

IN THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Appeal in terms of
Article 128(1) of the Constitution.

SC. Appeal 50/2013

High Court Matara No. 127/2011

M.C. Matara No. 39122

Officer in Charge,
Police Station,
Matara.

Complainant

Vs.

1. Mudugamuwa Hewage Gunasena,
2. Kankanamdurage Wimalawathie,
Both of No 60, Samdale Farm,
Tepudeniya.
3. Hawage Chaminda Sandamal,
4. Mudugamuwa Hewage Pathma
Rangika,
Both of Ipitawatta Galdola,
Kotapola.
5. Mudugamuwa Hewage Lasanthi
Shashikala,
No. 60, Semdale Farm,
Tepudeniya.

Accuseds

AND BETWEEN

Mudugamuwa Hewage Gunasena,
Both of No 60, Samdale Farm,
Tepudeniya.

1st Accused Appellant

Vs.

Officer in Charge
Police Station,
Akuressa.

Complainant Respondent

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

Respondent

2. Kankanamdurage Wimalawathie,
No 60, Samdale Farm,
Tepudeniya.
3. Hawage Chaminda Sandamal,
4. Mudugamuwa Hewage Pathma
Rangika,
Both of Ipitawatta Galdola,
Kotapola.
5. Mudugamuwa Hewage Lasanthi
Shashikala,
No. 60, Semdale Farm,
Tepudeniya.

Accused Respondents

AND NOW BETWEEN

Mudugamuwa Hewage Gunasena,
Both of No 60, Samdale Farm,
Tepudeniya.

1st Accused Appellant-Appellant

Vs.

Officer in Charge

Police Station,

Akuressa.

Complainant Respondent-Respondent

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Respondent-Respondent

2. Kankanamdurage Wimalawathie,

No 60, Samdale Farm,

Tepudeniya.

3. Hawage Chaminda Sandamal,

4. Mudugamuwa Hewage Pathma

Rangika,

Both of Ipitawatta Galdola,

Kotapola.

5. Mudugamuwa Hewage Lasanthi

Shashikala,

No. 60, Semdale Farm,

Tepudeniya.

Accused Respondent-Respondents

BEFORE : PRIYASATH DEP, PC, J. (as he was then)

UPALY ABEYRATHNE, J.

ANIL GOONERATNE, J.

COUNSEL : L. Amarasinghe with Sriyani Manamperi for
the 1st Accused Appellant-Appellant

Madhawa Tennakoon SSC for the
Respondent-Respondent

WRITTEN SUBMISSION ON: 13.07.2015 (the 1st Accused Appellant
Appellant)

ARGUED ON : 06.12.2016

DECIDED ON : 01.08.2017

UPALY ABEYRATHNE, J.

The 1st Accused Appellant-Appellant (hereinafter referred to as the Appellant) preferred an appeal to the Provincial High Court of Matara against the conviction dated 27.07.2007 and sentence imposed upon the Accused by the learned Magistrate of Matara dated 07.09.2011. The High Court, by judgement dated 15.11.2012, has dismissed the said appeal and affirmed the conviction and the sentence. This appeal lies from the said judgment of the High Court.

According to the minute dated 27.05.2013 this court has directed the Appellant to file a proper petition of appeal together with all documents on or before 05.08.2013. But the Appellant has not complied with the said order of this court.

It is significant to note that, in the said petition of appeal to this court, the Appellant has not sought special leave to appeal from the said impugned judgment of the learned High Court judge in terms of Section 9 of the High Court of the Provinces (Special Provisions) Act No 19 of 1990. Furthermore, it is important to note that this court has not granted special leave to appeal.

At the hearing, the learned counsel for the Appellant submitted that leave to appeal to this court had been granted by the High Court. But the relevant proceedings of the High Court manifests that the said submission of the learned counsel for the Appellant is erroneous. The High Court proceedings dated 22.11.2012, indicates that the Appellant had tendered a petition of appeal and affidavit to the said High Court. Thereafter the said petition of appeal had been filed of record and the case record had been submitted to the learned High Court Judge by the office, seeking a suitable order. The learned High Court Judge had ordered to forward the case record to this court with the said petition of appeal and an affidavit filed by the Appellant dated 15.11.2012 and 16.11.2012 respectively, having a sub file kept at the High Court office. Said proceedings of the High Court manifests that the learned High Court Judge too, had not dealt with the matter of granting leave to appeal to the Supreme Court.

This appeal has been preferred against the said convictions and sentences imposed upon the Appellant and the 2nd to 5th Accused Respondent Respondents (hereinafter referred to as the 2nd to 5th Respondents) by the learned Magistrate of Matara. The Appellant and the 2nd to 5th Respondents in this case were convicted of committing unlawful assembly and causing simple hurt on two women named Hokandara Wannage Sirima Kanthi and Pathiranage Renuka Kumari, offences punishable under Section 140 and Section 314 to be read with Section 146 of the Penal Code and each of them was sentenced to a term of 03

months rigorous imprisonment suspended for 05 years and to pay a fine of Rs. 1500/- carrying a default term of 02 months simple imprisonment.

In convicting the Appellant and the 2nd to 5th Respondents, the learned Magistrate has analysed the evidence of prosecution witnesses number 01 to 05. Said witnesses No 1, 2 and 3 were the injured persons at the incident which on 29.05.2005. Medico-Legal Reports of the said injured persons had been produced marked P1 to P 3. The learned Magistrate had reached the conclusion that said Medico Legal Reports has corroborated the injuries received by the witnesses No 1 and 2. According to P 1 said Sirima Kanthi had received 03 injuries and W.P. Renuka had received one injury. The Appellant and the 5th Respondent had given evidence. The 2nd 3rd and 4th Respondents had remained silent on the dock.

The learned counsel for the Appellants submitted that the complainant has abused the judicial process to charge the Appellant and the 2nd to 5th Respondents for an offence punishable under Section 140 to be read with section 146 of the Penal Code. According to the evidence of the prosecution the Appellant and the 2nd to 5th Respondents were present at the time of throwing stones to injured persons and they had been properly seen and identified by the injured persons. Soon after the incident a complaint had been lodged at the police station and the injured persons had been admitted to the hospital. At the investigation, the police had observed about 10 to 12 pieces of metal fallen in the compound of the injured persons' house.

The Appellant and the 2nd to 5th Respondents were not able to create a reasonable doubt in the said evidence of the prosecution. The learned Magistrate has correctly analysed and evaluated the evidence led by the prosecution and also the evidence led for the defence. At the hearing of the appeal, the learned High Court Judge too, has gone through the said evidence and reached the conclusion

that the findings of the learned Magistrate should not be disturbed. In the circumstances, I see no reason to interfere with such findings of both courts.

The learned Magistrate has imposed on the Appellant and 2nd to 5th Respondents a term of 03 months rigorous imprisonment suspended for 05 years and to pay a fine of Rs. 1500/- carrying a default term of 02 months simple imprisonment.

It must be noted that, for offences under Section 314 and 140 of the Penal Code, a rigorous imprisonment cannot be imposed on an accused. It should be a simple imprisonment. Hence, I vary the said term of 03 months rigorous imprisonment and substitute in place of that a term of 03 months imprisonment suspended for 05 years. Subject to the said variation in the sentence I dismiss the appeal of the Appellant without costs.

Judge of the Supreme Court

PRIYASATH DEP, PC, CJ.

I agree.

Judge of the Supreme Court

ANIL GOONERATNE, J.

I agree.

Judge of the Supreme Court