

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

Case No. 218/11
Colombo HC Case No.4109/2007

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

Complainant

Vs.

Asela Saminda Galoluwage

Accused

And now

Asela Saminda Galoluwage

Accused -Appellant

Vs.

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

Complainant - Respondent

C.A. NO. 218/2011

H.C. Colombo No. 4109/2007

Before : Sisira J. de Abrew, J. (Acting P/CA) and
P.W.D.C. Jayathilake, J.

Counsel : D. P. Kumarasinghe P.C. with Mahendra
Kumarasinghe and Shaminda Rodrigo
for the Accused-Appellant.
Varunika Hettige SSC for the A. G.

Argued and

Decided on : 02.12.2013.

Sisira J. de Abrew, J. (Acting P/CA)

Accused-appellant produced by the Prison Authorities is present in Court.

Heard both Counsel in support of their respective cases.

The accused-appellant in this case was convicted for committing the offence of grave sexual abuse to a girl named Senanayake Arachchilage Sashika Maduwanthi and was sentenced to a term of seven

years rigorous imprisonment (R.I.), to pay a fine of Rs. 5000/= carrying a default sentence of one year rigorous imprisonment and to pay a sum of Rs.100,000/= to the victim carrying a default sentence of two years rigorous imprisonment. Being aggrieved by the said conviction and the sentence, he has appealed to this Court. Learned President's Counsel appearing for the accused-appellant does not challenge the conviction. But he submits that the sentence imposed on the accused-appellant is excessive. According to the facts of this case Senanayake Arachchilage Sashika Maduwanthi is a prostitute. She has, at page 80, admitted that she was a prostitute. She has admitted to the doctor who examined her that she had had sexual intercourse with over hundred people. When we consider these matters, we are of the opinion that the sentence imposed by the learned trial Judge is highly excessive. Under SC No. 3/2008 Court has a discretion to impose an appropriate punishment in the opinion of Court notwithstanding the minimum punishment prescribed by law. We set aside the term of seven years R.I., the fine and the compensation ordered by the learned trial Judge and sentence him to a term of two years rigorous imprisonment suspended for a period of fifteen years. We state here that the Commissioner General of Prisons has no authority to keep the accused-appellant in his custody once he receives the copy of this judgment. We nullify the committal signed by

the learned High Court Judge. The learned High Court Judge must explain the gravity of the suspended sentence.

Appeal dismissed.

ACTING PRESIDENT OF THE COURT OF APPEAL

P.W.D.C. Jayathilake, J.

I agree.

JUDGE OF THE COURT OF APPEAL

WC/