

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

Hewafonsekage Priyari Sriyantha alies Upul,
Wasantharama Road,
Wadduwa.

CA.125/2011

H.C. (Panadura) No.1494/2001

Accused-Appellant

Vs.

Hon. Attorney General,
Attorney Generals Department
Colombo 12.

Complainant-Respondent

Before : **Sisira J. De Abrew, J**
P.W.D.C. Jayathilaka, J

Counsel : Tennny Fernando for the Accused-Appellant.
Warunica Hettige SC for the AG

Argued &
Decided on : **04.11.2013**

Sisira J.De Abrew, J

Heard both counsel in support of their respective cases. The accused appellant in this case was convicted for committing the offence of attempted murder on a person named Hilary Zoysa. He was also convicted of the offence of unlawful assembly common object of which was to cause injuries to said Hilary Zoysa. The prosecution alleged that the accused appellant, the other three accused (all four accused in the indictment) and the people unknown to the prosecution have committed the offence.

On the 1st charge he was sentenced to a term of six months simple imprisonment and to pay a fine of Rs. 2500/- carrying a default sentence of six months simple imprisonment.

On the 2nd count he was sentenced to (the accused appellant-4th accused)a term of three years rigorous imprisonment, to pay a fine of Rs.5,000/- carrying a default sentence of 06 months simple imprisonment and to pay a sum of Rs.50,000/-to the victim carrying a default sentence of one year imprisonment. Being aggrieved by the said conviction and the sentence the accused appellant has appealed to this court. The 1st, 2nd and 3rd accused in the indictment have pleaded guilty and the learned High Court Judge has imposed the suspended sentence on them on the 1st and 2nd counts. No punishment was imposed on the 2nd count. The fourth accused was tried in absentia. The facts of this case may be briefly summarised as follows.

The 1st accused on the day of the incident had an exchange of words with Hilary Soyza at a funeral house. When the victim came home the four accused and the people unknown to the prosecution entered his land. On seeing the accused appellant and others unknown to the prosecution entering the land, Hilary Zoysa tried to jump over the fence.

At this stage the 2nd accused attacked Hilary Zoysa with a sword. The 4th accused was armed with a weapon at the scene of the offence. He was in unlawful occupation of Hilary Zoysa's land. When we consider all these facts, we hold that the presence of the 4th accused at the scene of offence was a participating presence and that the 4th accused had shared ^{common} intention with the 1st, 2nd and 3rd accused. When we consider all the matters we affirm the conviction. The question that must be considered is whether the sentence imposed on the accused appellant was excessive.

The 1st, 2nd and 3rd accused were given suspended sentences. The person who inflicted injuries namely the 2nd accused was also given suspended sentence. In our view, the fact that the 4th accused (accused appellant) absconded from the trial should not be considered as an additional ground when imposing the punishment.

When we consider all these facts, we feel that the justice would be served if a suspended sentence is imposed. We set aside the term of three years rigorous imprisonment on the 4th accused (the accused-appellant) in respect of Count No.02 and sentence him to a term of two years rigorous imprisonment on count No.02. We direct that the term of six months rigorous imprisonment imposed on count No.01 and the term of two years rigorous imprisonment imposed on count No.02 should run concurrently and suspend the term of two years rigorous imprisonment(both terms of imprisonment)for a period of ten years. The fine imposed on the 1st count remains unchanged. The fine and the compensation imposed on the 2nd count remain unchanged. The accused appellant, who is on bail, should submit to his bail. The operation of suspended period will begin from the date he surrenders to court or is brought before Court.

Subject to above variation of the sentence, the appeal of the accused appellant is dismissed. The default sentence imposed by the learned trial judge should be implemented if the fines and the amount of compensation are not paid.

Judge of the Court of Appeal

P.W.D.C. Jayathilaka,J

I agree.

Judge of the Court of Appeal

Na/-