

**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/0032/2020

High Court of Chilaw

Case No: HC/32/18

Democratic Socialist Republic of Sri Lanka

COMPLAINANT

Vs.

Jayasundara Pradeep Kumara

ACCUSED

AND NOW BETWEEN

Jayasundara Pradeep Kumara

ACCUSED-APPELLANT

Vs.

The Attorney General

Attorney General's Department

Colombo 12

RESPONDENT

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

Counsel : Malintha Jayasinghe, Assigned Counsel for the
Accused Appellant
: Shaminda Wickrama, SC for the Respondent

Argued on : 20-06-2022

Written Submissions : 09-05-2022 (By the Accused-Appellant)
: 20-06-2022 (By the Respondent)

Decided on : 20-07-2022

Sampath B Abayakoon, J.

The accused-appellant (hereinafter referred to as the appellant) was indicted before the High Court of Chilaw on following counts.

1. For causing injuries to Palugahathannegedara Nandawathi on 20th July 2014 using an axe and thereby committing the offence of attempted murder, punishable in terms of Section 300 of the Penal Code.
2. At the same time and at the same transaction, causing simple hurt to Raghavan Kumara, an offence punishable in terms of section 314 of the Penal Code.

When the appellant was charged before the high Court, he has pleaded guilty to both the counts preferred against him. After hearing the learned Counsel on behalf of the appellant and the learned State Counsel for the prosecution, on the question of sentencing, the learned High Court Judge has imposed the following sentence on the appellant.

1. On count one, he was sentenced to 15 years rigorous imprisonment and a fine of Rs. 25000/-. In default, he was ordered 6 months simple imprisonment.

2. On count two, he was sentenced to one-year rigorous imprisonment and a fine of Rs.1000/-. In default of the fine, he was ordered 3 months simple imprisonment.

In addition to the above punishment, he was ordered to pay Rs. 250000/- as compensation to PW-02, who was the injured party mentioned in count one and Rs. 50000/- to PW-01, who was the injured party mentioned in relation to count two. In default, he was sentenced to 2 years and 6 months simple imprisonment periods respectively.

As the learned High Court Judge has not mentioned whether the period of imprisonment imposed on count one and two are concurrent to each other or consecutive, I find that it needs to be assumed that the sentences are consecutive to each other.

Being aggrieved by the sentence, the appellant filed this appeal. At the hearing of this appeal, it was the contention of the learned Counsel for the appellant that given the facts and the circumstances, the sentence imposed by the learned High Court Judge on the appellant was excessive.

The learned Counsel drew the attention of the Court to the decided case of **Hattuvan Pedige Sugath Karunaratne vs. The Attorney General S.C. Appeal 32/2020, decided on 20-10-2020** in this regard, where their lordships of the Supreme Court have considered the appropriateness of a sentence in relation to the crime, among other matters considered.

It was the view of the learned State Counsel that the learned High Court Judge has considered all the relevant factors before the appellant was sentenced and, the appellant cannot bargain the sentence imposed on him. It was his view that no material has been placed before the Court that needs the intervention of the Court and to consider reduction of the sentence imposed on the appellant.

It needs to be mentioned that this Court is in no position to agree with the submissions of the learned State Counsel when he said that if considered, the

appeal of the appellant would amount to bargaining of the sentence. This Court finds that any accused who is dissatisfied by a sentence imposed on him have a right of appeal to the Court of Appeal challenging his sentence, which cannot be termed as plea bargaining.

This Court finds that the appellant has pleaded guilty to the charges at the first available opportunity. He has been a person of 28 years at the time he pleaded guilty and the learned High Court Judge has considered his age as well as the fact that he has been in remand custody for a long period. However, the learned High Court Judge has considered the gravity of the injury suffered by PW-02 Nandawathi, and has expressed the opinion that persons who commit this type of criminal acts should be punished so that the punishment would reflect a message to the society.

It appears from the submissions made on behalf of the appellant that he is a person of no means. Therefore, it is clear that he will not be able to pay any of the compensation ordered. Although PW-01 had received three cut injuries where the appellant was found guilty in terms of section 314, and PW-02 who had received grievous injuries to her abdomen has received one cut injury. It is clear that the appellant has caused these injuries due to a personal animosity he had with them while working in a tile factory. When considering the fact that the appellant has pleaded guilty to the charges at the first available opportunity, which goes on to show that he repents his acts and also the fact that he had no previous convictions are matters that had been considered by the learned High Court Judge in mitigation of the sentence, I am of the view that imposing him a total of 16 years rigorous imprisonment on both counts are too excessive punishment in relation to the offences he was found guilty.

Having considered all the facts and the circumstances, it is the view of this Court that a 10-year rigorous imprisonment period on count one would be an appropriate punishment for the accused-appellant. Therefore, we set aside the

sentence of 15 years rigorous imprisonment imposed on the appellant on count one and replace it with a 10-year period of rigorous imprisonment.

The fine imposed on the accused-appellant on count one and the sentence and the fine imposed on count two shall remain the same.

Considering the facts and the circumstances, we order that the appellant shall serve the sentences imposed on count one and two concurrently. Having considered the fact that the appellant has been in incarceration from the date of the conviction, the sentence is ordered to be effective from 27-05-2020.

The compensation ordered and the default sentences imposed shall also remain the same.

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