

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

**C.A. No. 285/2008**

H.C. Ampara Case No. 1019/05

Nagoor Kaleel Alias Aswar  
(Presently of the Batticaloa Prison)

**Accused - Appellant**

**Vs.**

The Hon. Attorney - General,  
Attorney General's Department,  
Colombo 12.

**Respondent**

C.A. No. 285/2008

H.C. Ampara Case No. 1019/05

Before : Anil Gooneratne, J &  
Sunil Rajapakshe, J.

Counsel : N.A. Chandana Sri Nissanka Assigned Counsel  
for the Accused-Appellant.

Shanil Kularatne, S.S.C., for A.G.

Argued &  
Decided on : 17.07.2014.

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Anil Gooneratne, J.

Learned Counsel for the accused-appellant indicates to Court that he would not contest the conviction. However, it is his position that he would urge this Court to reduce the sentence already imposed by the learned High Court Judge. The accused-appellant was indicted in the High Court of Ampara under Section 365 2(B) ii(b) of the Penal Code as amended by Act No; 22/1995, 09/1998 and 16/2006. By the Amendment Act No; 16 of 2006, the minimum mandatory sentence has been reduced by the legislature to 7 years rigorous imprisonment. We have heard Counsel on either side. The accused-appellant was 19 years old at the time of incident. According to the indictment the

incident occurred on 04.08.2003, and he was also married as at the date of incident. The prosecutrix was 10 years on the date of the incident. It is also brought to the notice of Court that the accused and the prosecutrix are very close relatives. (cousins) Since learned Counsel for appellant has indicated to this Court that he is only challenging the sentence this Court has taken into account all the mitigatory factors and is of view that the sentence imposed by the learned High Court should be set aside, and we proceed to substitute and impose a sentence of 10 years rigorous imprisonment. The fine imposed by the learned High Court Judge was in a sum of Rs. 5000/= and the compensation awarded was a sum of Rs. 50,000/= remains unaltered which would carry the same default sentence as stated by the learned High Court Judge in his judgment dated 19.03.2008. In these circumstances this Court decides to back date the sentence to the date of conviction namely 19.03.2008. Subject to above this appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Sunil Rajapakshe, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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