELLANTS

AND

Hon. Attorney General

COMPLAINANT –
RESPONDENT

Before : P.R. Walgama, J

: K.K. Wickremasinghe, J

Counsel : Dr. Ranjith Fernando for the Accused – Appellants.

: D.S. Soosathas SSC for the State.

Argued on : 09.01.2017

Decided on : 14.06.2017

P.R. Walgama, J

The tenure of the instant application by the counsel for the Accused – Appellants is that the failure on the part of the Learned High Court Judge to comply with the Section 195 (ee) of Criminal Procedure Code, and thereby resulted the conviction a nullity.

The above section postulates that the trial judge should inquire from the accused whether he elects to be tried by a jury and the Trial Judge has to inform the Accused that he has the option to elect.

The above section 195 was amended by Act No. 11 of 1988 to reads as thus;

" (ee) if the indictment relates to an offence triable by a jury, inquire from the accused whether or not he elects to be tried by a jury".

It is seen from the hosts of cases decided on this issue had followed the judicial pronouncement in the case of THE ATTORNEY GENERAL .VS. VIRAJ APANSO- decided 12.09.08, which concluded that non observance of this procedure is an illegality and not a mere irregularity. Hence the case was sent back to the Original High Court to comply with the above mandatory requirement.

The facts emerged from the instant appeal and the genesis and the origin as per case for the prosecution is as here under;

That on 14.09.2009 the 1st and the 2nd Accused did cause injury to one Kariyaperumal Ganeshan and there by attempted to murder punishable under section 300 of the Penal Code. It is also alleged that the both accused had acted in furtherance of a common intention to cause injury to the afore said injured.

In the trial at the High Court it was urged by the Counsel for the Attorney General that the gravity of the injuries sustained by the injured is such that the murderous intention of the Accused is so apparent that when imposing a sentence to consider a sufficient punishment as the maximum punishment under section 300 of the Penal Code is 20 years of Rigorous Imprisonment.

After the appraisal of the Court below the Learned High Court Judge, handed down the judgment for a conviction and imposed the following sentence;

10 years of Rigorous Imprisonment for the 1st and the 2nd accused

A sum of Rs. 150,000/ as compensation by each accused, carrying a default sentence of 3 years of jail term and Rs. 10,000/ as a fine with a default sentence of 6 months jail term.

As per document marked P1 the short history given by victim is to the effect that he was assaulted by Davedas and Ranjan with a club due to a financial problem on 14.09.2009 at 7.10 p.m. It is also seen from the column which described the nature of the injuries that non of the injuries would have not resulted in a death. At best it was only a grievous hurt which is punishable under section 311 of the Penal Code. In addition it is salient to note that the weapon that was used to assault the injured was a club which is a blunt weapon.

Although the Counsel for the Accused – Appellants raised the afore said legal issue, was also agreeable to accept a lesser sentence. It was submitted to Court that Accused – Appellants will not challenge the conviction, but plead for clemency from Court.

Considering the fact that the Accused – Appellants had served a period of 2 years, in remand custody this court is inclined to reduce the sentence for 3 years, and the sentence to be effective from the date of the judgment. In addition, the Accused – Appellants shall pay the compensation as stated in the judgment pronounced on 27.07.2015, carrying a default team of 3 years Rigorous Imprisonment.

Thus the sentence is varied accordingly. Subject to the above variation appeal stands dismissed.

JUDGE OF THE COURT OF APPEAL

K.K.Wickremasinghe, J
I agree.

JUDGE OF THE COURT OF APPEAL