

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

K. Samal Chamara Appuhamy.

Accused-Appellant.

Vs.

The Hon. Attorney General.

Respondent.

CA 108/2012

HIGH COURT OF CHILAW CASE NO. 14/2010

BEFORE: Sisira J De Abrew, J. (Acting P/CA)
P.W.D.C. Jayathilaka, J.

COUNSEL: Asela De Silva for the Accused-Appellant.
Ranjith Abeysooriya for the State.

ARGUED &
DECIDED ON: 30.01.2014.

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

Heard both Counsel in support of their respective cases.

The Accused-Appellant in this case was convicted for an offence under Section 443 of the Penal Code (House Trespass in the night) and

for the offence of rape which is an offence punishable under Section 364 of the Penal Code. On the first count he was sentenced to a term of two years rigorous imprisonment and to pay a fine of Rs. 5000/- carrying a default sentence of six months imprisonment. On the second count he was sentenced to a term of 15 years rigorous imprisonment, to pay a fine of Rs. 15,000/- and to pay a sum of Rs. 300,000/- as compensation to the victim carrying a default sentence of two years rigorous imprisonment. Being aggrieved by the said convictions and the sentences he has appealed to this Court.

Learned Counsel appearing for the accused-appellant submits that he does not challenge the conviction. He only makes submission to get the sentence reduced. We note that the accused-appellant has raped 50 ✓ years old woman in the night. At the time of the incident he was 21 ✓ years old man. When we consider the age of the accused-appellant and his finger prints report which indicates that he has no previous conviction, we feel that the sentence imposed by the learned Trial Judge is little excessive. We therefore decide to intervene with the sentence imposed by the learned Trial Judge on the charge of rape. We do not intend to interfere with the sentence imposed by the learned Trial Judge on Count No.1. Considering his age and the fact that he has no previous conviction, we set-aside the term of 15 years rigorous imprisonment and the order of compensation made by the learned Trial Judge. On Count

No. 2 we sentence him to a term of 10 years rigorous imprisonment and to pay a sum of Rs. 100,000/- as compensation to the victim carrying a default sentence of one year imprisonment. We do not interfere with the fine imposed by the learned Trial Judge on the second count. We direct that the term of two years rigorous imprisonment imposed on count number one and the term of 10 years rigorous imprisonment on count number two should run concurrently. The default sentences should be implemented in addition to the term of imprisonment. We direct the Prison Authorities to implement the sentence from the date of sentencing by the learned Trial Judge. We direct the learned High Court Judge of Chilaw to issue a fresh committal indicating the sentence imposed by this Court. Subject to the above variation of the sentence the appeal of the appellant is dismissed.

Appeal dismissed.

ACTING PRESIDENT OF THE COURT OF APPEAL.

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

I agree.

JUDGE OF THE COURT OF APPEAL.