

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

In the matter of an appeal in terms of section 331
of the Code of Criminal Procedure Act No 15 of
1979

Democratic Socialist Republic of Sri Lanka
Complainant

CA Case No. CA/HCC/141/2018

Vs.

HC Kandy Case No. HC 108/2006

Landedara Ranjith Siriwardena alias Podi
Malli No 53, Wihara Road, Matale

Accused

AND NOW BETWEEN

Landedara Ranjith Siriwardena alias Podi
Malli (Currently in Welikada Prison)

Accused-Appellant

Vs.

Hon. Attorney General

Complainant-Respondent

Before: **N. Bandula Karunarathna J.**

&

R. Gurusinghe J.

Counsel: Sahan Kulathunga AAL for the Accused – Appellant
Azard Navavi DSG, for the Complainant-Respondent

Written Submissions: By the Accused – Appellant on 01.04.2019

By the Complainant-Respondent not filed

Argued on : 16.11.2021

Decided on : 22.11.2021

N. Bandula Karunarathna J.

This appeal is from the judgment, delivered by the learned Judge of the High Court of Kandy, dated 29.03.2018, by which, the accused-appellant, who is before this Court, was convicted and sentenced to 6 years imprisonment for having committed the grievous hurt of one Koswatte Gedara Priyantha Kumara and the accused-appellant was ordered to pay compensation of Rs. 75,000/-.

In this case, the accused-appellant along with three others was indicted in the High Court of Kandy for the following offences:

- (i) For being members of an unlawful assembly with the common intention of causing hurt on Priyantha Kumara; an offence punishable under section 140 of the Penal Code.
- (ii) For attempting to murder Priyantha Kumara; an offence punishable under section 300 read with section 146 of the Penal Code.
- (iii) An alternative charge under section 32 of the Penal Code.

In this case, the 1st, 2nd and 4th accused pleaded guilty at the start of the trial and was sentenced as follows:

- (i) Compensation of Rs. 10,000 to be paid to the complainant, in default thereof to be imprisoned for 1 year.
- (ii) 1st count - 6 months' rigorous imprisonment with a fine of Rs. 2500, in default thereof to be imprisoned for 3 months.
- (iii) 2nd count - 6 months' rigorous imprisonment with a fine of Rs. 3500, in default thereof to be imprisoned for 6 months.
- (iv) 3rd count - 1-year rigorous imprisonment with a fine of Rs. 3500, in default thereof to be imprisoned for 6 months.
- (v) The 2-year prison sentence, above mentioned was suspended for 5 years.

After the 1st, 2nd and 4th accused pleaded guilty and were convicted and sentenced, the 3rd accused, who is the accused-appellant in this case pleaded not guilty and the case proceeded to trial. On behalf of the prosecution, 9 witnesses gave evidence.

The prosecution case was closed and defence was called. The accused made a statement from the dock and the defence case was closed. Thereafter, with the conclusion of submissions on behalf of both parties the case was fixed for judgement.

On 29.03.2018, the learned Trial Judge delivered his judgement and proceeded to acquit the accused-appellant of all the charges in the indictment and then convicted him for voluntarily causing grievous hurt with a dangerous weapon under section 317 of the Penal Code sentencing him, to 6 years of rigorous imprisonment and a fine of Rs. 10,000 in default of which to be imprisoned for 6 months.

The accused-appellant was directed to, pay Rs. 75,000 to the complainant as compensation and in default of which to rigorous imprisonment for one year. Being aggrieved by the above conviction and sentence, the accused-appellant preferred this appeal to this Court.

When this matter was taken up for argument the learned counsel for the accused-appellant informed court that he is not canvassing the conviction but requested to consider a lesser sentence.

It is seen that the other accused were sentenced to 2 years imprisonment suspended for 5 years on pleading guilty to the charge of attempted murder while the appellant was sentenced to 6 years imprisonment for a charge of grievous hurt. The accused-appellant was ordered to pay compensation of Rs. 75,000/- while the other 3 accused who pleaded guilty were ordered to pay only Rs.10,000.

It was argued by the learned counsel for the accused-appellant that even though the discretion is vested in the Trial Judge to award a legal and appropriate sentence, there cannot be such a striking disparity in sentencing different accused of the same offence.

It was held in The Police Officer, Dondra, v. Baban; 25 NLR 156 that, an accused, who pleads not guilty and claims to be tried, is not to be punished when found guilty more severely on that account, than a co-accused who has pleaded guilty.

In the above-mentioned case, those who pleaded guilty to the offence in 1923 were fined Rs. 3/-. The appellant who pleaded not guilty and went for trial had been found guilty and fined Rs. 6/- for the same offence, because he pleaded not guilty and claimed to be tried. The learned Magistrate gave reason for the conviction and the sentence has indicated as follows;

" Counsel for the defence, however, questions my right to impose varying sentences in the case of the same offence. My only answer to that is that it is a practice universally followed, and I think, very rightly followed for a judge to regard a frank and open plea of guilt, when not made boastfully as a justification for treating the accused with somewhat less severity. A man who aggravates his original offence by putting forward a vexatious and frivolous defence cannot, I think, claim as a right from the Court the same sentence as has been imposed on those who admitted their guilt."

There is a great deal of truth and force in what the Magistrate had stated, but the practice has often been condemned, and, if I may say so, rightly condemned by this Court. It holds out a strong temptation to innocent persons to plead guilty.

In the case of Beliatta vs Don Lewis (1907); 1 Aserwatham's Report page 2, Wendt J made the following observation;

"Again, it is not an offence to plead not guilty when one is guilty, and a person doing so cannot be punished more heavily than one who fully admits the charge or *vice versa*."

In the present case, the accused-appellant was sentenced to 6 years' rigorous imprisonment and fined Rs. 10,000/- for the offence of voluntarily causing grievous hurt with a dangerous weapon under section 317 of the Penal Code. The Court directed the accused-appellant to pay Rs. 75,000/- to the complainant as compensation.

Those others who pleaded guilty for the offence of attempted murder was ordered 2 years' imprisonment suspended for 5 years and fined Rs. 9,500/-. They were asked to pay Rs. 10,000/- to the complainant as compensation.

It is my view that there is a serious disparity in sentencing different accused persons for the same offence in the present case.

In light of the reasons aforesaid, having regard to the facts and legal principles involved in the present matter in question, we decide that the conviction should stand and the sentence should be amended as follows;

The accused-appellant is sentenced to 4 years of rigorous imprisonment and fined Rs. 10,000/- with 3 months' imprisonment in default thereof, for the offence of voluntarily causing grievous hurt with a dangerous weapon under section 317 of the Penal Code. The accused-appellant should pay Rs. 25,000/- to the complainant as compensation, with 6 months' imprisonment' in default thereof.

Considering the circumstances of this case we decide that the imprisonment should be backdated to 29.03.2018 and the sentences in default of the aforementioned offences should run concurrently from 29.03.2018.

Appeal dismissed subject to the above-mentioned alterations on the sentence.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree.

Judge of the Court of Appeal