

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

S. H. Jayantha Kumara,
Accused -Appellant

C.A. Appeal No. 298/09

H.C. Hambantota No. 283/2007

Vs.

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

Respondent

Before : **SISIRA J. DE ABREW, J. &
P.W.D.C. JAYATHILAKA, J.**

Counsel : Shanaka Ranasinghe P.C. with Dilun
Jayasekera for the Accused-Appellant.

Yasantha Kodagoda D.S.G. for the Attorney
General.

Argued on : 01,07,2013 & 02.07.2013

Decided on : 02.07.2013.

Sisira J. de Abrew, J.

Heard both counsel in support of their respective cases.

After arguing the case learned President's Counsel appearing for the accused-appellant agrees to sustain convictions on charges of robbery.

We observe that the prosecution has not established that the accused-appellant was armed with a gun at the time of the robbery. Investigating officers have failed to recover any gun from the accused-appellant. As such it will be difficult to maintain the charge relating to the possession of a gun. Learned D.S.G. appearing for the Attorney General concedes this position.

According to the 1st charge, the accused-appellant has committed the robbery of jewellery worth Rs. 15,000/- and Rs. 4,500/- .

According to the 2nd charge, the accused-appellant has robbed a motor cycle worth Rs. 72,000/-. Court is therefore of the opinion that the charges under Section 380 of the Penal Code (charges of robbery) can be maintained. According to the evidence, the accused-appellant has been present in the house of the complainant at the time of the robbery.

Three months after the robbery S.I. Manjula Thusara attached to Crime Detective Unit of Tangalle Police Station has arrested the accused-appellant when he was riding a motor cycle. The motor cycle has been identified by the prosecution witnesses as the motor cycle robbed from their house. Prosecution witnesses further say that the motor cycle was in their compound at the time of the robbery. This suggests that the accused-appellant has participated in the robbery of jewellery and the motor cycle. The accused-appellant in his dock statement has however denied the way in which he was arrested described by S.I. Thusara. When we consider the evidence led at the trial, we are of the opinion that both charges of robbery have been established beyond reasonable doubt.

Considering the submissions of the learned President's Counsel that is to say that he is agreeable to sustain convictions of robbery on

both counts, and the other available evidence, we convict the accused-appellant for robbing jewellery worth Rs. 15,000/-, and Rs 4,500/- from the possession of Sujeewa Senanayake which is an offence punishable under section 380 of the Penal Code (in respect of count No.1) and for the robbery of motor cycle worth Rs. 72,000/- from the possession of the Ajith Prasanna Senanayake which is an offence punishable under section 380 of the Penal Code. (in respect of count 2). On the 1st count we sentence the accused-appellant to a term of 10 years rigorous imprisonment and to pay a fine of Rs. 5,000/- carrying a default sentence of 6 months simple imprisonment. On the 2nd count we sentence the accused-appellant to a term of 10 years rigorous imprisonment and to pay a fine of Rs. 5,000/- carrying a default sentence of 6 months simple imprisonment. We make order that the both terms of imprisonment should run concurrently. Therefore the total term of imprisonment that he has to undergo is 10 years rigorous imprisonment in addition to the default sentences.

In view of the said conviction, we set aside the conviction on count No. 1 (for being in possession of a fire arm at the time of committing the robbery in respect of both counts). We also set aside the life imprisonment imposed on both counts.

Learned President's Counsel informs court that the accused-appellant
is now on bail. The sentence imposed by this court ^{should} ~~could~~ be
implemented from the date on which he surrenders to the trial court
or is brought before the trial court. The accused -appellant shall
submit to his bail.

Subject to the above variation of the convictions and the sentence,
the appeal is dismissed. The learned High Court Judge is directed to
issue a fresh committal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

P.W.D.C. Jayathilaka, J.

I agree.

JUDGE OF THE COURT OF APPEAL.

/mds