IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an application under in terms of section 83(2) of the Case of Criminal Procedure Act No. 15 of 1979.

Democratic Socialist Republic of Sri Lanka.

Complainant

Vs

1. Dikkumburage Chithrananda

Accused

And now between

Dikkumburage Chithrananda

Accussed-Appellant

Vs

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

Respondent

Court of Appeal Case No:
CA/HCC/0227/24

High Court of Rathnapura Case No:
HC-146/2019

Before : **P. Kumararatnam, J.**

Pradeep Hettiarachchi, J.

Counsel : Shehan de Silva with Nuwan Helindu Abywardhana for the Accused-Appellant
Yuhan Abeywikrama for the Respondent.

Argued on : 13.10.2025

Decided on : 23.01.2026

Pradeep Hettiarachchi, J

Judgement

1. The Accused–Appellant (hereinafter referred to as the appellant) has preferred the present appeal against the judgment and sentence of the learned High Court Judge of Rathnapura. The Appellant was indicted before the High Court of Rathnapura on a charge of attempted murder of Ranjanee Dikkumbura, alleged to have been committed on or about 26.04.2016.

2. The trial was conducted by the learned High Court Judge sitting without a jury. Seven witnesses testified on behalf of the prosecution, and at the conclusion of the prosecution case, the Appellant testified in his defence. Upon a consideration of the evidence adduced by both parties, the learned High Court Judge found the Appellant guilty of causing grievous hurt to PW1 and accordingly convicted him under Section 317 of the Penal Code.

3. Accordingly, the appellant was sentenced to two years' rigorous imprisonment, which was suspended for a period of twenty years. In addition, the appellant was fined a sum of Rs. 35,000.00, with a default sentence of one year's simple

imprisonment. Further, the appellant was ordered to pay compensation in the sum of Rs. 600,000.00 to the injured party, with a default sentence of two years' simple imprisonment.

4. Being aggrieved by the said conviction and sentence the appellant filed the present appeal.

Following are the grounds of appeal, advanced by the appellant.

a. The learned High Court Judge erred in law in convicting the appellant of an offence under Section 317 of the Penal Code when the evidence adduced was insufficient to establish the essential elements of the said offence beyond reasonable doubt;
b. The learned High Court Judge failed to properly analyze and evaluate material contradictions in the evidence of the prosecution witnesses, which contradictions created reasonable doubt as to the prosecution case;
c. The learned High Court Judge failed to accord due weight to the material discrepancies and inconsistencies in the testimony of the alleged victim PW1 which fundamentally undermined the prosecution's version of events;
d. The learned High Court Judge failed to consider the irreconcilable contradictions in the witnesses' evidence about the location of the alleged incident, which fundamentally undermined the prosecution version of events;
e. The learned High Court Judge failed to properly evaluate the expert medical evidence, which evidence raises serious doubts as to how PW1's injuries were sustained;
f. The learned High Court Judge failed to consider that the prosecution had not discharged its burden of proving the case against the appellant beyond reasonable doubt, under the well-established principle that the burden of proof rests upon the prosecution throughout the trial; and,
g. The learned High Court Judge failed to extend to the appellant the benefit of reasonable doubt that arose from the totality of the evidence presented at the trial.

5. The Appellant and PW1, the injured witness, are brother and sister who reside in close proximity to each other. According to the evidence of PW1, on the day of the incident, her husband had gone to a nearby paddy field, and PW1 followed him carrying a plough. Thereafter, she returned home, prepared tea for her husband, and once again proceeded to the paddy field with the tea.

6. On her way, PW1 observed that the Appellant was removing certain plants which she claimed to have planted. When PW1 objected to this conduct, the Appellant allegedly abused her in offensive language and struck her on the head with a mamoty. As a result of the blow, PW1 fell to the ground bleeding. A person named Kumara subsequently transported her to the Ratnapura Hospital, from where she was transferred to the National Hospital, Colombo, where she underwent surgery.

7. PW3 is the son of the injured. According to his testimony, when his mother was going to the paddy field, the appellant scolded her, and while both were exchanging words, the appellant struck PW1 with a mammety. When PW3 went to the scene, PW1 had fallen to the ground, and the appellant ran to his house, took a car, and sped towards Kuruwita.

8. The appellant's contention at the trial was that he never struck PW1, but that PW1 and her family members came to his house and damaged his property by pelting stones. According to the appellant, during this course of events, PW1 was injured when a stone aimed at his house accidentally struck PW1.

9. I will first consider whether the evidence adduced by the prosecution was insufficient, as alleged by the appellant, to establish beyond reasonable doubt the essential elements of grievous hurt.

Relevant Law:

10. It is Section 311 of the Penal Code which defines grievous hurt. Section 311 reads:

The following kinds of hurt only are designated as "grievous"—

a) emasculation;
b) permanent privation or impairment of the sight of either eye;
c) permanent privation or impairment of the hearing of either ear;

d) privation of any member or joint;

e) destruction or permanent impairment of the powers of any member or joint;

f) permanent disfiguration of the head or face;

g) cut or fracture, of bone, cartilage or mouth or dislocation or sublimation, of bone, joint or tooth;

h) any injury which endangers life or if' consequence of which an operation involving the opening of the thoracic, abdominal or cranial cavities is performed;

i) any injury which causes the sufferer to be in severe bodily pain or unable to follow his ordinary pursuits, for a period of twenty days either because of the injury or any operation necessitated by the injury.

11. In the present case, the Judicial Medical Officer (JMO) who testified for the prosecution had not examined the wound of PW1, as the injured's head was covered with bandages following surgery at the time of the examination. However, the JMO prepared the Medico-Legal Report, marked P1, by referring to the bed-head ticket of the patient. According to her testimony, her opinion was based on the findings recorded in the bed-head ticket, which indicated a depressed fracture and a cerebral contusion.

12. It is also pertinent to note that, when testifying initially, the JMO referred to the patient as a male. Subsequently, the JMO was recalled, and she admitted that this was due to an oversight.

13. Furthermore, an officer attached to the Record Room of the National Hospital of Sri Lanka (NHSL) testified and produced the relevant bed-head ticket, marked as P2. This document confirmed that the patient was a female.

14. The evidence of the JMO clearly established that the injury sustained by PW1 amounts to grievous hurt as defined in Section 311 of the Penal Code. I find no reason to doubt the findings of the JMO, notwithstanding the fact that she had not personally examined the wound of PW1, as the bed-head ticket marked as P2 also substantiated her findings.

15. It is to be noted that although the JMO had interviewed PW1, she admittedly could not examine the wound, as PW1's head was covered with bandages at that time. In

preparing the Medico-Legal Report (MLR), the JMO relied solely on the observations recorded in the bed-head ticket (BHT). The BHT was also admitted in evidence at the trial as P2 through PW9, and its contents were not challenged by the defence. Accordingly, P2 corroborates the findings made by the JMO.

16. As noted above, the evidence of the Doctor (PW4) clearly establishes that the injury sustained falls within the ambit of "grievous hurt" as defined under Section 311 of the Penal Code. The inevitable conclusion, therefore, is that grievous hurt was caused. Accordingly, the appellant's first ground of appeal is devoid of merit and must fail.

17. Grounds (b) and (c) relate to the credibility of the testimonies of PW1 and PW2, and I shall therefore consider these grounds together. It is evident that the testimony of PW1 is devoid of contradictions. More importantly, no material inconsistencies are discernible in PW1's testimony. The defence highlighted only a single omission in the statement made to the police, namely, that PW1 failed to state that she was kicked by the appellant after being assaulted with the mammoty. In my view, this omission does not go to the root of the matter and, therefore, does not undermine the credibility of PW1's testimony.

18. Moreover, it was submitted that PW1 failed to make a complaint to the police until 30.04.2016, although the alleged incident occurred on 27th April 2016, and that this unexplained delay raises serious questions as to the spontaneity and reliability of her evidence. Evidently, the injured was first taken to the Rathnapura Hospital, from where she was subsequently transferred to the National Hospital, Colombo. As PW7 testified, he recorded the statement of PW1 at the National Hospital, Colombo, on 30.04.2016. In the circumstances, it cannot reasonably be held that the statement of PW1 lacked promptness, as PW7 recorded it at the first available opportunity.

19. The appellant also placed significant reliance on PW1's failure to mention in her police statement that she had informed one Kumara of the incident when he came to her assistance following the alleged assault. However, the learned trial Judge addressed this in the correct perspective, adequately explaining why this omission was not crucial to the credibility of PW1's evidence. Thus, I find no merit in any of the aforementioned grounds of appeal.

20. Another ground most strenuously argued relates to the exact location of the alleged incident. The appellant relied heavily on the evidence of PW6, who stated that he observed a patch resembling blood near the entrance of the appellant's house. Based on this observation, it was argued that PW6's evidence contradicts the testimony of PW1 regarding the place of the offence.

21. At page 10 of the judgment, the learned trial Judge has thoroughly analyzed and evaluated the testimony of PW6. A careful examination of PW6's evidence shows that the patch resembling blood was not located at the residence of the appellant but on the road leading to his residence. It is also important to note that on no occasion was the patch conclusively established as human blood. Accordingly, in my view, the evidence of PW6 does not undermine the credibility of PW1's testimony.

22. The next question that arises for consideration is whether the injury so described in P1 falls within the ambit of Section 317 of the Penal Code. Section 317 constitutes an aggravated form of grievous hurt and its applicability depends on the nature of the weapon used and the manner in which the accused employed such weapon in causing the grievous injury.

Section 317 reads:

> *Whoever, except in the case provided for by section 326, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious lo the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, 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 the person to whom the grievous hurt is caused shall be a woman or a child, may in addition be punished with whipping.*

23. In the present case, it was established that the appellant used a mammety to hit PW1. Although the mammety has a cutting edge, it was evident that the appellant had used the blunt side of it when attacking PW1.

24. The residual question is whether the factual position indicates that any grievous hurt was caused and whether the weapon used was a dangerous weapon. The expression "any instrument which used as a weapon of offence is likely to cause injury" has to be gauged taking note of the heading of the Section. What would constitute a 'dangerous weapon' would depend upon the facts of each case and no generalization can be made.

25. The heading of the Section provides some insight into the factors to be considered. The essential ingredients to attract Section 317 are:

    a. voluntarily causing a hurt;
    b. hurt caused must be a grievous hurt; and
    c. the grievous hurt must have been caused by dangerous weapons or means.

26. As was noted by the Supreme Court of India in ***State of U.P. v. Indrajeet Alias Sukhatha*** ***(2000(7) SCC 249)*** there is no such thing as a regular or earmarked weapon for committing murder or for that matter a hurt. Whether a particular article can per se cause any serious wound or grievous hurt or injury has to be determined factually.

27. It is not the position in law that a *mammety* would, in every instance, constitute a dangerous or deadly weapon. Whether it amounts to such a weapon depends entirely on the facts and circumstances of each case. Factors such as the size of the weapon, its sharpness, and the manner in which it was used are all relevant in determining whether it can be characterized as a dangerous weapon. This determination, in turn, is crucial in deciding whether Section 317 or Section 316 of the Penal Code is applicable.

28. In the present case, the evidence clearly establishes that the appellant used the blunt side of the *mammety* and not its cutting edge when attacking PW1. Furthermore, having regard to the nature of the implement, the *mammety* in question cannot, *per se*, be regarded as a dangerous weapon so as to attract the application of Section 317 of the Penal Code. Nevertheless, this Court cannot lose sight of the fact that the

appellant struck PW1 on the head with the *mammety*, resulting in a depressed fracture of the skull.

29. Moreover, the evidence of both PW1 and PW2 reveals that the incident occurred while the appellant was clearing the road by uprooting certain plants which PW1 claimed to have planted. In that context, it is evident that the appellant used the implement that was already in his hand at the time of the altercation. The injury caused by the *mammety* required invasive medical intervention, as PW1 was transferred from the Rathnapura Hospital to the National Hospital of Sri Lanka. The seriousness of the injury sustained by PW1 cannot, by any stretch, be treated lightly, particularly having regard to the vulnerable part of the body at which the blow was aimed.

30. Therefore, when the surrounding circumstances of the incident and the manner in which the *mammety* was used are considered, it can safely be concluded that the weapon employed was a dangerous weapon so as to attract liability under Section 317 of the Penal Code.

31. The High Court placed reliance on the evidence of the injured who testified as PW-1 and found that her evidence was corroborated by the evidence of the victim's son (PW-2), who claimed to be an eye-witness. Accordingly, conviction was made and sentence imposed.

32. In support of the appeal, learned counsel for the appellant submitted that the evidence of PWs. 1 and 2 should not have been relied upon by the High Court. Furthermore, it was argued that the injuries as mentioned by the JMO (PW-4) in P1 cannot be acted upon as she had not personally examined PW1.

33. The doctor who examined the injured noticed following injuries.

    I. Depressed fracture of right side of the skull
    II. Cerebral contusion present

34. It is important to emphasize that, unless the findings of the trial Judge are shown to be irrational, inconsistent with the evidence, or perverse, appellate courts are generally slow to interfere with the factual determinations of the trial Judge.

35. In ***Onnassi vs. Vergotti [1968] 2 Lloyd's Report 403,*** it was held inter alia:

> *"one thing is clear, not so much as a rule of law but rather as a working rule of common sense. A trial judge has, except on rare occasions, a very great advantage over an appellate court; evidence of a witness heard and seen has a very great advantage over a transcript of that evidence; and a court of appeal should never interfere unless it is satisfied both that the judgment ought not to stand and that the divergence of view between the trial judge and the court of appeal has not been occasioned by any demeanor of the witnesses or truer atmosphere of the trial (which may have eluded the appellate court) or by any other of those advantages which the trial judge possesses."*

36. As held in the case of ***Dharmasiri vs. Republic of Sri Lanka [2010] 2 SLR 241***

> *"Credibility of a witness is mainly a matter for the trial Judge. Court of appeal will not lightly disturb the findings of trial Judge with regard to the credibility of a witness unless such findings are manifestly wrong. This is because the trial Judge has the advantage of seeing the demeanour and deportment of the witness..."*

37. As held in the case of ***Mahathun and Others vs. The Attorney General [2015] 1 SLR 74*** "------ *(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 the testimony of a witness unless it is manifestly wrong."

38. I find that PW-1 is the victim of the assault allegedly made by the accused. Her evidence is clear and cogent. As she was a victim, in the absence of any material to show as to why she would falsely implicate the accused, her evidence has been rightly relied upon. PW- 2's evidence has also corroborated PW1's evidence.

39. The learned trial Judge has sufficiently analyzed and evaluated both the prosecution and the defence evidence and has given cogent reasons for accepting the

prosecution version, notwithstanding the presence of some insignificant omissions and contradictions. More importantly, the learned trial Judge has also clearly explained why she was not inclined to accept the defence evidence.

40. Upon consideration of the above, I find no reason to interfere with the findings of the learned trial Judge.

41. However, in my opinion, the compensation awarded by the learned trial Judge in favor of PW1 is excessive. While the evidence of the JMO established that PW1 sustained grievous hurt as a result of the appellant's attack, no acceptable medical opinion was provided regarding the likelihood of future medical complications. The JMO merely stated that complications *may* occur in the future. The JMO neither clinically examined PW1 nor explained how such complications could arise, making it difficult to reasonably infer that PW1 would suffer any future medical issues. Furthermore, there was no evidence of any loss of income resulting from the injury. In the absence of such evidence, the compensation ordered appears disproportionate to the circumstances.

42. Having regard to the nature of the injury and the evidence on record, I am of the view that a reduction of the compensation awarded by the trial Judge is warranted to a more reasonable and proportionate sum.

43. Hence, I vary only the amount of compensation payable by the Appellant. Accordingly, I order that a sum of Rs. 250,000.00 would be sufficient to meet the ends of justice. Subject to this variation, the appeal of the Appellant stands dismissed.

Judge of the Court of Appeal

P. Kumararatnam,J

I agree,

Judge of the Court of Appeal