

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

Padikara Gedara Ratnayaka
Mudiyanselage Madduma Banda

Accused-Appellant

C.A. No. 14/2014

H.C. Trincomalee No. HCT 91/2005

Vs.

1. Officer-in-Charge
Police Station, Wan Ela
2. The Hon. Attorney General
Colombo 12.

Complainant-Respondents

BEFORE : DEEPALI WIJESUNDERA, J.
ACHALA WENGAPPULI J.

COUNSEL : M. Sathyendran for the Accused-Appellant.
Janaka Bandara S.S.C. with S. Narampanawa S.C
for the respondents

ARGUED ON : 22nd January, 2018

DECIDED ON : 29th March, 2019

ACHALA WENGAPPULI J.

This is an appeal by the Accused-Appellant (hereinafter referred to as the "Appellant") against his conviction under two counts of attempted murder using a firearm, offences which are punishable under Section 44A of the Firearms Ordinance as amended by Act No. 22 of 1996. He was sentenced by the High Court of *Trincomalee* with imposition of life imprisonment in respect of each of those counts.

Being aggrieved by the said conviction and sentence, the Appellant sought to challenge its validity on the basis that the trial Court has failed to consider the evidence of the prosecution which implicated him is a total fabrication by his brother-in-law who was not well disposed towards him.

The prosecution presented evidence of the two injured in support of its case while calling another lay witness, in addition to leading evidence of the official witnesses, including the Consultant JMO.

One of the injured *Biso Menike* is the mother-in-law of the Appellant while the other injured *Manel Kumari* is his sister-in-law. The Appellant was married to one of the daughters of *Biso Menike* and had given birth to a child barely two weeks prior to the night of shooting.

The Appellant was employed as a home guard at that time and had been issued with a 12 bore shot gun for his duties.

After the child birth, wife of the Appellant was residing with her parents and the injured *Manel Kumari* too shared the same house. The Appellant, who lived in his own house, would routinely report to work for his night duty. He would visit his wife and child when in off duty.

On the day of the incident, at about 11.20 in the night, the Appellant came to his father-in-law's house. He then put the muzzle end of his gun through the window to the room in which the two injured women slept. He then shouted at them “ මම මද්දුමකණ්ඩා අඳුරනවද? “. When the injured saw the gun trained at them, they blocked the entrance to that room by stacking paddy sacks against its door, since it had no bolt. The Appellant thereafter fired 7 or 8 shots through the closed door, injuring both women.

PS 19946 *Abeykoon Banda* of *Wan Ela* Police, heard several shots being fired from the direction of *Biso Menika's* house that night at about 11.00 p.m. He then made enquiries and was told that the Appellant had shot two women and was lying in a nearby paddy field. He saw the two women, when they were being taken to the hospital in a lorry.

The Appellant was thereafter found in a paddy field about 400 to 500 meters from the place of shooting with bleeding injuries which disfigured his face. When questioned by PS *Abeykoon Banda*, whether he shot himself, the Appellant admitted that he did.

After inspecting the door of the house, he noted that it was peppered with gun shots.

The Consultant Judicial Medical Officer who examined the two injured persons confirmed that both have suffered several injuries that are consistent with the injuries caused by discharge of a firearm.

When the trial Court ruled that the Appellant had a case to answer, he opted to make a statement from the dock.

In his statement, the Appellant claimed that he had a fight with his brother-in-law. As he fell on the ground, he heard sound of a gunshot and he felt numb. He later came to know that his father-in-law and brother-in-law has made an attempt to kill him. They were against him and have even tried to separate him from his wife. He also complained that his brother-in-law, being a policeman attached to *Wan Ela* Police, used his influence to harass him.

In convicting the Appellant to the two counts he was charged with, the trial Court considered the claim of his brother-in-law's involvement with the shooting. It had totally rejected this assertion by the Appellant on the basis that it is clearly an afterthought.

This determination by the trial Court, which gave rise to the only ground of appeal relied on by the Appellant therefore needs consideration by this Court.

We note that the brother-in-law of the Appellant was in fact called by the prosecution as one of its witness. *Anura Bandara* in his evidence stated that he was about 14 to 15 years at the time of the incident and was schooling. As correctly observed by the trial Court, there was no suggestion that the witness participated in the assault on the Appellant which left him injured. Being a school boy, it is very unlikely he would make an attempt to kill his own brother-in-law who was trained in handling firearms and was possessing a shot gun. This witness too had joined the Police at a later point of time. There is passing reference to another brother in the Police. But this position was never suggested by the Appellant to this witness or in relation to the other brother, who already serving in the Police.

However, it was evident that the Appellant made a futile attempt to convert his failed suicide attempt to an attempted murder on his life by this witness and his father in his evidence. The trial Court has rejected the Appellant's claim on the basis that it is an afterthought. We agree with this view of the trial Court.

Considering the totality of the evidence placed before the trial Court, we find that it had reached the correct conclusion in convicting the Appellant on both counts. His appeal is clearly devoid of any merit and ought to be dismissed on that account. The sentence imposed by the trial

Court is a legal sentence that could be imposed under the penal provision upon which the Appellant was indicted.

Therefore, we affirm the conviction and the sentence of the Appellant.

His appeal is accordingly dismissed.

We make order that his life sentence imposed on each of the counts, should run from the date of the conviction, which is 25.03.2014.

JUDGE OF THE COURT OF APPEAL

DEEPALI WIJESUNDERA, J.

I agree.

JUDGE OF THE COURT OF APPEAL