

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

An appeal against the judgement
/sentence pronounced on 09-07-2015
by the learned Hon. Judge of the
High Court of Eastern Province
holden in Trincomalee.

C.A. Appeal No.100/2015

H.C. Trincomalee No. HCT 504 /2012

01. Jayamanna Mohottige Jagath
Priyantha alias Chooti
02. Galappaththige Sunil Priyantha alias
Ukku

Accused-Appellants

Vs.

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

Respondent

BEFORE : DEEPALI WIJESUNDERA, J.
ACHALA WENGAPPULI J.

COUNSEL : Lakshan Dias for the 2nd Accused-Appellant.
P. Kumararatnam S.D.S.G. for the Respondent

ARGUED ON : 16th January 2019

DECIDED ON : 15th February, 2019

ACHALA WENGAPPULI J.

The 2nd Accused-Appellant (hereinafter referred to as the “Appellant”) was indicted before the High Court of *Trincomalee* with the 1st Accused for the attempted murder of *Madahapola Lekamge Harrold Fonseka* on or about 08.03.2008. The 1st Accused absconded throughout the trial.

After trial without a jury, both Accused were convicted as charged by the High Court and each of them were sentenced to serve a term of ten years imprisonment. They were also imposed a fine of Rs. 10,000.00 each with a default term of six months. Each of the Accused were to pay Rs. 100,000.00 as compensation to the injured and in default two years of imprisonment was imposed.

Being aggrieved by the said conviction and sentence the Appellant sought to challenge its validity on the basis that the trial Court fallen into error on the question of identity of the Appellant and based upon a "mere assumption" he was found guilty to the offence of attempted murder.

This ground of appeal is based on the evidence of the injured who admitted that he did not know who inflicted his head injury or the weapon used in the attack.

Learned Senior Deputy Solicitor General in his submissions in reply invited our attention to the evidence of an eye witness to the attack, *Manjula*, who clearly saw the Appellant striking on the head of his father, the injured, with a knife with a curved blade.

The prosecution case is that the Appellant and the 1st Accused have assaulted *Manjula* when he was returning home with his friend *Madhushanka*. He then complained to the injured of the unprovoked attack, who decided to question the Appellant as to the reason for such an assault. As the injured questioned the Appellant, the 1st Accused attacked *Manjula* with an iron club and he fell down with the blow. The injured then attempted to help *Manula* to stand up by bending down. It is at that juncture the Appellant struck on the head of the injured with a knife.

Medical evidence revealed that the injured has suffered 8 centimetre long lacerated cut injury on the head and further medical examination revealed that there was a fracture of the skull lying underneath the external cut injury. The expert witness was of the opinion that it is a life-threatening injury and timely medical intervention has saved his life.

The segment of the evidence of the injured, relied upon by the Appellant in support his ground of appeal should be considered in detail. It is helpful if the evidence of the injured on this aspect is reproduced, which would facilitate an accurate evaluation.

Evidence of the injured at p. 164 is as follows:-

- ප්‍ර: තමාට කෙටුවේ කවුද කියා දන්නවද? මේ නඩුවේ මුද්‍රිතයින් කවුද කියා දන්නවද?
- උ: හරියට දන්නෙ නැහැ.
- ප්‍ර: තමාට සිද්ධියක් සිදු වුණා නේද?
- උ: ඔව්.
- ප්‍ර: එම සිද්ධිය කළේ කවුද. කෙටුවේ කවුද?
- උ: කෙටුවේ උක්කු කියන එක්කෙනා.
- ප්‍ර: අනෙක් කෙනා කවුද?
- උ: මුට් කියලා කියන්නෙ.

The injured also stated at p. 169 as follows;

- උ: පුතා වැටුනම උස්සන්න ගියා. එතකොට තමයි මම මඵටට පහරක් වැදුනෙ. මුත් පසුව මම දන්නෙ නැහැ මොනට වුනාද කියලා.

ප්‍ර: තමන් කීව්වා පුතා වැටුණා කියලා. පුතාට උස්සන්න තමන් ගැදුවා කීව්වා. තමාට පහරක් වැදුන බව කීව්වා. ඒප හර ගැහුවෙ කවුද?

උ: මම දන්නෙ නැහැ.

ප්‍ර: තමන් කීව්වා පුතා වැටුණා කියලා. එතන දෙන්නෙක් හිටපු බව කීව්වා. තමාට පහර දුන්නෙ කවුද?

උ: මම දන්නෙ නැහැ. මොකකින් ගැහුවද කියලත් දන්නෙ නැහැ.

ප්‍ර: කොහේද පහර වැදුනේ?

The first segment of the evidence reveals two combined questions put to the injured by the learned State Counsel who provided only one answer. At first glance it is not clear as to which question he answered since his reply was that he does not know for sure. In relation to the identity of the two Accused, the injured had already answered that both of them were well known to him; elsewhere in his evidence. It could well be that he answered the question as to who attacked him. However, the question and answer immediately following the double question provides consistency to the claim of his son that it was the Appellant who struck on the head of the injured.

It is seen from the evidence of the injured that he honestly confined himself to what he actually saw and heard, although he could have surmised that it was the Appellant, who was standing in front of him just before he bended down, who would in all probability have attacked him on his head. His son, *Manjula* however, provides for the deficiency in the evidence of the injured as to the identity of the attacker.

Evidence of *Manjula* is supported by the evidence of his friend *Madhushanka* who confirms the initial attack on his friend.

The recovery of a manna knife upon the information provided by the Appellant and the expert opinion that it could have been used in the attack also supports the claim of the lay witnesses for the prosecution.

Upon consideration of the evidence in relation to the identity of the Appellant and his involvement in the attack on the injured, we are of the view, that there was clear credible and reliable evidence before the trial Court to satisfy itself that the prosecution has established the identity of the Appellant beyond reasonable doubt.

We, therefore affirm the conviction and sentence of the Appellant. His appeal therefore stands dismissed.

JUDGE OF THE COURT OF APPEAL

DEEPALI WIJESUNDERA, J.

I agree.

JUDGE OF THE COURT OF APPEAL