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.

The Democratic Socialist
Republic of Sri Lanka.

Court of Appeal Case No.
CA/HCC/0063/2023

Complainant

High Court of Kandy
Case No. HC/86/2008

Vs.

Tennekoon Mudiyanselage
Karunarathne.

Accused

AND NOW BETWEEN

Tennekoon Mudiyanselage
Karunarathne.

Accused-Appellant

Vs.

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

Respondent

BEFORE : MENAKA WIJESUNDERA, J
WICKUM A. KALUARACHCHI, J

COUNSEL : Indica Mallawaratchy for the Accused-Appellant.
Jayalakshi De Silva, S.S.C. for the Respondent**.**

ARGUED ON : 14.05.2024

DECIDED ON : 19.06.2024

WICKUM A. KALUARACHCHI, J.

The accused-appellant was convicted of attempting to commit the murder of Senadheera Pathiranage Samarathunga in terms of Section 300 of the Penal Code. The appellant was sentenced to twenty years of rigorous imprisonment (RI). In addition, a fine of Rs. 25,000/- was imposed carrying a default term of three months. Also, compensation in the sum of Rupees One Million has been ordered to be paid to the victim carrying a default term of two years R.I. and directed Rs. 50,000/- to be deposited in terms of the Assistance to and Protection of Victims of Crime and Witnesses Act carrying a default term of six months imprisonment.

At the hearing of the appeal, the learned Counsel for the appellant and the learned Senior State Counsel (SSC) for the respondent made oral submissions. The learned Counsel for the appellant admitted that the learned Trial Judge had rightly convicted the appellant for attempted murder charge. However, the learned Counsel contended that the appellant had been wrongly punished as he was given the maximum punishment of twenty years R.I. Therefore, the learned Counsel for the appellant stated that she canvasses only the sentence.

The learned Counsel for the appellant contended that it is not reasonable to impose the maximum punishment of twenty years and one million compensation is also excessive. According to the sentencing order, the learned Counsel pointed out that the learned Trial Judge has considered only the factors; pregnancy of an accused, an accused being a breast-feeding mother of an infant, and that the accused being a woman as mitigatory factors and the other factors that could have been considered to reduce the punishment have not been considered by the learned Trial Judge in sentencing.

The learned SSC for the respondent contended that the learned Trial Judge has considered the gravity and the seriousness of the offence, pre-arrangement for the Commission of the offence, the impact of the offence on the victim, the several injuries caused by the appellant, and the unremorseful conduct of the accused even after stabbing and imposed correct and suitable sentence.

It is to be stated that the learned High Court Judge allowed both parties to make submissions before sentencing, then considered those submissions and made the sentencing order with reasons.

According to Section 300 of the Penal Code, for the offence of Attempt to Murder, an accused 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 fine.

For the offence of Attempt to Murder, there is no minimum mandatory sentence. Therefore, on the circumstances of a case, even the sentence could be suspended. However, this is certainly not a fit case to give a suspended sentence. When an accused is sentenced, the mitigating factors and the aggravating factors must be considered.

However, as pointed out by the learned Counsel for the appellant, there were mitigating factors to be considered in sentencing other than the aforesaid factors stated in the learned Judge's sentencing order.

The number of injuries inflicted to the victim and the impact on the victim including physical and psychological trauma are aggravating factors in this case. The appellant has inflicted two stab injuries and there are eight cut injuries. Injury No. 2 explained in the Medico-Legal Report marked P-1 is an injury sufficient in the ordinary course of nature to cause death. Therefore, the appellant had caused serious injuries to PW-1. Remorse shown by an appellant is a mitigating factor. However, in this case, the appellant was not remorseful even after he caused injuries to the victim. The appellant stabbed repeatedly to PW-1 and after he fell on the ground also, he stabbed according to PW-1's evidence. When PW-1 was fallen on the ground after stabbing, he requested the persons in the vehicles traveling on the road to inform his office about this incident, even at that time, the appellant had threatened them with a knife in his hand, not to take the injured victim anywhere. These items of evidence demonstrate appellant's fierce nature in committing the crime.

However, mitigating factors such as the period that he faced the trial, the time gap between the date of committing the offence and conviction, age of the accused must also be considered in sentencing an accused. It was held in ***Priyanka Perera V. Attorney General*** – S.C. Appeal 99/2006 that "the charge has been hanging over the appellant's head over a period of eight years and the disorganization that essentially would have followed due to the undue delay in confirmation of his sentence, in my view are circumstances, although not obligatory, that should be taken into consideration in suspending the sentence of imprisonment".

In the case at hand, the offence was committed on 7th of September 2004. The Judgment was delivered and the appellant was convicted on 22nd of June 2022 after 18 years. On the date of the conviction, the appellant was 62 years according to the submissions made by the appellant's Counsel. That means he committed the offence at the age of 44 years and went to jail for the offence that he had committed at the age of 62 years. According to the sentence passed by the learned Judge, he will have to be imprisoned until he reaches the age of 82 years. The learned Trial Judge could have considered these matters in sentencing.

In addition, imposing the maximum punishment of 20 years is also not justifiable. The appellant has one previous conviction in 1994 according to the certificate of previous convictions. For the said conviction, one-year imprisonment had been suspended for five years. By the 18th of January 1999, the operational period of the said suspended sentence was over. The offence relating to this case has been committed five years after the operational period of the said suspended sentence. Other than that, the appellant has no previous convictions. Therefore, imposing the maximum punishment is not reasonable.

Considering the facts; the age of the accused-appellant, having only one previous conviction long ago, facing the trial and continuously appearing in Court from 2008 to 2022 and the fact that he was convicted 18 years after committing the offence with the aforesaid aggravating factors, I am of the view that it is proper to reduce the period of imprisonment from twenty years R.I. to fourteen years R.I. Therefore, twenty years R.I. is reduced to fourteen years R.I. to be operative from 22nd of June 2022, the date of conviction. The compensation to be paid to PW-1 by the appellant is reduced from Rs. 1,000,000/- to Rs. 500,000/-. The default term of imprisonment for the fine, the sum ordered to be deposited in terms of the Assistance to and Protection of Victims of Crime and Witnesses Act, and the default sentence should stand as it is.

Subject to the above variation of the sentence, the appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera, J

I agree.

JUDGE OF THE COURT OF APPEAL