

**IN THE COURT OF APPEAL OF THE DEMOCRATIC 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/112/2020

Democratic Socialist Republic of Sri Lanka

**COMPLAINANT**

**Vs.**

**High Court of Tangalle**

**Case No:** THC/185/2019

01. Amarathunga Arachchige Dayananda  
*alias* Madduma Mahaththaya

02. Geegana Gamage Chamara Nilanga

**ACCUSED**

**AND NOW BETWEEN**

Geegana Gamage Chamara Nilanga

**2<sup>nd</sup> ACCUSED-APPELLANT**

**Vs.**

The Attorney General

Attorney General's Department

Colombo 12

**RESPONDENT**

**Before** : Sampath B. Abayakoon, J.  
: P. Kumararatnam, J.

**Counsel** : Charuka Dharmasiri with Nuwan  
Beligahawatte for the Accused Appellant  
: Shaminda Wickrama, S.C. for the Respondent

**Argued on** : 02-06-2022

**Written Submissions** : 21-01-2022 (By the Accused-Appellant)  
: 01-06-2022 (By the Respondent)

**Decided on** : 18-07-2022

**Sampath B Abayakoon, J.**

This is an appeal by the 2<sup>nd</sup> accused appellant (hereinafter referred to as the appellant) on being aggrieved by the sentence imposed upon him by the learned High Court Judge of Tangalle.

The appellant, along with the 1<sup>st</sup> accused named in the indictment, was indicted before the High Court of Tangalle for causing grievous injuries to one Indika Sandaruwan on 22<sup>nd</sup> December 2016 and thereby committing the offence of attempted murder, punishable in terms of Section 300 read with Section 32 of the Penal Code.

Both the 1<sup>st</sup> accused as well as the appellant pleaded guilty to the charge when the indictment was read out to them on 23<sup>rd</sup> September 2020.

On behalf of the appellant, submissions have been made in mitigation of the sentence and a compensation in a sum of Rs. 75000/- has been offered to the injured. It has been urged that he is a married person of 39 years of age, having 3 children at that time and he is also a serving Army soldier attached to the Engineering Regiment of the Sri Lanka Army. Under the circumstances, it has been pleaded for the consideration by the Court for a sentence that does not

affect his employment. It has been specifically pleaded that he may be ordered to pay state costs instead of a fine. It appears from the proceedings that the learned State Counsel who prosecuted the matter has not insisted on imposing a jail term on the appellant as well as the first accused. Having considered the fact that the injured, who is the PW-01 named in the indictment, has also expressed his willingness to accept compensation and to conclude the matter, it has been urged the Court to consider these factors and impose a suitable sentence.

In his sentencing order, learned High Court Judge has considered the fact that the appellant and the first accused tendered an unconditional plea and also the fact that the injured, namely, PW-01 named in the indictment, has expressed his wish to obtain compensation, as mitigatory factors.

Accordingly, the appellant and the other accused have been sentenced to 2 years imprisonment which has been suspended for a period of 5 years. In addition, they have been ordered to pay a sum of Rs. 75000/- each to PW-01 as compensation. In addition to the above, the appellant and the 1<sup>st</sup> accused have been ordered to pay Rs. 5000/- each as fines. In default, they have been sentenced to one month imprisonment.

It appears from the sentencing order that the submission made on behalf of the appellant to the effect that he is a serving Army soldier and to consider imposing a punishment which would not affect his employment has drawn the attention of the learned High Court Judge. However, he has not been ordered to pay state costs instead of a fine, but a note of his application has been made in the sentencing order.

In the appeal under consideration, the appellant is only challenging the sentence where he was ordered to pay a fine of Rs. 5000/-, and seeking this Court's indulgence to set aside the fine imposed and to consider imposing a state cost in place of the fine.

At the hearing of this appeal, the learned Counsel for the appellant as well as the learned State Counsel after making oral submissions invited this Court to consider their respective written submissions as well, and pronounce a judgment deemed appropriate.

As I have stated before, the appellant along with another, has been indicted for the offence of attempted murder, punishable in terms of section 300 read with section 32 of the Penal Code. The indictment has been served on 21<sup>st</sup> May 2020 and on the day where the appellant and the 1<sup>st</sup> accused were explained of the charge against them, have chosen to tender an unconditional plea of guilty to the charge.

The appellant has pleaded several grounds in mitigation and has urged the indulgence of the learned High Court Judge to consider imposing a state cost rather than a fine on him on the basis that a fine may affect his employment in the Sri Lanka Army. It really appears from the sentencing order that the intention of the learned High Court Judge was also to make a sentencing order that will not affect the employment of the appellant. It appears that it was on that basis that the learned High Court Judge has decided to mention that application in his sentencing order.

In his submissions before this Court, it was the view of the learned Counsel for the appellant that considering the fact that he was an army soldier serving in the Sri Lanka Army since 2009 with a distinguished record, and then a father of three children, and the fact that he has had no previous convictions or pending cases, the learned High Court Judge should have considered imposing a state cost rather than a fine on him. He relied on the judgment by Edirisuriya, J. in the case of **Kumara Vs. The Attorney General (2003) 1 SLR 139** to substantiate his position.

The view of the learned State Counsel was that the learned High Court Judge has well considered the application of the appellant to decide whether to order him to pay a state cost rather than a fine in the sentencing order. It was his view

that after considering the facts and the circumstances, the learned High Court Judge has decided to suspend the jail term imposed on the appellant but not to order state costs in lieu of the mandatory fine that has to be imposed on a charge of this nature. It was his view that there exists no reasonable basis to allow the application of the appellant with regard to the sentence imposed upon him by the learned High Court Judge. He moved that the appeal should stand dismissed as there is no merit in the application.

In the case of **Kumara Vs. The Attorney General (Supra)** it was held:

1. *A suspended sentence is a means of reeducating and rehabilitating the offender rather than alienating or isolating the offender.*
2. *No offender should be confined to in a prison unless there is no alternative available for the protection of the community and to reform the individual.*
3. *Imprisonment has an isolating and alienating effect on the family of the imprisoned offender because of the hardships they are faced with during the imprisonment of the family members.*
4. *Suspended sentence with its connotation of punishment and pardon is supposed to have integrative powers. The offender is shown that he has violated the tenets of society and provoked it wrath, but is immediately forgiven and permitted to continue to live in society with the hope that he wouldn't indulge in that form of behavior again.*
5. *The accused does not have previous convictions; he surrendered to police; he pleaded guilty on the first date of trial; he offered compensation to the aggrieved party; these amply demonstrate the mitigatory factors.*

The above mentioned was a case where the accused was charged for the offence of murder, but where he pleaded guilty for the lesser offence of culpable homicide not amounting to murder under Section 297 of the Penal Code on the basis of a sudden fight. He was sentenced to seven years rigorous imprisonment and a fine. Considering his appeal against the sentence, Edirisuriya, J. in suspending his

sentence and in addition, ordering him to pay compensation to the next of kin of the deceased, held as earlier, which are the grounds that should be considered in mitigation by a trial judge.

In the instant case, the appellant was indicted for the offence of attempted murder for which he has pleaded guilty on the first available opportunity when he was charged based on the indictment.

It is clear from the proceedings that the learned Counsel who represented the appellant before the High Court has placed clear mitigatory circumstances for the consideration of the Court. His only application with regard to the sentence had been to consider imposing of a state cost rather than a fine, as it would affect the appellant's employment.

When one considers the underlying principles that have been laid down by Edirisuriya, J. in the above-mentioned case, it is clear that the purpose of imposing a suspended sentence is to allow an offender to rehabilitate himself and to continue to live in the society. The appellant is a serving army soldier, and if a fine is imposed, it would affect his employment as a government servant which may result him been deprived of his livelihood. Such a situation would affect his family members and may change his life altogether.

In my view, this is not the expected purpose of suspending a sentence imposed upon an accused. By suspending a sentence for a minimum period of 5 years, the appellant, if he complies with the conditions of the suspended sentence, will be treated as a person who did not receive a punishment before the eyes of the law. But if he is fined, as contended by the learned Counsel for the appellant, it may affect his employment. Therefore, it is nothing but fair to allow the application of the appellant considering the facts and the circumstances that led to the imposition of a fine and a suspended sentence on the appellant.

Therefore, I set aside the Rs. 5000/- fine imposed on the appellant and order him to pay a state cost of Rs. 10000/-. As he is now benefiting from this judgment and he is yet to pay the compensation ordered, it is ordered that he shall pay a

compensation of Rs.125000/- to PW-01. In default, he shall serve a simple imprisonment period of 6 months.

If the appellant fails to pay the state cost ordered, it shall be recovered as a fine and in default, he shall serve a simple imprisonment period of 3 years.

The appeal is allowed to the above extent.

Judge of the Court of Appeal

**P. Kumararatnam, J.**

I agree.

Judge of the Court of Appeal