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, read with Article 138 of The Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal No:

CA/HCC/0032/2024

Democratic Socialist Republic of Sri Lanka

COMPLAINANT

Vs.

High Court of Tangalle

Case No: HC/33/2014

P. L. Ishan Maduranga

ACCUSED

AND NOW BETWEEN

P. L. Ishan Maduranga

ACCUSED-APPELLANT

Vs.

The Hon. Attorney General,

Attorney General's Department,

Colombo 12.

COMPLAINANT-RESPONDENT

Before	: Sampath B. Abayakoon, J.
	: Amal Ranaraja, J.
Counsel	: Shanaka Ranasinghe, P.C. with Widura Ranawaka and Nisith Abeysuriya for the Accused-Appellant.
	: Disna Warnakula, D.S.G. for the State.
Argued on	: 03-10-2024
Written Submissions	: 05-06-2024 (By the Accused-Appellant)
Decided on	: 18-12-2024

Sampath B. Abayakoon, J.

This is an appeal by the accused-appellant (hereinafter referred to as the appellant) on the basis of being aggrieved of his conviction and the sentence by the learned High Court Judge of Tangalle.

The appellant has been indicted before the High Court of Tangalle for causing stab wounds to one Mathis Hewage Samantha on or about 03-05-2007, at a place called Ratmalketiya within the jurisdiction of the High Court of Tangalle, and thereby, committing the offence of attempted murder punishable in terms of section 300 of the Penal Code.

After the appellant was arrested and later bailed out by the learned Magistrate of Tangalle, he has absconded the Court. Accordingly, the non-summary proceeding against him has taken place in his absence.

After the committal of the matter to the High Court, the Hon. Attorney General has filed an indictment against the appellant on 09-07-2014, where it had not been possible to serve summons on the appellant. It had been informed to the Court that the appellant has left the country.

Accordingly, the learned High Court Judge of Tangalle has taken due steps in terms of section 241 of the Code of Criminal Procedure Act, and after being

satisfied that the appellant is absconding the Court, has taken up the trial in his absence. It is noteworthy to mention that the appellant has been represented by an Attorney-at-Law during the 241 inquiry, but when the matter was taken up for trial, there had been no legal representation for the appellant.

After trial, the learned High Court Judge of Tangalle has found the appellant guilty as charged of his judgment dated 24-11-2023, and has sentenced him for a period of 10 years imprisonment. He has been ordered to pay a fine of Rs. 10,000/=, and in default, 3 months simple imprisonment have been ordered. In addition to the above, he has been ordered to pay a fine of Rs. 300,000/- to the victim PW-01, with a default sentence of 6 months simple imprisonment.

As the appellant was absconding the Court, an open warrant has been issued against him. It had been ordered that the above sentence shall become effective once the appellant is arrested and produced before the Court.

The appellant has appealed against the conviction and the sentence of his petition of appeal dated 06-12-2023 within the stipulated time period allowed for a person aggrieved of a conviction and a sentence to appeal therefrom to the Court of Appeal.

This goes on to show that although the appellant absconded the Court, nor did he retained the services of an Attorney-at-Law to represent him, he had followed the proceedings before the Court diligently by filing the appeal soon after the conviction and the sentence.

When this matter was taken up for argument before this Court, the learned President's Counsel who represented the appellant informed the Court that although his client has preferred this appeal against his conviction and the sentence, he has received instructions to withdraw the appeal against the conviction and only to challenge the sentence imposed upon him.

Accordingly, upon the withdrawal, the appeal against the conviction is hereby dismissed.

At the hearing of the appeal against the sentence, this Court heard the submissions of the learned President's Counsel who argued that the actual conviction should have been in terms of section 301 of the Penal Code and that the sentence should have also been in accordance with the same.

The learned Deputy Solicitor General (DSG) who represented the respondent contended that the matters taken by the learned President's Counsel as reasons for his argument are reasons that were not before the trial Court by way of evidence. It was her position that the learned trial Judge has come to a correct finding when convicting the appellant as charged, and sentencing him accordingly. It was her view that the appeal against the sentence should also be dismissed for want of merit.

The appellant is a person who has knowingly absconded from Court and a person who has filed this appeal without resorting to the provisions of section 241(3) of the Code of Criminal Procedure Act, under which he could have appeared before the trial Court and satisfy that his absence from the trial was due to *bona fide* reasons.

However, it is settled law that even a person who absconded the Court has a right to appeal against any conviction or sentence in terms of section 14 of the Judicature Act No. 02 of 1978.

In the case of **Sudharman De Silva Vs. The Attorney General (1996) 1 SLR 9**, it was held;

> *"Section 14 of the Judicature Act has specifically endowed an accused who is convicted with a substantive right of appeal and this right of appeal cannot be taken away from him on the ground that he had been acting contumaciously or in defiance of the law. Contumacious conduct on the part of an accused is relevant only where the exercise of a discretion vested in the Court is involved. Here the right to appeal is statutory and can be asserted as of right by the accused although he had jumped bail and was absconding at the trail."*

Since it was contended that the sentence of the appellant should have been in terms of section 301 of the Penal Code, I find it relevant to reproduce the said section for the better understanding of this judgment.

> **301. Whoever does any act with such intention or knowledge and under such circumstances, that if he by that act cause death would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to 3 years or with fine, or with both; and if hurt is caused to any person by such act shall be punished with imprisonment of either description for a terms which may extend to 7 years, or with fine, or with both.**

It needs to be noted that the difference between section 300 and section 301 of the Penal Code is that for a person to be found guilty for the offence of attempted murder, there must be proof that he had the intention or knowledge under the circumstances that his act would cause death and he would be guilty of murder. While in terms of section 301, when that person causes the act, he should have the intention or knowledge that if the death is caused, he would be guilty of culpable homicide not amounting to murder.

Culpable homicide as described in section 293 of the Penal Code would become culpable homicide not amounting to murder in terms of section 297 of the Penal Code, if the act, which caused the death, falls within the five exceptions mentioned in section 294 of the Penal Code.

Since it was contended that the act where PW-01, who was the victim of this incident, received injuries was a result of a sudden fight without premeditation in the heat of passion upon a sudden quarrel, I find it necessary to consider the facts of the matter briefly in that regard.

According to the evidence of PW-01, on the day relevant to the incident, namely on 03-05-2007, he had been serving in the army and was about 27-28 years of age.

On the said day, at around 5.30 in the afternoon, he has left his home to purchase a phone card from a nearby boutique in his foot bicycle. After travelling for about 200 meters from his home, he has seen a fellow villager called Darshana being assaulted by a group of about six persons, which included the appellant.

After seeing the incident, he has stopped his bicycle and has gone to settle the dispute between the parties at which point, the appellant has stabbed him towards his chest as well as abdomen. Soon after being stabbed, he has fallen unconscious and has regained his consciousness at the Matara General Hospital. Both the persons named Darshana and the appellant had been young persons well known to the victim from their childhood, and there had been no reason for the appellant to attack the PW-01 in the manner it was done as he was only attempting to settle the dispute.

It is clear from the evidence of PW-01 that being a person serving the army and relatively an elderly person than the appellant and the other person who were brawling, he has attempted to settle the dispute and separate the parties being engaged in such activity, which has resulted him being stabbed in the manner he has described.

The Medico-Legal Report (MLR) produced at the trial shows that both stab wounds inflicted on PW-01 had been injuries sufficient in the ordinary course of nature to cause death, which falls under section 300 of the Penal Code.

Although it was contended by the learned President's Counsel that there was a sudden fight, the evidence clearly shows that there was no sudden fight between the appellant and PW-01. The PW-01 has intervened only in order to settle an incident between two other parties, and the appellant being a much younger person should have known that the intention of the PW-01 had been to settle and separate the brawling parties. When the appellant stabbed the person who came to settle the dispute on his chest and abdomen for no reason, it should be within his knowledge that his action may cause death and he would be guilty of

murder in such a situation. I find no basis to conclude that the appellant's behaviour was a result of any provocation or any sudden fight as claimed at the hearing of this appeal.

As clearly submitted by the learned DSG, there was no evidence placed before the Court for the trial Court to come to such a conclusion. Although it was contended that the appellant also suffered injuries and was warded at the hospital when he was initially remanded by the learned Magistrate of Tangalle, and that fact should have been considered by the learned High Court Judge, I find no basis agree to such a contention. Clearly, there was no such evidence before the trial Court for the learned trial Judge to consider such a fact. Even if it was brought to the attention of the learned trial Judge, I do not find it as a basis to conclude that the act committed by the appellant should fall under section 301 of the Penal Code.

For a person who was found guilty for an offence in terms of section 300 of the Penal Code, where hurt has been caused to the victim of the crime, the offender shall be liable for a period of imprisonment of either description for a term which may extend for 20 years, and shall also be liable to a fine.

It is clear from the sentencing order that the learned High Court Judge has well considered the relevant facts and the circumstances when the appellant was sentenced for a period of 10 years rigorous imprisonment other than the fine imposed and the compensation ordered.

I am unable to agree that the sentence was excessive under any circumstances given the facts and the circumstances relevant to the instant matter.

I do not find the submission made to the effect that the appellant has received burn injuries while working overseas and had to undergo treatment, as a reason that should be considered applicable in order to consider the reduction of the sentence imposed upon him, since such a reasoning cannot be justified in that regard.

Accordingly, the appeal against the sentence is also dismissed for want of merit.

It is ordered that the sentence shall commence if and when the appellant appears before the High Court of Tangalle, and or arrested and produced before the High Court as directed by the learned High Court Judge in his sentencing order.

Appeal dismissed.

Judge of the Court of Appeal

Amal Ranaraja, J.

I agree.

Judge of the Court of Appeal