

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

In the matter of an application under and in terms of Section 331 of the Code of Criminal Procedure Act No. 15 of 1979 to be read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA/HCC/486/2017

HC of Matara Case No: HC40/16

Democratic Socialist Republic of Sri Lanka.

Complainant

Vs.

Bulathwaththage Dharmasena

Accused

And now Between

Bulathwaththage Dharmasena

Accused-Appellant

Vs.

The Attorney General

Attorney General's Department

Colombo 12.

Complainant-Respondent

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

Counsel: Nalin Ladduwahetty PC with Kavithri Hirusha Ubeysekera for the
Accused-Appellant
Suharshi Herath, DGS for the Respondent

Written

Submission: 02.09.2019 by the Accused Appellant)

On 08.10.2019 by the Respondent)

Argued On : 02.09.2025

Judgment On: 24.10.2025

JUDGEMENT

B. Sasi Mahendran, J.

The Accused- Appellant (hereinafter referred to as the Accused) was indicted before the High Court of Matara on the charge of committing the offence of attempt to murder one Bulawattage Chandrasena on 11.11.2012, punishable under Section 300 of the Penal Code.

The Prosecution led the evidence through eight witnesses and marking productions from P1 to P2, and thereafter closed its case. The Accused, in his defence, gave evidence in the witness box and called one witness.

At the conclusion of the trial, the Learned High Court Judge, by a judgment dated 22.11,2017, found the accused guilty of attempting to murder. Accordingly, the Learned High Court judge imposed 8 years of rigorous imprisonment with a fine of Rs. 1000/- and in default term of one-month simple imprisonment. Furthermore, compensation in the sum of Rs. 200,000 carries in default term of 01-year simple imprisonment.

Being aggrieved by said judgment and sentence, this appeal was preferred by the Accused. The following Grounds of Appeal were urged by the counsel for the Accused.

1. The Learned High Court Judge misdirected himself in Law and, in fact, in analyzing the evidence placed before the Court during the trial
2. The Learned High Court Judge misdirected himself in law and in Fact in weighing the case of the prosecution with that of the defence, prima facie rebutting the presumption of innocence.
3. The Learned High Court Judge failed to address the judicial mind in legally analyzing the evidence of the prosecution and the defence and instead arrived at conclusions based on surmise and conjecture, causing prejudice to the Accused.
4. The learned High Court judge failed to address his mind to the productions of the prosecution, wherein the prosecution failed to provide any of the weapons used during the incident, which would have provided reasonable evidence in arriving at a conclusion.
5. The prosecution failed to establish the identity of the Accused beyond a reasonable doubt.
6. The Trial Judge has made no effort to make a genuine judicial analysis of the contents of the evidence of the Accused in order to determine whether it would create a reasonable doubt in the prosecution's case.
7. The Trial Judge failed to give a judicial analysis of the elements of an offence found in Section 300 of the Penal Code, and as to whether the Appellant could be found guilty thereof

The main argument advanced by counsel for the Accused was that the Learned High Court Judge had not adequately considered the defence raised by the Accused. Before proceeding to evaluate the merits of this submission, it is necessary to set out the factual narrative as presented by the prosecution.

I am mindful that when this case was taken up on 31.05.2017, counsel for the accused informed the Court that a separate case was pending against Prosecution Witness No. 01 for allegedly causing injuries to the accused. It was further submitted that the parties had expressed an intention to resolve the matter through a payment of Rs. 150,000. However, this proposed settlement was declined by Witness No. 01.

The facts and circumstances of the case are as follows;

According to the testimony of Prosecution Witness No. 01, Bulathwattage Chandrasena, who is both the victim and the brother of the accused on 11th November 2012, at approximately 5:00 to 5:30 PM, while returning from the workplace of his wife and walking near Wandokkawa Road, the accused suddenly approached him and uttered the words “උබට අයිතිවාසිකම් දෙන්නම්”, before launching an attack with a knife. The knife struck the witness’s eyes and face. In an attempt to seize the weapon, the witness sustained injuries to his hand. Despite this, the accused continued to assault him with the knife. The witness retaliated, managed to disarm the accused, and threw the knife away. However, the accused then drew a second knife from his waist and resumed the attack. The witness succeeded in wresting the second knife from the accused, after which the accused fled the scene.

The witness attempted to walk a short distance but was unable to proceed due to his injuries, prompting him to discard the knife and sit near a bush. Subsequently, his eldest son, wife and neighbours arrived and transported him to Matara Hospital and during his hospital stay, the police took his statement.

Furthermore, the witness testified that there had been a dispute concerning a paddy field owned by his father. Approximately one to one and a half weeks prior to the incident, the witness had informed the Accused that the land belonged to both of them and proposed that each should use half. In response, the Accused claimed that their mother had transferred ownership to the Accused in writing. Following this disagreement, the Accused encountered the witness on the day the alleged offence occurred.

During cross-examination, counsel for the Accused suggested to the witness that he was angry towards the Accused over the father's paddy field, and that the mother had transferred the land to the Accused. The witness denied the suggestion, stating that no such transfer had been made and that the land was used jointly, with each party occupying one-half. The witness further acknowledged that the Accused was physically disabled, lacking fingers on his left hand, but maintained that he was nonetheless capable of working effectively.

According to PW 08, Wijesekara Liyanage Anura, who was serving as a Police Constable at the time, the investigation was initiated on 12th November 2012 at 3:05 p.m., following the police complaint lodged on 11th November 2012. The inquiry was conducted jointly

with PW 05. The location of the alleged offence was identified as Wandokkawa Road, and the evidence gathered during the investigation corroborated the testimony of PW 01 and PW 02, particularly regarding PW 01's 'Hena' and the adjoining house. Subsequently, on 19th November 2012, the Accused was arrested.

During cross-examination, the witness acknowledged that the Accused had visible injuries and stated that, according to the Accused, he had been hospitalised and received medical treatment. In response to a suggestion by learned counsel for the Accused, the witness denied the allegation and maintained that there were clear signs indicating that a violent encounter had occurred in the area. He observed a broken slipper and traces of lime on the ground, and described the location as appearing consistent with a struggle.

It was further admitted that no weapon used in the alleged crime was recovered. The Accused presented himself at the police station seven days after the incident, bearing visible injuries on his body.

During the testimony of PW 03, Dr Denagamage Chandana Priyanath, JMO, it was stated that he examined PW 01 on 24.11.2012 at 9:40 p.m. Upon examination, PW 01 was found to have sustained 18 injuries distributed across the head, face, neck, chest, and left hand, including the fingers. Injuries 6 to 13 were identified as incised wounds located on the left hand, were classified as defensive injuries. The witness acknowledged that PW 01 was capable of walking despite the injuries. This Medical Evidence corroborates the version of the PW01.

According to the Accused, due to his physical disability, he was unable to hold or lift heavy objects. On the day of the alleged offence, he had gone to his uncle Premasiri's residence around 5:00 p.m. for a ceremony, carrying a bag of lime in his disabled hand and an umbrella in the other. He claimed that while en route, he saw PW 01 approaching with a knife. (This position was not put to the witness No.01). An argument ensued concerning a paddy field inherited from the Accused's father, where his son had been working. PW 01 allegedly objected to the use of his portion of the land. In response, the Accused stated that he had been cultivating the land for over 30 years and that any dispute should be resolved through their mother.

According to the Accused, the victim, the brother approached him with apparent intent to attack. As the Accused attempted to retreat, leaving behind his slippers and umbrella, he fell to the ground. While trying to get up, the witness came close, prompting the Accused

to embrace him and retaliate. The Accused alleged that the witness first struck him in the chest with a Mal knife, followed by additional blows to the head and neck. This was not proposed to the PW 01 when he was cross-examining. In the course of defending himself, the Accused sustained injuries to his fingers. He further stated that he managed to seize the Mal knife from the witness's waist, using his disabled left hand to restrain the witness while taking the knife with his right hand, and then struck back.

Upon a comprehensive evaluation of the evidence—including the medical reports, the testimony of Prosecution Witness No. 01, and the corroborative accounts provided by PW 02 and PW 03—the Learned High Court Judge determined that the version of events presented by the Accused lacked credibility. Furthermore, it is noteworthy that the defence put forward by the Accused during his testimony was not suggested to PW 01 during cross-examination. This omission lends weight to the conclusion that the defence was a subsequent fabrication rather than a genuine account.

Further, the Learned High Court Judge decided that the claim of restraining PW 01 with a disabled limb while simultaneously defending against a knife attack and retaliating with the same weapon was implausible and inconsistent with the physical disability that the Accused described. Accordingly, the Court found the defence to be untenable. The learned High Court judge intrinsically analysed and considered the injuries described by the JMO with the mode of attack described by the victim, had correctly concluded that the evidence of the victim is probable.

I am of the considered view that the Learned High Court Judge rightly concluded that the accused had arrived at the scene and initiated an attack on Prosecution Witness No. 01. The pertinent question, however, is what provoked the accused to assault the victim—specifically, whether the attack was premeditated. It is undisputed that the accused and PW 01 were embroiled in a dispute over land inherited from their father. According to the testimony of PW 01, the accused approached him armed with a knife and launched an assault, which compelled PW 01 to respond in self-defence. It is further evident that the confrontation was instigated by the accused, who began the altercation by uttering the words “උබට අයිතිවාසිකම් දෙන්නම්” .

According to the evidence presented by the Judicial Medical Officer, Prosecution Witness No. 03, the victim sustained injuries that were deemed serious and posed a threat to his life. In contrast, the Medico-Legal Report (MLR) of the accused indicates that he too suffered injuries, though they were all classified as non-grievous. This disparity suggests

that the accused acted with the intent to cause specific harm to PW 01. Moreover, the accused did not dispute the fact that he had a knife at the time of the incident.

We are mindful that the Learned High Court Judge had an opportunity to hear and see the witness and form an opinion regarding their truthfulness. However, the main issue for consideration in this appeal is the sentence imposed on the accused, and it is noted that the Learned High Court Judge failed to provide reasons for imposing an eight-year term of imprisonment.

We are mindful that the Accused and PW 01, being brothers, were engaged in a longstanding dispute over inherited land, which had given rise to animosity between them. However, these contextual factors were not taken into account by the Learned High Court Judge when imposing the sentence. Furthermore, the learned Judge has failed to consider whether there exists any evidence indicative of a criminal intent on the part of the Accused to cause injuries to PW-01.

Both parties were involved in a physical altercation that lasted for over four minutes. In the given circumstances, it is apparent that the Accused acted in the heat of passion triggered by the confrontation. This factor is pivotal in substantiating a plea of sudden provocation. However, this aspect appears to have been overlooked by the Learned High Court Judge when imposing the eight-year sentence, despite the fact that the Accused himself sustained injuries classified as non-grievous.

In imposing a sentence of eight years' Rigorous Imprisonment and awarding Rs. 200,000 in compensation, the Learned Judge did not provide any reasons to justify either the duration of the sentence or the quantum of compensation.

In light of the foregoing circumstances, we hereby set aside the sentence of eight years' Rigorous Imprisonment imposed by the Learned High Court Judge and substitute it with a term of two years' Rigorous Imprisonment, suspended for a period of ten years, on the basis that the incident arose from a sudden altercation stemming from a land dispute. Additionally, the compensation previously fixed at Rs. 200,000 is reduced to Rs. 150,000, in default sentence term of 01-year simple imprisonment, which corresponds to the amount initially proposed by the Accused on 31.05.2017 .

Appeal partly allowed. Sentence varied.

The registrar of the court is directed to send this judgment to the High Court of Matara for compliance.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE.

JUDGE OF THE COURT OF APPEAL