

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

H.M. Karunaratne alias Danapala.

Accused-Appellant.

Vs.

The Hon. Attorney General.

Respondent.

CA NO.246/2012

HC BADULLA CASE NO. 133/2008

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

COUNSEL: Amila Palliyage for the Accused-Appellant.
Thusith Mudalige SSC for the Respondent.

ARGUED &

DECIDED ON: 06.02.2014.

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

Accused 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 raping a girl under 16 years of age and was sentenced to a term of 12 years rigorous imprisonment, to pay a fine of Rs. 25,000/- carrying a default sentence of four years imprisonment and to pay a sum of Rs. 300,000/- carrying a default sentence of four years imprisonment. Being aggrieved by the said conviction and the sentence the accused-appellant has appealed to this Court. Learned Counsel for the accused-appellant does not challenge the conviction. However he makes an application to implement the sentence from the date of sentencing by the learned trial Judge.

According to the facts of this case 46 years old accused-appellant raped a girl under 16 years of age. Since the learned Counsel for the accused-appellant does not challenge the conviction, we do not interfere with the Judgment of the learned trial Judge. However we notice an illegality in the default sentence in respect of non-payment of compensation ordered by the learned trial Judge. According to Section 364(4) the maximum default sentence that can be imposed for non-payment of

compensation is two years. But the learned trial Judge has imposed a term of four years. We therefore, set-aside the said default sentence of four years and impose a term of two years imprisonment in default of the compensation. Learned trial Judge has imposed a default sentence of four years imprisonment for non-payment of fine of Rs. 25,000/-. We feel that the default sentence is unreasonable. We therefore set-aside the default sentence of four years imprisonment for non-payment of the fine Rs. 25,000/-. We impose a term of one year imprisonment for non-payment of the fine. We direct the Prison Authorities to implement the sentence from the date of sentencing by the learned trial Judge. The learned trial Judge is directed to issue a fresh committal indicating the sentence imposed by this Court. Subject to the above variations of the default sentence, appeal of the appellant is dismissed.

Appeal dismissed.

ACTING PRESIDENT OF THE COURT OF APPEAL.

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

I agree.

JUDGE OF THE COURT OF APPEAL.

Mm/-.