

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

In the matter of an Appeal in terms of section 331 (1) of the Code of Criminal Procedure Act No- 15 of 1979, read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal No:

CA/HCC/0218/2018

Democratic Socialist Republic of Sri Lanka

COMPLAINANT

Vs.

High Court of Embilipitiya

Case No: HC/60/2016

Ratnayaka Arachchilage Wijesinghe

ACCUSED

AND NOW BETWEEN

Ratnayaka Arachchilage Wijesinghe

ACCUSED-APPELLANT

Vs.

The Attorney General

Attorney General's Department

Colombo 12

RESPONDENT

Before : Sampath B Abayakoon, J.
: P. Kumararatnam, J.
Counsel : K. Kugarajah for the Accused-Appellant
: Maheshika Silva SSC for the Respondent
Argued on : 08-02-2022
Written Submissions : 30-08-2019 (By the Accused-Appellant)
: 22-10-2019 (By the Respondent)
Decided on : 07-03-2022

Sampath B Abayakoon, J.

This is an appeal by the accused appellant (herein after referred to as the appellant) on being aggrieved by the conviction and the sentence imposed on him by the Learned High Court Judge of Embilipitiya.

The appellant was indicted before the High Court of Embilipitiya for the offence of attempted murder of one Godawatte Liyanage Gnanawathi on 06-07-2010, an offence punishable in terms of Section 300 of the Penal Code.

After trial, the appellant was found guilty as charged, and the Learned High Court Judge after hearing both the parties on the sentence, imposed a term of four years rigorous imprisonment to the accused and a fine of Rs 5000/-, in default of 3 months simple imprisonment. In addition to the fine, the appellant was ordered to pay Rs 150000/- as compensation to the victim, in default, twelve months simple imprisonment.

At the hearing of this appeal the Learned Counsel for the appellant informed the Court that he is not canvassing the conviction and only making submissions with regard to the sentence.

Accordingly, the appeal against the conviction was dismissed and the learned Counsel for the appellant as well as the Learned Senior State Counsel (SSC) for the Respondent Attorney-General were heard with regards to the sentence.

The victim Godawatte Liyanage Gnanawathi (PW-01) was the mother-in-law of the appellant. On the day of the incident the appellant has visited the house of the PW-01 and has informed her that his wife (daughter of PW-01) has eloped with some other person. Hearing the news, PW-01 has shown her sympathy towards the appellant and has even provided him with meals. However, after some time the appellant has attacked PW-01 from behind using an axe and has runaway from the scene of the crime. The attack has caused injuries to her neck area.

The evidence reveals that as a result of the attack, PW-01 was suffering for a long time and still she has to depend on her husband for her day-to-day affairs. She being a manual labourer at the time of the attack, was not being able to work and earn a living even at the time of her giving evidence in the High Court.

After the conviction, the learned Counsel who appeared for the appellant has pleaded before the learned High Court Judge in mitigation and has stated that the appellant was 60 years old with three children and a farmer by profession and also that he has no previous convictions. The learned Counsel in making submissions before this Court also reiterated the same mitigatory circumstances and pleaded that given the circumstances, this Court may consider suspending the sentence imposed upon him.

In the case of **Ravij Vs. State of Rajastan (1996) 2 SCC 175** it was held that:

“It is the nature and gravity of the crime and not the criminal which are germane for consideration of appropriate punishment in a criminal case.

The court will be failing in duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong.”

In M. Gomes Vs. W.V.D Leelaratne 66 NLR 233 it was stated that:

“A Judge in determining the proper sentence should first consider the gravity of the offence as it appears from the nature of the act itself. Should have regards to the punishment provided in the Penal Code or the Statute under which he is charged.”

When the sentence imposed upon the accused by the learned High Court Judge is considered, it needs to be mentioned that for an offence of this nature where the offender has caused serious injuries to the victim, he shall be liable to an imprisonment of either description for a term which may extend to 20 years and shall also be liable to a fine.

Given the facts and the circumstances of this case, this Court is of the view that the term of imprisonment imposed by the learned High Court Judge to the appellants is very much adequate. In imposing the sentence, the Learned High Court Judge has considered the mitigatory circumstances as well as the gravity of the offence. Hence, this Court finds no reason to interfere with the sentence of the learned High Court Judge.

The appeal against the sentence is dismissed as this Court finds no merit in the appeal. The conviction and the sentence affirmed.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal