

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI

LANKA.

*In the matter of an appeal in terms of Article 128
of the Constitution of the Democratic Socialist
Republic of Sri Lanka.*

SC APPEAL No. 210/2017

S.C. Special Leave to Appeal No.

7/15

High Court Monaragala Appeal No.

14/2013 and 15/2013

Magistrate Court Bibile Case No.

14007

Officer In Charge

Police Station,

Bibile.

COMPLAINANT

-Vs-

1. Sanjaya Samantha Bandara Nanayakkara
Kawdella,
Bibile.

2. Alawatthage Chularathne Anura De Silva
Batticaloa Road,
Ambagolla Junction,
Bibile.

ACCUSED

AND THEN BETWEEN

1. Sanjaya Samantha Bandara Nanayakkara
Kawdella,
Bibile.

1ST ACCUSED-APPELLANT

2. Alawatthage Chularathne Anura De Silva
Batticaloa Road,
Ambagolla Junction,
Bibile.

2ND ACCUSED-APPELLANT

-Vs-

1. Officer In Charge
Police Station,
Bibile.

COMPLAINANT-RESPONDENT

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

RESPONDENT

AND NOW BETWEEN

Alawatthage Chularathne Anura De Silva
Batticaloa Road,
Ambagolla Junction,
Bibile.

2ND ACCUSED-APPELLANT-APPELLANT

-Vs-

1. Officer In Charge
Police Station,
Bibile.

COMPLAINANT-RESPONDENT-RESPONDENT

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

RESPONDENT-RESPONDENT

BEFORE : **P. PADMAN SURASENA, J.**
A. H. M. D. NAWAZ, J. &
K. PRIYANTHA FERNANDO, J.

COUNSEL : Asoka Fernando for the 2nd Accused-Appellant-Appellant
instructed by Ms. A.R.R. Siriwardena.
Azard Navavi SDSG for the Complainant-Respondent-Respondent
and the Respondent-Respondent.

ARGUED &

DECIDED ON: 13-12-2023.

P. PADMAN SURASENA, J.

Court heard the submissions of the learned Counsel for the 2nd Accused-Appellant-Appellant, the submissions of the learned Senior Deputy Solicitor General who appeared for both the Complainant-Respondent-Respondent and the Respondent-Respondent, and then concluded the argument of this case.

The 2nd Accused-Appellant-Appellant (hereinafter referred to as the Accused-Appellant) stood charged along with another (1st Accused) before the Magistrate's Court of Bibile under three counts. The 1st count is for an offence punishable under Section 344 read with Section 32 of the Penal Code; the 2nd count is for an offence punishable under Section 186 read with Section 32 of the Penal Code; the 3rd count is for an offence punishable under Section 314 read with Section 32 of the Penal Code. As the learned Magistrate had decided not to proceed with the 2nd count, the trial had proceeded only on the 1st and 3rd counts. After the trial, the learned Magistrate had convicted both Accused on the 1st count in the Charge Sheet, which is for using criminal force against Police Constable 1759 Nissanka of Bibile Police in order to prevent or deter the said Police Constable from discharging his duty as a public servant, an offence punishable under Section 344 read with Section 32 of the Penal Code. The learned Magistrate has acquitted both Accused from the 3rd count which is under Section 314 of the Penal Code.

Being aggrieved by the said conviction, both the Accused had then appealed to the Provincial High Court. The Provincial High Court, by its judgement dated 26-11-2014, had affirmed the conviction and the sentence imposed on both Accused, and affirmed the judgement dated 17-06-2013 pronounced by the learned Magistrate of Bibile.

Being aggrieved by the judgement of the Provincial High Court, the 2nd Accused has filed the instant appeal. Although, the 2nd Accused in the Special Leave to Appeal Petition filed before this Court had sought for Special Leave to Appeal in respect of several questions of law covering the factual matrices of the case, we note that this Court by its order dated 31-10-2017, had granted Special Leave to Appeal only on the following question of law.

"Whether the Hon. High Court Judge erred in law for his inability to consider that, the learned Magistrate disregarded the failure of the prosecution to prove Count 1

of the charges framed against the accused for its inability to establish that the Virtual Complainant engaged in his official duties at the time of the incident?"

Therefore, it would suffice for us to consider the above question of law in this appeal.

The facts of the case show clearly that the 2nd Accused had assaulted/used criminal force on the Police Constable Nissanka who had just come out of the Police Station and walked towards the Bus Stand in Bibile Town.

The main contention of the learned Counsel for the 2nd Accused is that the said Police Constable was not on duty when he was subjected to the relevant assault. It was his argument that due to that fact, it was wrong for the Magistrate's Court as well as the Provincial High Court to have convicted the Accused-Appellant-Appellant. Section 344 of the Penal Code under which the 2nd Accused stands convicted is as follows:

"whoever assault or uses a criminal force to any person, being a public servant in the execution of his duty, as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both".

Therefore, the primary question is whether the Police Constable Nissanka could be considered to have been discharging his duty at the time he was assaulted just outside the Police Station. First and foremost, it could be pertinent to refer to Section 56 of the Police Ordinance which is as follows:

"Every police officer shall for all purposes in this Ordinance contained be considered to be always on duty, and shall have the powers of a police officer in every part of Sri Lanka."

It shall be his duty-

- (a) To use his best endeavours and ability to prevent all crimes, offences and public nuisances;*
- (b) To preserve the peace;*
- (c) To apprehend disorderly and suspicious characters;*
- (d) To detect and bring offenders to justice;*

- (e) *To collect and communicate intelligence affecting the public peace;*
- (f) *Promptly to obey and execute all orders and warrants lawfully issued and directed to him by any competent authority.*

The literal and plain meaning of the above section is clear enough for us to hold that every Police Officer must be considered to be always on duty. Be that as it may, even on the consideration of the facts of this case, we can see clearly that the Police Constable Nissanka was on standby duty in the Police Station on the relevant date. This is obvious because the incident relevant to this case had occurred on the day immediately after the date of the Presidential Election 2010. Furthermore, it is not disputed that the Police Constable Nissanka had come out of the Police Station with permission obtained from his superiors.

On the other hand, the relevant date of offence being the day immediately after the Presidential Election 2010, we cannot turn a blind eye to the fact that the law had prohibited any gathering on the streets on such days. It is also not disputed that the group of persons to which the 2nd Accused had belonged at the time of committing this offence was celebrating the election victory in the town with cheering etc. It was at that moment that the Police Constable Nissanka observing that those persons were committing an offence and observing that there was a likelihood of a breach of peace in the area, had taken a prompt action to warn that group of persons with a view of dispersing them. It was at that time that the 2nd Accused had resisted the duty of the said Police Constable and used criminal force on him. We observe that it was under such circumstances that the 2nd Accused now takes up the position that the Police Constable Nissanka was not on duty at that moment. We are unable to agree with that submission.

Learned Senior Deputy Solicitor General cited the case of **Albert V. Lavin**.¹ In that case, *Lavin*, a Police Constable at the relevant time, off duty and in plain clothes, was at the head of a queue of a bus stop. He had intervened when another person had attempted to jump the queue at that bus stop. The Magistrate had concluded that there were reasonable grounds for Lavin to believe that there existed a likelihood of a breach of peace which was imminent at the time, which had warranted his intervention. The House of Lords had unanimously agreed with that conclusion.

¹ 1981 (3) ALL ER 878

Thus, in addition to the presence of the afore-stated statutory provision in our country namely, Section 56 of the Police Ordinance, *Lavin's case* also supports the sustainability of the judgements of both the Magistrate's Court as well as the Provincial High Court.

For the foregoing reasons, we proceed to answer the question of law in respect of which this Court has granted Special Leave to Appeal, in the negative. We observe that the learned Magistrate had considered evidence in relation to all the ingredients of the offence and had come to the correct conclusion. We also observe that the whole trial had been conducted before the Magistrate who pronounced the judgement. Therefore, the learned Magistrate who pronounced the judgement had ample opportunity to evaluate the evidence of the Witnesses taking into consideration, the demeanour and deportment of those Witnesses. Perusal of the judgement of the learned High Court Judge also reveals that the learned High Court Judge had also considered all necessary aspects of the case before he decided to dismiss the appeal. Thus, in those circumstances we have no basis to interfere with the findings of the Trial Judge as well as the conclusions reached by the learned High Court Judge.

For the above reasons, we decide to affirm the judgement dated 17-06-2013 and also the judgement dated 26-11-2014 of the learned High Court Judge and affirm the conviction and the sentence imposed on the 2nd Accused. Hence this Appeal should stand dismissed.

JUDGE OF THE SUPREME COURT

A.H.M.D. NAWAZ, J.

I agree,

JUDGE OF THE SUPREME COURT

K. PRIYANTHA FERNANDO J.

I agree,

JUDGE OF THE SUPREME COURT

Mks