

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

**CA 223/2012**

HC Negombo Case No: 200/2008

The Attorney General

**Vs.**

Loku Horathal Pedige Suraj Anuruddha  
alias Chamara

**Accused**

**And Now Between**

Loku Horathal Pedige Suraj Anuruddha  
alias Chamara

**Accused-Appellant**

**Vs.**

The Attorney General  
Attorney General's Department  
Colombo 12

**Respondent**

CA 223/2012

HC Negombo Case No: 200/2008

Before : Sisira J. de Abrew, J &  
P.W.D.C Jayathilake, J

Counsel :Mahendra Kumarasinghe for the accused-appellant,  
Hiranjan Peiris SSC for the AG.

Argued & Decided on : 01.11.2013

Sisira J. de Abrew, J.

Heard both Counsel in support of their respective cases. Learned Counsel for the accused-appellant after arguing the case makes an application to withdraw the appeal. The application for the withdrawal of the appeal is allowed. He further makes an application to grant concession on the sentence on the basis that the sentence imposed by the learned trial judge is highly excessive.

According to the facts of this case Surani Nelum Kumari who is the victim in this case was dragged by the accused-appellant to a place in a jungle and committed grave sexual abuse on her. The sexual act had been witnessed by her brother Mahesh de Silva. Brother says that he saw the accused-appellant who had lowered his trouser on the top of the body of his sister. After arrival of the brother at the scene, the accused-appellant ran away from the scene. Mahesh de Silva and Chandrapala who is the uncle of the victim girl had chased after accused-appellant and caught him. Whilst he was being brought by the two male persons, about 30 villagers from the adjoining village had come and rescued the accused-appellant. Soon after the incident the victim girl made a complaint to the police. When we consider the evidence led at the trial we are of the opinion that the charge had been proved by the prosecution beyond reasonable doubt. I now advert to the question whether the sentence is excessive. Learned Counsel submits that the accused-appellant was a soldier attached to the Sri Lanka Army. He submits that the accused-appellant was in operational areas during the war period of this country. At the time of the incident he was 22 years old. Considering all these matters we decide to interfere with the sentence imposed by the

learned trial judge. We are of the opinion that the sentence imposed by the learned trial judge is excessive. We therefore set aside the sentence imposed by the learned trial judge in count No 1 (3 years) and impose a sentence of one year rigorous imprisonment and to pay a fine of Rs.5000/- carrying a default sentence of 3 months simple imprisonment. On the second count the accused-appellant has been sentenced to a term of 12 years rigorous imprisonment to pay a fine of Rs.10000/- carrying a default sentence of 3 months simple imprisonment and to pay a sum of Rs. 50000/- as compensation to the victim carrying a default sentence of 12 months simple imprisonment. We set aside the said punishment imposed by the learned trial judge and impose the following punishment. On the second count the accused-appellant is sentenced to a term of 5 years rigorous imprisonment, to a pay a fine of Rs. 5000/- carrying a default sentence of 3 months simple imprisonment and to pay a sum of Rs. 50000/- to the victim as compensation carrying a default sentence of 12 months simple imprisonment. We direct that the two terms of imprisonment imposed by this Court (1 year RI and 5 year RI) should run concurrently. The accused-appellant is present in Court produced by the Prison Authorities. Both Counsel admit that after the conviction

he has not been released on bail. We direct the prison authorities to implement the sentence imposed by this Court from the date of conviction namely 06.09.2012. The learned trial judge is directed to issue a fresh committal. Subject to the above variation of the sentence appeal of the appellant is dismissed.

*Appeal dismissed.*

JUDGE OF THE COURT OF APPEAL.

P.W.D.C Jayathilake, J.

I agree.

JUDGE OF THE COURT OF APPEAL.

NR/-