

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

In the matter of an appeal in terms of Article
154G(3)(b) of the Constitution of the
Democratic Socialist Republic of Sri Lanka,
read with section 320 of the Code of
Criminal Procedure (Special Provisions) Act
No. 19 of 1990.

Democratic Socialist Republic of Sri Lanka.

Plaintiff

CA HCC 0262/2023

High Court of Hambantota
Case No:- 1/2022

Vs.

Mahamarakkalage Sashi Sahan Pathum

Accused

AND NOW BETWEEN

Mahamarakkalage Sashi Sahan Pathum

Accused-Appellant

Vs.

Attorney General,
Attorney General's Department,
Colombo 12.

Plaintiff- Respondent

Before: **B. Sasi Mahendran, J.**
Amal Ranaraja, J.

Counsel: Palitha Fernando, P.C. with Iranga Wijegunawardena for the
Accused-Appellant.

Jayalakshi de Silva, S.S.C for the Respondent.

Argued on: 16.05.2025

Judgment on: 20.06.2025

JUDGMENT

AMAL RANARAJA, J.

1. The Accused-Appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Hambantota* in High Court case no. HC 01/2022.

2. The charge in the indictment is as follows;

That on or about December 26, 2018, in the *District of Hambantota* within the jurisdiction of this Court the appellant did stab *Thena Hannadige Nadeeka Lakmali* with such intention or knowledge and under such circumstances that had he by such an act caused the death of the said *Thena Hannadige Nadeeka*, he would have been guilty of murder, and that he by such an act caused hurt to the said

Thena Hannadige Nadeeka Lakmali; and that he has thereby committed an offence punishable under section 300 of the Penal Code.

3. At the conclusion of the trial the appellant has been convicted of the charge referred to above and sentenced to a term of 13 years rigorous imprisonment and imposed a fine of Rs.10,000.00 with a term of 01 year rigorous imprisonment in default of payment of the fine.
4. Being aggrieved by the conviction and the sentencing order, the appellant has preferred the instant appeal to this Court.

Case of the prosecution

5. On the date of the incident, December 26, 2018, at approximately 05.00 pm the neighbours of the appellant have heard the commotion coming from his house and subsequently alerted the police. Officers have arrived at the appellant's residence, where two female officers have conducted an inquiry, they had been informed that there had been a verbal dispute between the appellant and his wife, but the couple has indicated that they would resolve the matter among themselves. After, assessing the situation, the female officers have returned to their patrol vehicle. Shortly thereafter, an officer has witnessed the appellant's wife running towards their vehicle, with the appellant in pursuit. The officer has also witnessed the appellant physically assaulting his wife, causing

her to fall near the patrol vehicle. It has been evident that the appellant was armed with a knife during this altercation. As a result of the attack, the wife of the appellant has sustained a bleeding injury and has been subsequently admitted to a hospital. The appellant has been arrested and taken into police custody. On January 01, 2019, *Dr. H C W Ajithkumar* MO/Medico-Legal Officer has examined the wife of the appellant during her stay at the hospital and subsequently prepared a medico-legal report. This report has been designated as exhibit “B-04”.

Case of the appellant

6. The appellant has asserted that he has been falsely implicated in this case and has insisted that he has committed no offence.
7. When the matter was taken up for argument, the Learned President’s Counsel for the appellant has urged the following grounds of appeal;
 - i. There has been total inadequacy in the consideration of the facts of the case by the Learned Trial Judge.
 - ii. The nature of the injury has not been adequately considered by the Learned Trial Judge.
 - iii. The nature of the weapon has been completely misunderstood by the Learned Trial Judge.
 - iv. Ingredients of the offence of attempted murder have not been adequately considered by the Learned Trial Judge.

- v. Without prejudice to the above, even if the totality of the evidence is accepted the appellant can be convicted of only simple hurt.
- vi. The appellant has had no fair trial in lieu of one or more of the above mention matters.

8. Section 300 of the Penal Code addresses the offence of attempted murder, which is a serious criminal act characterized by the deliberate intention to kill another individual.

9. Section 300 of the Penal Code provides as follows,

“Whoever does any act with such intention or knowledge and under such circumstances that if he by that act caused death he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable to imprisonment of either description for a term which may extend to twenty years and shall also be liable to a fine.”

10. To constitute an attempt to murder under section 300 of the penal code, the prosecution must establish certain key elements.

- a. The death of a human being must be attempted.
- b. The accused/appellant must have made the attempt.

- c. The act must be done with the intention of causing death or it be done with the intention of causing such bodily injury as
 - i. the accused/appellant knew to be likely to cause death, or,
 - ii. that it was sufficient in the ordinary course of nature to cause death.
- d. The accused/appellant attempted to cause such death by doing an act known to him to be so imminently dangerous that it must in all probability cause
 - i. death, or,
 - ii. such bodily injury as is likely to cause death.

11. When the police officers visited the residence of the appellant, no complaint has been made regarding any attempt by the appellant to cause injury to his wife. Additionally, there have been no allegations, of threats or statements related to an attempt made on his wife's life. There is also no evidence to support the claim that the neighbours heard any threats made by the appellant towards his wife.

12. Further medical evidence has not been presented at the trial and no justification provided for this absence. The medico-legal report pertaining to the appellant's wife has been submitted by a court officer. This report indicates that the appellant's wife sustained a single injury to her back,

which the attending physician i.e. PW11 has classified as a non-grievous injury.

13. Despite the reports description of the injury as a stab wound, it is also referred to as a cut injury leading to a discrepancy that has not been clarified. Moreover, there has been no explanation regarding the sensitivity of the body area where the injury was inflicted.
14. When discussing the potential injuries which could have occurred to a patient's internal organs, it is essential to consider the trauma and the mechanisms involved. Internal organs are particularly vulnerable to damage from physical impacts, accidents or medical conditions. For instance, penetrating injuries, such as those caused by sharp objects can result in piercing of organs leading to severe complications such as peritonitis or sepsis. Internal bleeding can compromise a patient's hemodynamic stability necessitating medical intervention. Such evidence has also not been forthcoming either.
15. In these circumstances, there is no evidence to establish that an attempt was made to cause the death of his wife by the appellant.
16. Furthermore, it cannot be conclusively shown that the appellant in making this attempt inflicted the injury with the intention to cause death or with the awareness that such injury was likely to result in death or that it was sufficient in the ordinary course of nature to cause death.

17. The evidence does not also demonstrate that the appellant attempted to cause his wife's death through any actions that he knew to be imminently dangerous, actions which were likely to result in her death or to inflict injury that could have led to her death.

18. Based on the reasons outlined above, I overturn the appellant's conviction of attempted murder together with the disputed sentencing order.

Instead, I find the appellant guilty of voluntarily causing hurt with a dangerous weapon an offence punishable under the provisions of section 315 of the Penal Code and convict the appellant of such offence. I hereby sentence the appellant to three years rigorous imprisonment and impose a fine of Rs. 10,000.00. Should the appellant fail to pay the fine, an additional term of 6 months simple imprisonment shall be enforced.

The term of rigorous imprisonment shall commence from June 20,2025.

19. Subject to the above variation, the *appeal is dismissed.*

I make no order regarding cost.

20. The Registrar of this Court is directed to communicate this judgment to the *High Court of Hambantota* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree,

Judge of the Court of Appeal