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.

Court of Appeal No:

CA/HCC/0004/23

High Court of Jaffna

Case No: HC/2255/2017

Democratic Socialist Republic of Sri Lanka

COMPLAINANT

Vs.

1. Markandu Uruththiran
2. Sarvananthan Kabilkumar
3. Arumugam Ravikumar

ACCUSED

AND NOW BETWEEN

2. Sarvananthan Kabilkumar
3. Arumugam Ravikumar

ACCUSED-APPELLANTS

Vs.

The Attorney General

Attorney General's Department

Colombo 12

RESPONDENT

Before	: Sampath B. Abayakoon, J.
	: P. Kumararatnam, J.
Counsel	: G. Jeyakumar with Rudani for the Accused Appellants
	: Jayalaxshi de Silva, S.S.C. for the Respondent
Argued on	: 17-01-2024
Written Submissions	: 31-10-2023 (By the Accused-Appellant)
	: 04-01-2024 (By the Respondent)
Decided on	: 07-03-2024

Sampath B. Abayakoon, J.

This is an appeal preferred by the 2nd and the 3rd accused (hereinafter sometimes referred to as the 1st or the 2nd appellant) in the High Court of Jaffna Case No. 2255/2017, where both of them were convicted for the offence of attempted murder punishable in terms of section 300 read with section 32 of the Penal Code.

The offence is said to have been committed on or about 7th November 2015, at a place called Katkovalam within the jurisdiction of the High Court of Jaffna.

It has been alleged that the appellants, along with the 1st accused indicted had used a knife, a club, and a hand clip to attack the injured, namely Rasathurai Arul Pragash, and thereby causing injuries to him.

When the charge was read over to the accused before the High Court, the 1st accused indicted has pleaded guilty to the charge and he had been sentenced accordingly.

As the 1st and the 2nd appellants who were the 2nd and the 3rd accused in the case had pleaded not guilty, the case has proceeded to trial and the learned High Court Judge of Jaffna of his judgement dated 05-10-2022 has convicted both the appellants for the charge preferred against them.

Accordingly, they have been sentenced to a period of 8 years rigorous imprisonment each, and they were ordered to pay a fine of Rs. 5000/- each. In default, they have been sentenced to 3 months each simple imprisonment.

The appellants had been ordered to pay compensation in a sum of Rs. 200,000/- each to PW-01 of the case, who was the victim of this incident. In default of paying the compensation, it has been ordered that they shall serve a simple imprisonment of 12 months each.

Even though the name of the injured has been referred to in the charge as Rasathurai Arulpragash, in the list of witnesses his name has been referred to as Rasathurai Arulprasath (PW-01). It appears from the evidence, that in fact, the correct name of the injured in this incident is Rasathurai Arulprasath as he has taken the oath before the Court under that name. However, there is no dispute as to the identity of the injured in the incident relating to the indictment.

The Grounds of Appeal

At the hearing of this appeal, the learned Counsel for the appellants informed the Court that he would be relying on the grounds of appeal urged in his petition of appeal.

The said grounds of appeal are as follows.

a. The conviction is against the weight of evidence led at the trial.

b. Doubts in the prosecution case was not considered by the learned High Court Judge.
c. The evidence of the injured was not properly evaluated by the learned High Court Judge.
d. The medical evidence, if properly analyzed by the learned High Court Judge could have resulted in the acquittal of both accused-appellants.
e. The contradiction between the medical evidence given by the doctor and the evidence of the injured was not taken into account by the learned High Court Judge.
f. The sentence imposed on both appellants are excessive and unreasonable, when the evidence led against both appellants does not warrant the sentences imposed by court.

Facts in Brief

The appellants as well as the 1st accused indicted and the victim, namely, PW-01 Arulprasath were well known to each other from a very young age and were friends. PW-01 was a fisherman during the time relevant to this incident. In his evidence, he has mentioned the date of the offence as 11-11-2015, but had stated that he was unable to remember the exact date as he had been hospitalized for some time and it was his mother who informed him the date. However, he has stated that the incident occurred on a Saturday around 6.30 in the evening.

It had been his evidence that when he was having his meals before going for fishing, he received a call to his mobile phone by the 2nd accused (1st appellant). The 1st appellant has wanted him to come out of the house, which he did not do, as he was getting ready to go for fishing. In about five minutes time, another call has been received by PW-01 from the mobile phone of the 1st appellant, but it was the 3rd accused (2ndappellant) who spoke and wanted him to come out. He was a police officer at that time. As both of them wanted him to come out and were well known to him, PW-01 has come out of the house.

At that point, the 2nd appellant has first attacked him using a hand clip, which has struck his left eye. Thereafter, the 1st accused indicted had inflicted cut injuries on the head of PW-01. Once he fell to the ground, the 1st appellant had trampled on him and had dealt a blow on his head using a club.

It had been the PW-03 who has taken the injured to the hospital. He was also a fellow villager. When walking towards the main road around 7.30 – 8.30 in the night on the day of the incident, he had heard somebody pleading for help. When he inquired, he has seen the 1st appellant holding on to the victim PW-01, and it was he who had been calling for help. Thereafter, PW-03 had taken steps to take the victim to the hospital. When asked by PW-03, the 1st appellant had informed him that Ravi inflicted cut injuries on PW-01.

The Judicial Medical Officer (JMO), namely PW-04, who examined the injured has given evidence at the trial, and had marked the relevant Medico-Legal Report (MLR) as P-02. According to the MLR, the injured had been admitted to the Jaffna Teaching Hospital on 07-11-2015 at 8.34 p.m. and had been discharged 12 days thereafter.

The JMO has observed 2 grievous cut injuries on the face and the head of the victim. The cut injuries had caused damage to the nose and both the eyes as well. The doctor has opined about both the cut injuries as life threatening grievous injuries, where death can be occurred as a result of complications, which may occur due to the seriousness of the injuries. The JMO has observed multiple fractures on the skull of the victim as well.

At the conclusion of the prosecution evidence, and when the two appellants were required to present their defence, both of them had made dock statements.

The statement of the 1st appellant had been that when he was playing with PW-01, the 1st accused indicted came and cut him with a knife and ran away.

The statement of the 2nd appellant had been that he was not present at all in the place of the incident.

Consideration of the Grounds of Appeal

As the grounds of appeal urged by the learned Counsel for the appellants are interrelated, I will now consider all the grounds of appeal together, drawing my attention to the submissions made in that regard by the learned Counsel for the appellants as well as the learned Senior State Counsel on behalf of the respondent, namely, the Attorney General.

In his submissions before the Court, the learned Counsel for the appellants relied mainly on the MLR marked P-02 to argue that the injured have received only two cut injuries contrary to the claim by him in his evidence that he was attacked by all three accused mentioned in the indictment.

It was his argument that it was only the 1st accused indicted, who pleaded guilty to the charge at the very outset of the trial, caused the injuries and the medical evidence does not provide any evidence against the appellants.

He was of the view that given the contradictory nature of the evidence of PW-01 and the medical evidence, the conviction against the appellants was bad in law, and moved for the acquittal of the appellants on that basis.

The learned Senior State Counsel narrating the facts that led to the incident as elicited by way of evidence, pointed out the seriousness of the cut injuries inflicted on the victim. It was her position that although the JMO has observed cut injuries, which can be attributed to the 1st accused indicted, the evidence clearly provides that the appellants too had attacked the victim.

She pointed out to the uncontradicted evidence of PW-01, that the 2nd appellant attacked him with a hand clip and the 1st appellant's action after he fell on the ground, where he has assaulted him with a club.

It was her view that since the learned High Court Judge has well considered the evidence and the relevant law in his judgement and has given a reasonable sentence, the appeal should stand dismissed, as there is no basis to interfere with the conviction and the sentence.

It is clear from the evidence of PW-01 as correctly pointed out by the learned Senior State Counsel, that his evidence had not been discredited at any material point during the trial. The only contradiction marked was of no relevance when considering the trustworthiness of his evidence.

It is well-established law that a contradiction to be relevant in a case, such contradiction or contradictions should have the effect of shaking the core of the case, and trivial contradictions should not be considered as relevant. It is also well-settled law that the evidence has to be considered in its totality and not by compartmentalizing the same.

In the case of **Mahathun and Others Vs. The Attorney General (2015) 1 SLR 74,** it was observed that;

(1) When faced with contradictions in a witness testimonial, the Court must bear in mind the nature and significance of the contradictions, viewed in light of the whole of the evidence given by the witness.
(2) Too great a significance cannot be attached to minor discrepancies, or contradictions.
(3) What is important is whether the witness is telling the truth on the material matters concerned with the event.
(4) Where evidence is generally reliable much importance should not be attached to the minor discrepancies and technical errors.
(5) The Court of Appeal will not lightly disturb the findings of a trial judge with regard to the acceptance or rejection of testimony of a witness unless it is manifestly wrong.

In the Indian Supreme Court case of **State of U. P. Vs. M. K. Anthony, AIR 1985 SC 48,** it was held:

"While appreciating the evidence of a witness the approach must be whether the evidence of a witness read as a whole appears to have a ring of truth.

Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to tender it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole."

The fact that the appellants as well as the 1st accused were well known to the victim was an undisputed fact. The evidence of PW-01 led at the trial has clearly established the fact that the appellants were instrumental in calling the PW-01 out from his home. It was the 2nd appellant who has attacked the victim first. Thereafter, the 1st accused indicted had inflicted cut injuries on him. According to the uncontradicted evidence of PW-01, when he fell on the ground as a result, the 1st appellant had attacked him with a club.

The fact that the JMO has observed only 2 cut injuries does not mean that the victim was not attacked by the appellants in the manner stated by him in his evidence. According to PW-01, the 1st attack had been to his left eye. When the doctor examined the victim, he has observed injuries on both eyes of PW-01 as the cut injury too had been towards both his eyes. The doctor may not have been in a position to categorize the injuries to the eyes as separate injuries. It is quite possible that although PW-01 had been assaulted with a club, it may not have caused injuries to him.

The history given by the patient to the doctor is very much consistent with the evidence of PW-01.

Under the circumstances, I am in no position to agree with the contention of the learned Counsel for the appellants that the evidence of PW-01 and the observations of the JMO as stated in the MLR marked P-02 are contradictory to each other. On the contrary, I am of the view that the evidence of PW-01 and that of the JMO are very much consistent, cogent, and trustworthy.

I find no reasons to accept that there are material contradictions and or omissions in the evidence of the witnesses for that matter.

Although the PW-01 has not mentioned a reason for the attack or a motive, such a motive is not an essential requirement to establish in a criminal trial.

E.R.S.R. Coomaraswamy, in his book ***The Law of Evidence*** **Volume I at page 224** states thus;

> "But even in criminal cases, it is not necessary for the prosecution to prove a motive or the adequacy of the motive, if any, in order to establish the charge. The motive which induces a man to do a particular act is known to him and him alone. Therefore, the prosecution is not bound to prove a motive for the offence, though it can suggest a motive, and when it does so, the judge or jury can examine it. Where there is clear evidence that a person has committed an offence, it is immaterial that no motive has been proved, or that the evidence of motive in not clear." **(*See- Emperor Vs. Balaram Das 49 Cal. 358).***
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> Therefore, it is not necessary to prove the motive at all. A conviction is possible without any motive being disclosed.

As determined correctly by the learned High Court Judge, the defence taken up by the appellants had not created any reasonable doubt on the evidence against them or has not provided any reasonable explanation that can be considered in favour of the appellants.

The three accused in the case have been charged in terms of section 32 of the Penal Code for acting in connivance with each other to cause injuries to PW-01.

Discussing the manner in which the common intention can be proved, the Supreme Court of India in the case of **Rishideo Vs. State of U.P. (1955) AIR 331** stated that;

> "*The existence of a common intention said to have been shared by the accused is, on an ultimate analysis, a question of fact.*"

In the case of **Mahabub Shah Vs. Emperor A.I.R. (1945) Privy Council 118**, it was held that;

> *"Common intention within the meaning of section 34 of the Indian Penal Code implies a pre-arranged plan. To convict of an offence applying section 34, it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. It is no doubt difficult if not impossible to procure direct evidence to prove the intention of an individual; it has to be inferred from his act or conduct or other relevant circumstances of the case. Care must be taken not to confuse same or similar intention with common intention; the partition which divides "there bounds" is often very thin; nevertheless, the distinction is real and substantial, and if overlooked will result in miscarriage of justice. The inference of common intention within the meaning of the term in section 34 should never be reached unless it is a necessary inference deducible from the circumstances of the case."*

Basnayake, C.J. having considered several authorities, in the case of **The Queen Vs. J. Mahatun and Another 61 NLR 540 at 546** determined as follows;

> *"To establish the existence of a common intention.it is not essential to prove that the criminal act was done in concert pursuant to pre-arranged plan. A common intention can come into existence without pre-arrangement. It can be formed on the spur of the moment. To hold that "common intention" within the meaning of the section necessarily implies a pre-arranged plan would*

unduly restrict the scope of the section and introduce an element which it has not."

The evidence that had been placed before the High Court has clearly established the fact that all three assailants including the appellants were acting in connivance with each other, when the PW-01 was called out of the house and attacked. I am of the view that the evidence led at the trial has established beyond reasonable doubt that the appellants were acting with a common intention when the injuries were caused to PW-01.

The medical evidence clearly provides that if not for the prompt medical intervention, the injuries would have caused the death of PW-01. Therefore, I find that the charge of attempted murder had been proved beyond reasonable doubt against the appellants.

For a person found guilty for the offence of attempted murder, the sentence that can be imposed is a period of imprisonment of either description for a term which may extend to 10 years, 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 20 years, apart from the fine to which he is also be liable.

It is clear from the sentencing order that the learned High Court Judge has well considered the severity of the injuries sustained by PW-01 as a result of this incident and had imposed a very reasonable sentence of 8 years each rigorous imprisonment on the appellants, the fines, the compensation ordered also had been reasonable.

I am in no position to agree that the sentences imposed are excessive or unreasonable for the reasons considered as above.

Accordingly, the appeal is dismissed, as I find no merit in the grounds of appeal urged on behalf of the appellants.

The conviction and the sentence dated 05-10-2022 is affirmed.

As the appellants are on bail pending the determination of this appeal, the respective sentences against them shall become operative from the date the learned High Court Judge of Jaffna pronounces this judgement to the appellants.

Judge of the Court of Appeal

P Kumararatnam, J.

I agree.

Judge of the Court of Appeal