

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

1. Liyana Mendis Gunadasa
2. Liyana Mendis Premadasa
3. Liyana Mendis Ariyadasa

**ACCUSED-APPELLANTS**

C.A. 141/2006  
H.C. Galle 1487

Vs.

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

**RESPONDENT**

**BEFORE:** Anil Gooneratne J. &  
Malinie Gunaratne J.

**COUNSEL:** Anil Silva P.C. for the Accused-Appellants  
Rohantha Abeyesuriya D.S.G. for the Respondent

**ARGUED ON:** 09.06.2014

**DECIDED ON:** 20.06.2014

**GOONERATNE J.**

The three Accused-Appellants were indicted for an offence committed on 24.5.1985 on two counts. The 1<sup>st</sup> count is a charge of murder of one Andiris Appu and the 2<sup>nd</sup> count is a charge of attempted murder by causing injuries to one Leslie. However all the Accused-Appellants were acquitted of the charge of murder on the 1<sup>st</sup> count and on the 2<sup>nd</sup> count the trial Judge found guilty of same and imposed a sentence of 7 years rigorous imprisonment and a fine of Rs. 21,000/- (carries default sentence of 3 years R.I) to be paid by each Accused-Appellants and from that sum Rs. 20,000/- to be paid by each Accused to the injured party as compensation. The balance sum of Rs. 1000/- from each Accused to be paid as a fine.

At the hearing of this appeal the learned President's Counsel submitted that the offence had been committed 30 years ago and in view of the delay he cited several case laws and invited this court that a custodial sentence should not be imposed, and that his clients should be treated very

leniently. He also submitted that his clients would be willing to pay compensation to the victim, and submitted that court should consider the delay of 30 years to be considered as a mitigatory factor. Learned D.S.G. did not oppose the view of President's Counsel. I would for better understanding of all the sequence of events refer to following details

Date of offence	-	24.5.1985
Date of Indictment	-	23.9.1993
Convicted in High Court	-	23.02.2006
Appeal heard and concluded-		09.06.2014

The above dates and figures no doubt demonstrate the lapse of time taken to finally conclude the case of the 3 Appellants. As such there is justification to consider the mitigatory factor of delay for the benefit of the Appellants. My views are fortified on perusing the following case law.

Karunaratne Vs. The State 78 NLR 413...

Held by Rajaratnam J. and Ratwatte, J. (Vythialingam J. dissenting) that while the trial judge was right in sentencing the accused to a term of two years rigorous imprisonment and to pay a fine of Rs. 1000 and that even if the provisions relating to the suspension of sentences were in operation at that time and the case was concluded in due time, this was not a case where the sentence would have been suspended, having regard to the gravity of the offence. But on the other hand, when a deserving conviction and sentence have to be confirmed ten years after the proved offence the judge cannot disregard the serious consequences and disorganization that it can cause to the accused's family.

Therefore the delay of 10 years to final conclude the case is a very relevant circumstance to be taken into consideration and in the circumstances of the case a suspended sentence is appropriate.

**Ananda Vs. A.G. (1995) 2 SLR 316**

Held:

- (1) An accused has a right to be tried and punished for an offence committed within a reasonable period of time, depending on the circumstances of each case. A delay of over 18 years to dispose of a Criminal Case is much long period by any standard, delays of this nature are generally regarded as mitigating factors.
- (2) It appears that the Appellant has turned over a New leaf.
- (3) It is to be seen that the appellant had spent a period of 9 months in remand custody from 4.5.81 – 9.2.82, in connection with the instant case, there is no indication on record to show that the Magistrate had considered this matter in passing the sentence of the Appellant.

In the case in hand the long delay of 30 years from the date of offence is a mitigatory factor and no court would be able to decide otherwise mainly for the reason that the court procedure, itself has taken to finally conclude the matter by at least two decades. Such delays not only need to be avoided but condemned in the interest of justice. As such we allow the conviction to stand and substitute a sentence and impose a reduced sentence of 2 years rigorous imprisonment, suspended for a period of 5 years and a fine of Rs. 7500/- each which carries a default sentence of 6 months simple

imprisonment. In addition we direct that the victim be paid a sum of Rs. 30,000/- by each Accused-Appellant which also carries a default sentence of 6 months simple imprisonment.

Appeal allowed as above.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL