

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

**In the matter of an Appeal in terms of
Section 331 of the Code of Criminal
Procedure Act No. 15 of 1979.**

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

Court of Appeal
Case No. CA HCC 356/2019

Complainant

Vs.

High Court of Gampaha
Case No. HC 63/2015

1. Ganegoda Appuhamilage Don Chulasiri
Ganegoda
2. Ganegoda Appuhamilage Don Neelanuwan
Maduranga Ganegoda

Accused

AND NOW BETWEEN

1. Ganegoda Appuhamilage Don Chulasiri
Ganegoda
2. Ganegoda Appuhamilage Don Neelanuwan
Maduranga Ganegoda

Accused-Appellants

Vs.

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

Complainant-Respondent

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

Counsel: Neville Abeyratne, P.C. with Kaushalya Abeyratne Dias for the
1st Accused-Appellant.

Pradeep Mahamuthugala on the instructions of Jaliya
Samarasinghe for the 2nd Accused-Appellant.

Janaka Bandara, D.S.G. for the Respondent.

Argued on: 15.12.2025

Judgment on: 26.01.2026

JUDGMENT

AMAL RANARAJA, J.

1. The accused appellants (hereinafter referred to as the “Appellants”) in this case have been indicted in the *High Court of Gampaha* in High Court case number HC 63/2015.

The charges in the indictment are as follows:

Charge 01

That on or about September 25, 2009, in the district of *Gampaha* within the jurisdiction of this Court the appellants voluntarily caused hurt to one *Poramba Liyanage Udara Karunatilaka*; and have thereby committed

an offence punishable in terms of section 314 read with section 32 of the Penal Code.

Charge 02

In the same course of transaction as above, the appellants committed the robbery of a wallet, vehicle insurance and a vehicle revenue license, property in the possession of *Poramba Liyanage Udara Karunatilaka*; and have thereby committed an offence punishable in terms of section 380 read with section 32 of the Penal Code.

Charge 03

In the same course of transaction as above, the appellants wrongfully restrained *Poramba Liyanage Udara Karunatilaka*; and have thereby committed an offence punishable in terms of section 333 read with section 32 of the Penal Code.

Charge 04

In the same course of transaction as above, the appellants threatened of causing fear of hurt/loss to a person or property of *Poramba Liyanage Udara Karunatilaka*; and have thereby committed an offence punishable in terms of section 486 read with section 32 of the Penal Code.

2. At the conclusion of the trial, the learned High Court Judge has found the appellants guilty of the charges and sentenced them as follows:
 - i. First accused appellant has been sentenced to one year rigorous in respect of the first charge, eight years rigorous imprisonment in respect of the second charge, one year rigorous imprisonment in respect of the third charge and two years rigorous imprisonment in respect of the fourth charge.

- ii. The learned High Court Judge has directed that the substantial terms of rigorous imprisonment shall run concurrently.
 - iii. The sentence imposed in the *Magistrates Court Negombo* in case no. H571540 be implemented against the first appellant consequent to the expiry of the terms of imprisonment imposed in the instant case.
 - iv. Further, the first appellant has also been imposed a fine of Rs.1000.00 each in respect of the four charges and a term of one year simple imprisonment each in default.
 - v. The second appellant has been sentenced to one year rigorous imprisonment each in respect of the four charges for them to run concurrently and the terms of imprisonment have thereafter been suspended for five years.
 - vi. The second appellant has also been imposed a fine of Rs. 1000.00 in respect of first charge and Rs. 500.00 each in respect of the second, third and fourth charges and a term of six months simple imprisonment each in default.
 - vii. Further, the appellants have also been directed to pay a sum of Rs. 300000.00 each as compensation to PW01 with a term of one year simple imprisonment each in default.
3. The appellants being aggrieved by the conviction, disputed judgment together with the sentencing order have preferred the instant appeal to this Court.

Case of the prosecution

4. On the evening of the incident around 21.00 hours, PW01 has been traveling from Colombo in the direction of his parents residence in *Kadawatha*. While approaching turn to his parents house, a vehicle that had just overtaken his, has collided with his own resulting in damage to his car. The other vehicle has subsequently engaged in a hit and run.
5. Consequently, PW01 has chosen to pursue the offending vehicle in an attempt to obtain its identifying details before filing a report with the police. During the pursuit, PW01 has observed the vehicle turn onto a side road. Despite also turning onto this road, PW01 has lost sight of the other vehicle.
6. Thereafter, PW01 has stopped his car on the side of the road to assess the damage to it. As PW01 has alighted from the car for this purpose, the appellants have approached him from a neighboring property. They have assaulted PW01 with their limbs. Subsequently, the first appellant has retrieved a cricket bat and also assaulted PW01 with it. PW01 has sustained injuries to his head, face, neck, shoulders and limbs as a result of the assault. PW01 has also suffered injuries to the back of his body and arms from being pushed against a barbed wire fence in the vicinity.
7. Following the assault, PW01 has been forcibly taken into the appellant's residence, where unlawful confinement has been imposed on PW01. The first appellant has also demanded and when PW01 surrendered, ceased PW01's wallet and car documents. Subsequently, the first appellant has directed the second appellant and the others assembled to procure copies of the documents pertaining to PW01's car. This directive has been executed.

8. Additionally, under duress, the first appellant has coerced PW01 into writing a letter admitting to be under the influence of alcohol and accepting responsibility for the motor accident involving the respective vehicles. The documents and the wallet have been subsequently returned to PW01 who has been then driven home in his car.
9. PW01 has been admitted to the *Ragama Teaching Hospital* on the same night. The next day, he has been taken to the *Eye Hospital in Colombo*. There, PW01 has been examined by a *Consultant Judicial Medical Officer* and an *Eye Doctor*. The medico-legal report and the diagnostic ticket had been admitted into evidence and marked as exhibits *e02* and *e03* respectively.

Case of the appellants

10. The appellants have maintained that PW01 came to their residence to discuss a motor accident involving his car and the first appellant's vehicle. They have stated that after PW01's discussion, he proceeded to assault the first appellant.
11. The appellants have also proposed that any injuries sustained by PW01 may have been a consequence of the first appellant acting in self defence. They further reject PW01's claim that his wallet and the car documents were confiscated temporarily and that he was also pressured into writing a letter acknowledging fault for the accident.

Grounds of appeal

12. When the matter was taken up for argument, the learned Counsel for the appellants urged the following grounds of appeal:

- i. Whether the evidence was sufficient to establish the guilt of the first and second accused appellants?
 - ii. Has the learned Trial Judge erred in law or misdirected herself by not considering the discrepancies and inconsistencies in the evidence of the prosecution which render it unsafe to convict on such evidence?
 - iii. Has the learned Trial Judge ignored or lost sight of the facts that the first and second accused appellants did not have a fair investigation due to the unlawful intervention of the virtual complainant (PW01) and the Attorney General's Department in the police investigation by changing the Investigation Officer?
 - iv. Has the learned Trial Judge misdirected herself by holding that the charges were proved beyond reasonable doubt when in fact there is no proof at all to convict the first and second accused appellants?
13. The prosecution witness 01 (PW01) has promptly lodged a complaint with the police on the very day the incident occurred. In open court, PW01 has recounted the history of the events, providing a detailed narrative. The gist of the patient's history provided by PW01 before examination by the *Consultant Judicial Medical Officer* is similar to the detailed narrative given in court. The subsequent examination by the *Consultant Judicial Medical Officer* has revealed injuries to PW01's head, face, neck, shoulders and limbs.
14. The nature and the location of the injuries have been found to be consistent with the force and direction of blows sustained by PW01. Specifically, abrasions observed at the back of the body of PW01 and the back of his arms strongly suggest that he was forced into a barbed wire

fence, resulting in injuries upon impact. Corroborating this account, PW16 and PW17, the police officers who have visited the scene have presented evidence that aligned with PW01's description of the location.

15. Significantly, the appellants have not been able to point to any material discrepancies, such as significant contradictions or omissions within the prosecution's presented narrative, leaving its core assertions unchallenged.
16. Regarding the appellants, neither has made an immediate complaint to the police concerning the alleged assault by PW01. While the second appellant has been released on bail two days after the alleged incident and the first appellant after two weeks (on October 09, 2009), the first appellant has not filed a complaint against PW01 until October 16, 2009. The appellants have failed to provide a justification for this delay in filing a complaint.
17. Furthermore, the medico-legal report issued upon the examination of the first appellant has only disclosed hypopigmentation of the skin. The attending *Judicial Medical Officer* has opined that the injury pattern was compatible with the history provided by the first appellant. However, this opinion does not specifically corroborate the history given by the patient.
18. In her assessment of the case, the learned High Court Judge has approached the narratives of the prosecution and the appellants with a holistic perspective. She has carefully considered the matters previously outlined, systematically applying the rules for evidence evaluation. Based on such a rigorous process, the learned High Court Judge has determined that the prosecution's evidence was credible and sufficient, leading her to disregard evidence tendered by the appellants.

19. This Court is satisfied by the learned High Court Judge's methodical approach and sees no reason to challenge the validity of her ultimate finding in respect of the evaluation of evidence presented in the case.

20. Section 310 of the Penal Code of Sri Lanka reads as follows:

"Whoever causes bodily pain, disease, or infirmity to any person is said to "cause hurt"."

21. The legal definition of "hurt" is found in section 310 of the Penal Code of Sri Lanka, which states "whoever causes bodily pain, disease or infirmity to any person is set to cause hurt". "Bodily pain" refers exclusively to physical pain, not mental or emotional distress. Direct physical contact is not always necessary. An act with indirectly resulting in pain is sufficient (eg: throwing hot water and the steam causing burns).

22. PW01's narrative of the incident has clearly detailed that the appellant's initial assault involved the use of their limbs which was then escalated by the first appellant using a cricket bat. PW01 has further testified that he was pushed against a barbed wire fence.

23. These actions by the appellants have directly led to injuries sustained by PW01. Such fact has been substantiated by the medico-legal report marked as exhibit 202. Consequently, the appellants have inflicted severe physical pain upon PW01.

24. In the case of *King vs. Thajudeen* 6 NLR 16, Bonser, C.J. stated,

"But it was urged that they did not intend to break the man's rib and therefore they could not be convicted of grievous hurt. No doubt they had not in their mind at the time they struck him their baton and with their fists any definite idea that they were going to break his ribs or any particular rib; but when people cause injuries to a man, their intent must be judged by the result of their action. They must be deemed in law to have intended what they did."

25. Section 331 of the Penal Code of Sri Lanka defines wrongful confinement as follows:

"Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits is said "wrongfully to confine" that person."

Hence, if all movement of a person is restricted, it becomes wrongful confinement.

26. Section 372 of the Penal Code of Sri Lanka reads as follows:

"Whoever intentionally puts any person in fear of any injury to that person or to any other and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion"."

27. The offence of extortion is committed when someone intentionally puts a person in fear of injury, to such person or to any other, and by doing so dishonestly, convinces the person in fear to handover property, valuable

security or something convertible into valuable security to any person. Further, a property could be something owned or possessed by a person.

28. Under section 379 of the Penal Code of Sri Lanka, extortion is classified as robbery when the offender while in the presence of the victim instills fear of instant death, instant hurt or instant wrongful restraint to the victim or another person, thereby causing the victim to immediately surrender the extorted item.
29. Section 379 of the Penal Code of Sri Lanka sets out the aforementioned as follows:

"Extortion is " robbery ", if the offender, is at the time of committing the extortion, is in the presence of the person put in fear and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted."

The explanation provided in the same section is as follows:

"The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint."

30. Upon being forcibly brought on to the premises of where the appellant's house was situated, the witness (PW01) has subsequently been denied the freedom to depart at will. When PW01 has attempted to leave the premises, the first appellant has restrained him. The first appellant has done so without reason, deliberately, thereby preventing PW01 from proceeding beyond a circumscribed limit within the property.

31. Consequently, the first appellant has driven the car of PW01 which was parked on the side of the road, into the appellant's premises. Thereafter, the first appellant's subsequent actions have implied that he was demanding the wallet and the car documents from PW01 who was at that time fearing further injury due to the prior actions of the appellants and also subjected to unlawful restraint. The first appellant has thus made PW01 deliver up his wallet together with the car documents from his possession and then instructed the second appellant and other assembled individuals to procure copies of the documents.
32. Moreover, under the duress of this unlawful restraint and confinement, PW01 has been caused into writing a letter, admitting responsibility for the motor accident involving the respective vehicles. This act of writing has been with assistance, implying further pressure and manipulation during the period of unlawful restraint and confinement. PW01 has also testified that the first appellant threatened to kill him, and the threat made PW01 feel scared and alarmed.
33. Common intention in criminal law means a shared, prearranged plan or mutual understanding among two or more people to commit an unlawful act, making each person liable for the offence as if they did it alone, even if they did not perform the final act, as long as it was in furtherance of their shared goal.
34. The key elements are all individuals must have a mutual agreement and understanding to carry out the criminal act. This agreement can be premeditated or developed spontaneously at the scene. The offence must be committed by one or more members in pursuit of the common goal. Each person is held responsible for the act of the group regardless of their individual participation level.

35. Common intention is a psychological fact, therefore, it is usually proven through circumstantial evidence. A court looks at prior conduct, the relationship between the accused and the circumstances, like carrying weapons, coordinated acts, etc. to infer a shared plan.
36. The circumstances presented suggest a coordinated attack and subsequent unlawful restraint/confinement orchestrated by both appellants. The second appellant, who is the son of the first appellant has been actively involvement in the initial confrontation. He, along with the first appellant have accosted PW01 together. Immediately following this aggressive encounter, both appellants have proceeded to assault PW01 collectively.
37. The situation has escalated further when PW01 was forcibly taken to the appellant's residence. It is within this location that the first appellant committed further offences, wrongfully restraining and confining PW01. During this confinement, the first appellant has also seized PW01's wallet and car documents.
38. Although the second appellant has been present in the vicinity during these events, he has notably refrained from intervening or offering any assistance to PW01, tacitly enabling the ongoing unlawful acts.
39. The sequence of events further implicates the second appellant in the appellant's plan. Subsequent to the unlawful confinement and seizure of property (though the property was returned subsequently), PW01 has been ultimately dropped off at his parents house.
40. Significantly, the second appellant has been among the individuals who accompanied PW01 on these occasions, a gesture that, in light of preceding events, can be interpreted as a final act of control or oversight rather than genuine assistance. The coordinated actions and the shared

presence of both appellants through these grave incidents strongly imply a premeditated and shared plan. Their concerted efforts from the initial accosting and assault to the unlawful confinement and subsequent drop-off also demonstrate a unity of purpose and a clear intention to deprive PW01 of his liberty and property. In those circumstances, the learned High Court Judge was correct in concluding that the appellants had committed the offences set out in the indictment, pursuant to a common intention to commit them.

41. The proceedings in the High Court had been held in public. The appellants have been represented by a legal counsel. Copies of the indictment together with its annexures have been served on the appellants and it has enabled them with their legal team to inspect all the evidence the prosecution intended to use against the appellants to prepare an adequate defence. The appellants have been able to present their side of the story, provide testimony and challenge the evidence brought against them.
42. The learned High Court Judge has considered the appellants innocent until proven guilty beyond a reasonable doubt and made decisions based solely on the testimony presented in court. Hence, the matter in issue offered a fair trial.
43. Further, when this matter was taken up for argument, the appellants were unable to establish the fact that a fair investigation was not conducted by the police as regard to the instant matter due to the unlawful intervention of the virtual complainant and the Attorney General's Department.

44. In those circumstances, I am not inclined to interfere with the conviction, disputed judgment together with the sentencing order and affirm the same. I dismiss the appeal.

I make no order regarding costs.

Appeal dismissed.

45. The Registrar of this Court is directed to send this judgment to the *High Court of Gampaha* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree

Judge of the Court of Appeal