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

In the matter of an Appeal in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka, Section 14 of the Judicature Act No. 02 of 1978 read with Section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

Court of Appeal No:

CA/HCC/102/2023

Democratic Socialist Republic of Sri Lanka

COMPLAINANT

Vs.

High Court of Hambamtota

Case No: HC/52/2017

1. Meegahalandadurage Sanath Weeratunga
2. Meegahalandadurage Durage Sisira Weeratunga
3. Gayrukagamage Anula
4. Lokugamage Piyasena
5. Nagodage Nadeera Jeewanthi

ACCUSED

AND NOW BETWEEN

Meegahalandadurage Sanath

Weeratunga

ACCUSED-APPELLANT

Vs.

The Hon. Attorney General,

Attorney General's Department,

Colombo 12.

COMPLAINANT-RESPONDENT

Before	: Sampath B. Abayakoon, J.
	: P. Kumararatnam, J.
Counsel	: Malintha Jayasinghe for the Accused-Appellant
	: Janaka Bandara, D.S.G for the Respondent
Argued on	: 20-05-2024
Written Submissions	: 26-03-2024 (By the Accused-Appellant)
	: 20-09-2022 (By the Accused-Appellant)
Decided on	: 23-07-2024

Sampath B. Abayakoon, J.

This is an appeal preferred by the 1st accused-appellant (hereinafter referred to as the appellant) on the basis of being aggrieved of his conviction and the sentence by the learned High Court Judge of Hambantota.

However, when this matter was taken up for argument, the learned Counsel for the appellant informed the Court that the appellant has instructed him to withdraw the appeal against the conviction and only to make submissions on the basis of the appropriateness of the sentence imposed by the learned High Court Judge upon the appellant.

Accordingly, upon the withdrawal, the appeal against the conviction is dismissed.

The views of the learned Counsel for the appellant, as well as of the learned Deputy Solicitor General (DSG) were heard as to the sentence imposed upon the appellant by the learned High Court Judge of Hambantota.

This is an action where the appellant was indicted along with four others before the High Court of Hambantota for committing the following offences.

1. That he was a member of an unlawful assembly with the common object of causing hurt to one Wijemuni Arachchige Nandasena at Suriyawewa within the jurisdiction of the High Court of Hambantota on or about 10-11-2012, and thereby committed an offence punishable in terms of section 140 of the Penal Code.
2. At the same and at the same transaction, he along with other members of the unlawful assembly, caused injuries to the earlier mentioned person, and thereby committed the offence of attempted murder, punishable in terms of section 300 read with section 146 of the Penal Code.
3. At the same time and at the same transaction, he along with others caused injuries to the earlier mentioned person in furtherance of a common intention, and thereby committed the offence of attempted murder, punishable in terms of section 300 read with section 32 of the Penal Code.

The indictment was against 5 accused persons, the appellant being the 1st accused. The evidence placed before the High Court also reveals that all five accused named in the indictment are members of the same family.

After trial without a jury, by the judgment dated 09-02-2023, the learned High Court Judge found the appellant guilty to the 2nd count of the indictment, namely, attempted murder, while being a member of an unlawful assembly. The rest of the accused were acquitted of the charges preferred against them.

After having considered the mitigatory as well as the aggravating circumstances, the learned High Court Judge has imposed a period of 6 years rigorous imprisonment on the appellant. He has also been ordered to pay a fine of Rs. 10,000/- with a default sentence of 12 months rigorous imprisonment. In addition to the above, the learned High Court Judge has ordered the appellant to pay Rs. 500,000/- as compensation to the victim, and in default, he has been ordered to serve a default sentence of 2 years rigorous imprisonment.

The learned Counsel for the appellant submitted to the Court that all the accused indicted had the intention of pleading guilty to the charge before the trial proceeded, but it could not be materialized because the prosecution was not prepared to accept a plea. It was his contention that the matter proceeded to trial only because of the refusal by the prosecution to accept a plea. He was of the view that, this fact should have been considered by the learned High Court Judge in his sentencing order.

He also submitted that this was a matter where the actual victim, namely PW-01, was not called to give evidence before the trial Court and the conviction has been based on the other eyewitness accounts of the incident. He contended further that the delay of the case coming to a conclusion should have also been considered by the learned High Court Judge in imposing a sentence upon the appellant.

The learned DSG on behalf of the respondent submitted that the learned High Court Judge has considered the seriousness of the injuries suffered by the victim

and the conduct of the accused of the indictment, which resulted in the victim receiving such grievous injuries, as relevant in his sentencing order. He was of the view that the learned High Court Judge had been lavishly reasonable when he decided to acquit the other family members of the appellant in his judgment, and when it comes to the sentence imposed upon the appellant. He was of the view that there exists no basis to revisit the sentence imposed upon by the learned High Court Judge.

It needs to be noted that this is a matter where a judgment has been pronounced after a full trial, which should be considered different to a situation where the accused person/persons have unconditionally pleaded guilty to the charge/charges initiated before a High Court.

Although the journal entries of the High Court proceedings shows that there had been an application to conclude the matter by way of a short cut, which implies that the accused person may have been offered to reach a plea deal, it has not come through. The only conclusion that can be reached is that the appellant and the other accused may have expected the Court to impose them a suspended sentence, which had not been agreed upon by the prosecution on the basis that the injuries caused to the victim would not warrant such a sentence.

The victim, who was the PW-01 named in the indictment, had been suffering from a mental condition where he was not able to understand the proceedings before the Court, or to give evidence as to the incident. This had been the reason why the prosecution has been unable to call him.

Accordingly, the prosecution has relied on the other eyewitnesses of the incident to prove the case before the trial Court.

It is clear that the incident where the victim received these grievous injuries was a result of a dispute relating to a land that persisted between the appellant's family and the injured person's family over a period of time.

The learned High Court Judge in his sentencing order has considered the application made on behalf of the appellant to impose him a suspended sentence of imprisonment in terms of section 303 of the Code of Criminal Procedure Act, and has rightly concluded that although the appellant was a person with no previous convictions, the facts and the circumstances does not warrant such a cause of action.

The learned High Court Judge, after having considered several judgments of our Superior Courts in relation to the appropriateness of a sentence that should be imposed on a convicted person, and the matters that should be considered in that regard, has decided to sentence the appellant. It is clear that the learned High Court Judge has considered the fact that the appellant had no previous convictions and the other relevant facts and circumstances in sentencing the appellant.

In terms of section 300 of the Penal Code, the maximum sentence that could have been imposed upon the appellant was 20 years rigorous imprisonment, or a fine, or both.

The sentence of 6 years rigorous imprisonment imposed on the appellant by the learned High Court Judge clearly indicates that the learned High Court Judge has well considered all the relevant facts in imposing such a reduced sentence, even after a full trial.

As considered by the learned High Court Judge in his sentencing order, in the case of **CA/LA 6/2013 decided on 25-01-2016**, which was an appeal preferred by the aggrieved party on the basis of inadequacy of the sentence after the accused pleaded guilty to the charges preferred against them, **Wijith K. Malalgoda, P.C., J. (P/CA) (as he was then),** after having considered several decided cases on sentencing policy has observed as follows;

> *"When considering the above decisions of our Courts it is observed that the Courts have a duty to be mindful of aggravating and mitigatory factors of*

the case before them when imposing sentence, since those factors will play a key role in deciding the sentence."

Basnayake, ACJ. (as he was then) in the case of **Attorney General Vs. H. N. De Silva (1955) 57 NLR 121**, after having considered the things that should be considered by a Judge when sentencing an accused person observed:

"A Judge should, in determining the proper sentence, first consider the gravity of the offence as it appears from the nature of the act itself and should have regard to the punishment provided in the Penal Code or other statutes under which the offender is charged. He should also regard the effect of the punishment as a deterrent and consider to what extent it will be effective. If the offender held a position of trust or belong to a service which enjoys the confidence that must be taken into account in assessing the punishment. The incidents of crime of the nature of which the offender has been found to be guilty and the difficulty of detection are also matters which should receive due consideration. The reformation of the criminal though no doubt an important consideration, is subordinate to the others I have mentioned. Where the public interest or the welfare of the State (which are synonymous) outweighs the previous good character, antecedents and age of the offender pubic interest must prevail."

Although our Courts do not have the advantage of following statutory sentencing guidelines in sentencing an accused person, it is clear that the above views expressed by **Basnayake, ACJ.** has been followed by our Courts with necessary adaptations from time to time, since deciding what would be the appropriate sentence of an accused person found guilty after trial or at situations where the accused opted to plead guilty to the charges depends on the facts and the circumstances of the relevant case.

It is clear from the sentencing order that the learned High Court Judge was well possessed of the matters that should be considered in sentencing the appellant, when the appellant was sentenced for rigorous imprisonment period of 6 years

and to a fine, and also when the learned High Court Judge ordered him to pay compensation to the victim.

I am of the view that the sentence imposed was not excessive under any circumstances and, hence, finds no basis for the submissions of the learned Counsel for the appellant in that regard.

Accordingly, the appeal against the sentence is dismissed for the want of merit.

However, having considered the fact that the 1st accused-appellant has been in incarceration from the date of sentence, that is from 15-02-2023, it is ordered that the 6-year rigorous imprisonment period imposed upon him shall deem to have taken effect from 15-02-2023.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal