

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

Court of Appeal case no : CA HC 245 / 2013

P.Wijayananda

Allwisiwattha

Palathota

Kaluthara

Petitioner

Vs.

Hon Attorney General

Attorney General's Department

Colombo 12

Respondents

Before : **S. Devika de L. Tennekoon, J**
S. Thurairaja,P.C. J

Counsel : Dr. Ranjith Fernando with Shiroma Peiris
for the Accused -Appellant
Shanaka Wijesinghe DSG for the AG

Decided on : 20.09.2017

S. Thurairaja,P.C. J

Dr. Ranjith Fernando, Counsel for the accused appellant submits that he is not contesting the conviction but he is pleading with the sentence. He further submits that the accused –appellant was attached to Sri Lankan Army as a civil employee namely Cook, and his wife is suffering with the terminal illness.

Considering the nature of the offence, it was revealed in the judgement that the accused appellant was not involved in a robbery. This had happened during the course of a fight and he had acted himself in defense and inflicted the injury. The judge has observed that this is exceeding the right of private defense and caused the injuries. It was brought to the

notice to the court that the victim in this case was also charged before the Magistrate's Court, where the accused appellant in this case was the victim and was given six months' imprisonment suspended for five years and the case number is MC Kalutara 18099. and he was imposed a fine of Rs. 1,500/- in default one-year rigorous imprisonment.

The counsel submits that the accused appellant is a government servant and considering the family circumstances, he pleads with the Court to reconsider the fine imposed to be converted in to a state cost for him to get back to his job which he has served more than 20 years. Further he submits to consider the reduction of compensation.

The learned DSG appearing for the respondent submits that he cannot concede to the application made by the accused appellant. The court considers the submissions of both counsel, proceedings and we find that the findings of the High Court Judge is reasonable and we do not inclined to interfere with the finding of the High Court Judge of convicting the accused appellant. So therefore, the conviction stands as it is. Regarding the sentence, we consider the mitigating circumstances submitted before the trial judge and before this Court, and impose the following sentence, two years' rigorous imprisonment will stand as it is.

Considering the age and other circumstances of the accused appellant we suspend the same for 10 years and the fine of Rs.2000/- is removed hereby and we impose Rs. 1,500/- as a state cost, if it is not paid it will be

converted into a fine and he will be he will be serving 2 months simple imprisonment. The compensation of Rs. 100,000/-will stand as it is and in default he will be serving Two years simple imprisonment. Considering the submissions of the accused appellant, we give six months to pay the compensation. That is before the 20/03/2018.

The Registrar, is hereby directed to send the case record to the Registrar, High Court of Kalutara to implement the sentence. The accused appellant is cautioned to appear before the High Court when noticed.

Judge of the Court of Appeal

S. Devika de L. Tennekoon, J

I agree

Judge of the Court of Appeal

Na/-