

Counsel: Udaya Bandara for the Accused-Appellant.
Ms. Varunika Hettige SSC for the Respondents.

Argued &

Decided on: 14.06.2013.

Sisira. J. de Abrew, J

Heard both counsel in support of their respective cases.

The accused-appellant in this case was convicted for committing grave sexual abuse on a boy named Thelhawadi Durayalage Suresh Palitha and was sentenced to a term of 10 years Rigorous Imprisonment, to pay a fine of Rs. 5000/- carrying a default sentence of 07months Rigorous Imprisonment, and to pay a sum of Rs. 10,000/- as compensation to the victim carrying a default sentence of 01 year Rigorous Imprisonment. Being aggrieved by the said conviction and the sentence the accused-appellant has appealed to this Court.

Learned counsel appearing for the accused-appellant does not challenge the conviction but pleads in mitigation to reduce the sentence. He submits that the sentence imposed by the learned trial judge is excessive. He further cites the judgment of the Supreme Court in Case No. 3/2008. The learned State Counsel submits that the sentence is reasonable and the facts of SC No. 3/08 are not applicable to this case but she concedes the position that the Court has power to impose a sentence at its discretion notwithstanding the minimum sentence prescribed by law. This situation has been clearly stated in the said judgment of the Supreme Court.

According to the facts of this case the accused-appellant has inserted his penis into the anus of the victim. He has suffered injuries as a result of the sexual act done by the accused-appellant. According to the medical report the victim has sustained a fresh injury in the anus. Dr. has observed a tear in the anus at 7 O' clock position. When the accused-appellant was committing the act, the mother of the victim has come to the place where the incident took place. When the accused-appellant opened the door the victim had run away from the place

in order to go to the toilet. When the mother questioned, the victim boy immediately complained to the mother of what happened.

When we consider the evidence, we are of the opinion that the learned trial judge has rightly convicted the accused-appellant.

I now advert to the question of sentence. The victim was, at the time of the incident, an eleven year old boy and the accused-appellant was, at the time of the incident a 22 year old man. At the time of the incident the accused was unmarried.

When we consider the age of the accused-appellant at the time of the incident, we decide to reduce the sentence. In our view the sentence of 10 years is little excessive. We therefore set aside the sentence of 10 years R.I and impose a term of 07 years R.I.

We direct the Prison Authorities to implement the sentence from the date of conviction (namely 15.03.2010). The fine and the compensation ordered by the learned trial judge remain unaltered. Subject to the above variation of the sentence appeal of the accused-appellant is dismissed.

Appeal dismissed.

Judge of the Court of Appeal

P.W.D.C. Jayathilaka, J

I agree.

Judge of the Court of Appeal

Kpm/-