IN THE COURT OF APPEAL

OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Asan Mohamad Rizwan
Ketetenna, Kahawatta

Presently

At Welikada Prison

Accused-Petitioner

C.A. Revision No.CA [PHC] APN 141/2013

H.C.Ratnapura HC 25/2010
M.C.Pelmadulla Case No.33332

Vs.

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

Complainant-Respondent

BEFORE	:	**K.T.CHITRASIRI, J.**
		MALINI GUNARATNE, J.
COUNSEL	:	D.Kularatne for the Accused-Petitioner
		Miss. Ayesha.Jinasena D.S.G. for the Complainant-Respondent
ARGUED ON	:	04.08.2014. 05.08.2014 & 05.09.2015
WRITTEN SUBMISSIONS	:	08.11.2014 by the Accused-Appellant
		02.02.2015 by the Complainant-Respondent
DECIDED ON	:	25. 03. 2015

CHITRASIRI, J.

Accused-Petitioner (hereinafter referred to as the accused) was convicted by the learned High Court Judge of Ratnapura upon pleading guilty for committing culpable homicide not amounting to murder, punishable under Section 297 of the Penal Code. Accordingly, the accused was sentenced to twelve (12) years rigorous imprisonment with a fine of Rupees Five Hundred (Rs.500/-) carrying a default sentence that runs for a period of one (01) month.

Being aggrieved by the aforesaid conviction and the sentence, the accused filed this revision application seeking *inter alia* to set aside both the conviction and the sentence. However, when this matter was taken up for argument on 04.08.2014, learned Counsel for the petitioner submitted that the petitioner was not pursuing the relief sought to have the conviction set aside. Accordingly, the petitioner restricted his reliefs to the relief mentioned in paragraph (d) referred to in the prayer to the petition. Therefore, this application was taken up for argument restricting it to the sentence imposed by the learned High Court Judge on 02.04.2013.

The very first argument advanced by the learned Counsel for the petitioner in this connection was that it was incorrect to have imposed twelve (12) year imprisonment on the accused since the particular provision of law provides only to impose a maximum of ten (10) year imprisonment. This argument was advanced stating that the applicable law in this instance was the second limb referred to in Section 297 of the Penal Code.

Section 297 of the Penal Code stipulates thus:

> *"Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment of either description for a term which* ***may extend to twenty years****, and shall also be liable to fine,* ***if the act by which the death is caused is done with the intention*** *of causing death, or of causing such bodily injury as is likely to cause death;*
>
> *or with imprisonment of either description for a term which* ***may extend to ten years****, or with fine, or with both,* ***if the act is done with the knowledge*** *that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."*
>
> *[emphasis added]*

In order to apply the law referred to above, it is necessary to ascertain whether the offender had the intention of causing death or whether he/she had only the knowledge in committing the said offence. Intention, as opposed to the knowledge of a person, can be determined only upon considering the circumstances of each case. If the circumstances of a particular incident show that there had been intention to kill, then the sentence extends up to 20 years of imprisonment, while the punishment is restricted to ten years of imprisonment if the offender had only the knowledge as to the consequences of the wrongful act of the accused.

Then the issue is to determine whether or not the accused had the intention of causing the death or he had only the knowledge as to the consequences. This can be ascertained basically by looking at the prior conduct of the offender as well as the other circumstances of the case. Learned High Court Judge, having referred to the dying declaration of the deceased which had been made to her mother and to her brother and also to the circumstances that preceded the incident, has decided that the accused committed the crime intentionally. Dying declaration recorded by Police had been produced in evidence by the Court Interpreter at the non-summery proceedings and in that it is stated that the accused having poured kerosene had set fire. The relevant part of that statement reads thus:

"මමත් ඒ ඇම්බියුලන්ස් එකේ රත්නපුරට ආවා. ඒ එන අතරතුරදී දුව මට කිවා එයාගේ පුරුෂයා ලාම්පුතෙල් ඇහට දාලා ගිනි පෙට්ටියකින් ගිනි තිබ්බා කියලා ඊට කලින් ගහල ක්ලාන්ත හැදුනා කිවා. ඊට පස්සේ එයාම ඉස්පිරිතාලෙට එක්ක ආවා කිවා."

[vide at page 91 in the appeal brief]

Observations of the learned High Court Judge in this regard are as follows:

"වුදිතගේ පසු ක්‍රියා කලාපය සළකා බලන විට විශේෂයෙන් තම බිරිඳ රෝහල්ගත කර සිටිය දී නිවසින් පිටවීම, බිරිඳ බැලීමට රෝහලට නොපැමිණීම සළකා බලන විට වුදිත විසින් එලෙස නොකිරීමට හේතුව පැහැදිලි කර නොමැත. එසේ නොවන්නට ඕනෑම සාධාරණ මනුෂ්‍යයෙක් තම බිරිඳගේ ශරීරය ගිණි ගන්නා අවස්ථාවේදී එය නිවා දැමීමට ප්‍රබල උත්සහායක් ගනු ඇත. එහෙත් වුදිත එවැන්නක් කළ බවට ස්වාධීන සාක්ෂිකරුවන්ගේ සාක්ෂි මගින් අනාවරණය නොවේ. **ඒ අනුව වුදිත අතේ තිබූ ගිණි ගැනීමේ තුවාල ගිණි තැබීමේ දී සිදු වූ තුවාල ලෙස නිගමනය කළ හැකිය.**"

සිද්ධිය වූ දින ද මෙම වුදිත ඔහුගේ මිතුරන් කොටසක් සමඟ මත්පැන් පානය කිරීමට ගඟෙන් එගොඩට ගොස් ඇති අතර, එවිට මරණකාරිය නැවත වුදිතට පැමිණෙන ලෙස දැන්වුව ද ඔහු පැමිණ නැත. පසුව මරණකාරිය වුදිතගේ ජංගම දුරකථනයට දුරකථන පණිවුඩයක් ගෙන නැවත එන ලෙසට බැණ වැදී ඇත. **එසේ නිවසට පැමිණි මෙම වුදිත මරණකාරියට පහර දී ඇය බිම වැටුණු පසුව ඇයගේ හිසට හුමිතෙල් වත්කර ගිණි තැබූ බවත් ය.** වුදිතගේ පොලිසියට කරන ලද ප්‍රකාශයෙන් එම ස්ථාවරය ප්‍රතික්ෂේප කරන ලද අතර, ඔහු පවසන්නේ මරණකාරිය විසින් ගිණි තබා ගත් බවය. මෙම ස්ථාවරයන් දෙක එකිනෙකට පරස්පර ස්ථාවරයන් වේ. එහෙත් අධිකරණය වුදිතගේ සිරුරේ තිබූ පිළිස්සීම් තුවාල සම්බන්ධයෙන් පෙර දක්වන ලද අදහස් මත වුදිතගේ ස්ථාවරය මෙම අධිකරණය ප්‍රතික්ෂේප කරයි."

(emphasis added)
(Vide at pages 42 and 43 in the appeal brief)

Having considered the contents of the dying depositions referred to above and the other circumstances relevant to the issue, the learned High Court Judge seemed to have come to the conclusion that the deceased killed his wife intentionally by pouring kerosene on her body and allowed to set ablaze.

At the time of the incident there was nobody at the place where the incident took place other than the accused and the deceased. It had happened in the house where both of them were residing as the husband and the wife. Learned High Court Judge has observed that the accused could have easily prevented the death of the deceased particularly because she was his wife, if he had no intention to kill her. I do not see any wrong in his observations. Moreover, the accused should have cried for assistance and taken some precautionary measures to save her. In the circumstances, it is my opinion

that the learned High Court Judge has correctly sentenced the accused having come to the conclusion that the particular offence comes under the first limb of Section 297 of the Penal Code. Accordingly, I do not agree with the contention of the learned Counsel that it should fall within the second limb referred to in Section 297 of the Penal Code.

Learned Counsel for the petitioner then contended that the sentence is excessive. He also submitted that the learned High Court Judge has not properly evaluated the factors such as tendering a plea, the age and the good character of the accused that were brought to the notice of Court in mitigation of the sentence.

Sentencing is an important aspect in the administration of criminal justice system. A sentence ranges from death penalty to the mere censure in the form of good behavior bond or probation. There are multiple considerations relevant to the determination of a sentence. The most important consideration is the seriousness of the crime. Jurisprudentially, this position is persuasive despite pragmatic difficulties associated with matching the harshness of the sanction to the severity of the crime.[1]

The judges are to pass lawful and appropriate sentence upon the accused being convicted. In doing so, judges are to address their minds to the objective of sentencing particularly when exercising the discretion given to them under the law. Then only a correct sentence could be passed upon a

[1] San Diego Law Review Vol.51 No.2 Spring 2014 page 343 - Article by Mirko Bagaric Dean & Professor of Law Deaking University, Melbourne

convicted accused. If not, criticism on lack of uniformity, consistency and transparency in imposing sentences are bound to surface. Therefore, it is necessary for the judges to keep in mind the objectives of sentencing and also the sentencing guidelines, in order to arrive at the correct and appropriate decision.

Objectives of sentencing include the following:

(i) To punish offenders to an extent and in a manner, which is just in all the circumstances;

(ii) To protect the community from offender;

(iii) To deter offenders or other persons from committing offences of the same or similar nature;

(iv) To establish conditions so that rehabilitation of offenders may be promoted or facilitated;

(v) To signify that the court and the community denounce the commission of such offences;

(vi) To maintain the required standards of societal expectations in making decisions;

(vii) To prevent overcrowding prisons also could be considered as one such objective particularly when it comes to developing countries such as ours.

Keeping those objectives in mind, it is the prime duty of the judges to pass the sentence in accordance with the law. Hence, it is necessary for the

Court to first look at the particular punishment stipulated for the offence that was committed by the accused. Therefore, the judges must be mindful of the provisions of law for which the accused is convicted before passing the sentence. Otherwise, it will be an illegal order.

At the same time, there are other statutory provisions that are applicable when sentencing a convicted person. One such provision is Section 303 of the Code of Criminal Procedure Act. Indeed, the Legislature, by enacting the Code of Criminal Procedure (Amendment) Act, No. 47 of 1999 has introduced the manner in which the sentence is to be determined and the way the sentence is to be suspended. In that Section 303, the matters that are to be considered before passing the sentence are stipulated. Those matters are as follows:

303. (1)

(a) *The maximum penalty prescribed for the offence in respect of which the sentence is imposed*

(b)The nature and gravity of the offence

(c)The offender's culpability and degree of responsibility for the offence

(d)The offender's previous character

(e)Any injury, loss or damage resulting directly from the commission of the offence

(f)The presence of any aggravating or mitigating factor concerning the offender

(g)The need to punish the offender to an extent in a manner, which is just in all circumstances

(h)The need to deter the offender or other persons from committing offences of the same or of a similar character

(i) The need to manifest the denunciation by the court of the type of conduct in which the offender was engaged in

(j)The need to protect the victim or the community from the offender

(k)The fact that the person accused of the offence pleaded guilty to the offence and such person is sincerely and truly repentant; or

(l)A combination of two or more of the above

The same Section 303 of the Code of Criminal Procedure Act refers to the instances where a sentence of imprisonment cannot be suspended. Those are as follows:

(a) A mandatory minimum sentence of imprisonment has been prescribed by law for the offence in respect of which the sentence is imposed ; or

(b) The offender is serving, or is yet to serve, a term of imprisonment that has not been suspended ; or

(c) The offence was committed when the offender was subject to a probation order or a conditional release or discharge ; or

(d) The term of imprisonment imposed, or the aggregate terms of imprisonment where the offender is convicted for more than one offence in the same proceedings, exceeds two years

Having referred to the importance of looking at the available statutory provisions, I will now advert to the other aspects that are necessary to consider before a sentence is determined. Those can be categorized as follows:

(a) The maximum and the minimum (if any) penalty prescribed for the offence;

(b) The nature and gravity/seriousness of the particular offence.

(c) The offender's culpability and degree of his/her responsibility for the offence

(d) mental state of the accused at the time the offence was committed;

(e) Evidence as to pre-arrangement for the commission of the offence;

(f) The impact of the offence on any victim and the injury, loss or damage caused as a result of the offence committed;

(g) Whether the offender pleaded guilty to the offence and if so, the stage in the proceedings at which the offender did so or the stage at which it was indicated;

(h) The conduct of the offender during the trial as an indication of remorse or the lack of remorse;

(i) Any action taken by the offender to make restitution of the injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider.

(j) The offender's previous character, good or bad;

(k) Imprisonment should be used when no other sentence is adequate;

(l) Proportionality between the crime and the sentence;

(m) Possibility of reforming the offender;

(n) To ensure consistency in deciding sentences;

(o) Presence of any aggravating or mitigating factors concerning the offender or any other circumstance relevant to the commission of the offence; and

At this stage, it is necessary to note that the purpose of looking at the matters referred to last, namely, consideration of aggravating and mitigating factors may not yield its expected results **unless the court decides first, on a starting point within the prescribed punishment**. A mere statement to say that the court has considered aggravating and/or mitigating factors will generate only criticism as to how the judicial discretion is exercised.

I am fully aware of the practical difficulties that may come up in doing so in our jurisdiction especially due to the volume of work, the judges are loaded with. Nevertheless, such a system would prevent complaints being made particularly on appeal as to the non consideration of relevant factors on the sentence. Moreover, it will ensure transparency of the manner in which a sentence is passed. That also will help ensuring the uniformity in sentencing through by courts for similar offences. Also, it assists judges to exercise their discretion in a judicious manner when imposing sentences. Above all, it will be a valid reason to promote public confidence in the criminal justice system. Therefore, it is prudent to adopt such a system namely to consider mitigating and aggravating factors after deciding on a starting point, at least when it comes to the indictable offences that are being tried in the High Court.

Starting point referred to above could be determined basically upon considering the seriousness of the crime and the circumstances under which the particular offence is committed. Therefore, it is the duty of the trial Judge

to consider those facts carefully and then to arrive at the starting point. Thereafter, it is the duty of the judge to come down the period after considering the mitigating factors and then to increase it from that point after looking at the aggravating factors or *vise versa*. Then the judge is in a position to come to the correct sentence that he is to pass on the accused convicted.

Having stated the manner in which sentence is to be determined, I will now turn to consider the authorities relevant to the issue. In the case of the Attorney General V. Mendis[2], Gunesekara J has held that no trial judge should permit and encourage a situation where the accused attempts to dictate or indicate what sentence he should get or what sentence he expects. As far as the decisions relevant to the issue is concerned, it must be noted that the learned Deputy Solicitor General Miss. Ayesha Jinasena has taken immense pain to enlighten this Court by referring to various guide line judgments that are available in Sri Lanka as well as in other jurisdictions. I thought it fit to cite a few of those that she has submitted as it will be of much assistance for the judges and for the counsel in determining sentences.

Those authorities are as follows:

JUDGEMENT	RATIO DECIDENDI
FROM INDIA	
Ravji –v- State of Rajasthan	It is the nature and gravity of the crime and not

[2] 1995(1) S L R 138

(1996) 2 SCC 175	the criminal which are germane for consideration of appropriate punishments in a criminal trial. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'. If for an extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, the most deterrent punishment is not given, the case of deterrent punishment will lose its relevance
Dhananjoy Chatterjee –v- State of W.B. (1994) 2 SCC 220	The imposition of appropriate punishment is the manner in which the Court responds to the society's cry for justice against the criminal. Justice demands that Court should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.

Sevaka Perumal etc –v- State of Tamil Nadu AIR 1991 SC 1463	Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is therefore the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc
Mahesh –v- State of M.P. (1987) 2 SCR 710	[in refusing to reduce the death sentence observed] It will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the Appellants would be to render the justice system of the country 'suspect'. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon.
State of Karnataka –v- Krishnappa (2000) 4 SCC 75	The reasons that the accused an unsophisticated and illiterate citizen belongs to the weaker section of the society, that he was a chronic addict to drinking and had committed rape of a girl where the state of 'intoxication' and that his family comprise of a old mother, wife and children depends upon him. These reasons are neither special nor adequate. The measure of punishment in the wake of rape cannot depend upon the social status of the convicts or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. The crimes of violence upon women needs to be severally dealt with

	The social economic status, religion, race, caste or creed of the accused or the victims is irrelevant consideration in sentencing policy.
State of Punjab –v- Prem Sagar **SCC P 553, paras 5-8**	*There are certain offences which touch our social fabric. We must remind ourselves that even while introducing the doctrine of plea bargaining in the Code of Criminal Procedure, certain types of offences had been kept out of the purview thereof while imposing sentences. The said principles should be borne in mind. A sentence is judgment on conviction of a crime. It is resorted to after a person is convicted of the offence. It is the ultimate goal of any justice-delivery system.*
FROM THE UNITED KINGDOM	
Regina –v- Roberts (Hugh) Regina –v- Roberts (Thomas) (1982) 1 WLR 133	Rape being a serious crime an immediate custodial sentence is called for, other than in wholly exceptional circumstances, to mark the gravity of the offence, to emphasize public disapproval, to serve as a warning to others, to punish the offender and to protect women.
Regina –v- Billam and Others (1986) 1 WLR 349	Making an order appropriate to the circumstances in each case, that while judges in rape cases required no reminder of the need to impose custodial sentences, statistics revealed that sentences in such cases were too low.
Reg –v- Taylor (1983) 5 Cr.App. R.(S) 241	Exceptional circumstances in which a non custodial sentence may be appropriate are illustrated
Hodgson (1967) 52 Cr. App R. 113	When the following conditions are satisfied, a sentence of life imprisonment in the opinion of Court was justified;

	(a) where the offence or offences are in themselves grave enough to require a very long sentence (b) where it appears from the nature of the offences or from the defendant's history that he is a person of unstable character likely to commit such offences in the future (c) where if the offences are committed the consequences to others may be specially injuries as in the case of sexual offences or crimes of violence
Chapman [2000] 1 Cr App R. (S) 377	Confirmed the above stance taken by Court in Hodgson's case
FROM SRI LANKA	
Attorney General –v- Sampath (1997) 3 SLR 390	The trial judge having imposed a term of 3 years RI could not have in law directed that the period spent in remand by the accused-respondent should be taken into consideration as a part of the period of the sentence that he had served.
Bandara –v- Republic of Sri Lanka	To deliver a message to all those who have no

(2002) 2 SLR 277	respect for other persons right to life and property [court acted in terms of section 336 of the CPC and enhanced the sentence]
AG –v- Gunarathna and others (1995) 2 SLR 240	The High Court judge has not given any reason for imposing only a suspended term of imprisonment. On the basis of the facts relevant, the offence calls for the imposition of a custodial sentence Although the Petition of Appeal has not prayed for the imposition of a fine, the Court of Appeal has the jurisdiction to impose a sentence which is commensurate with the offence
Sajeewa alias Ukkuwa and Others –v- AG (2004) 2 SLR 263	In most offences the 1st offender should receive some kind of mitigation of sentence….. however, if an accused is found guilty for a heinous crime, ie gang rape, there is no reason for mitigation of his sentence.
AG –v- Ranasinghe (1993) 2 SLR 81	Rape is a heinous crime and calls for an immediate custodial sentence. An offence of rape calls for an immediate custodial sentence. In a contested case of rape, a figure of 5 years should be taken as the starting point of the sentence subject to aggravating or mitigating circumstances. Reasons are; 1. To mark the gravity of the offence 2. To emphasize public disapproval 3. To serve as a warning to others 4. To punish the offender 5. To protect women Aggravating factors; 1. Use of violence over and above force necessary to commit rape 2. Use of weapon to frighten or wound victim 3. Repeating acts of rape 4. Careful planning of rape 5. Previous conviction for rape or other offences of a sexual kind 6. Extreme youth or old age of victim 7. Effect upon victim, physical or mental

	Subjection of victim to further sexual indignities or perversions
AG –vs- Hewa Welimunige Gunasena CA(PHC) APN 110/2012 Decided on 12/2/2014	2 years sentence suspended for 10 years on a grave child abuse is a very lenient sentence considering the beastliness of the crime. When an offence of child abuse is proved, victims of tender age and innocent behavior the sentence of imprisonment should be imposed severely. Held that the sentence imposed was not adequate for the purpose of preventing the commission of further offences by the accused. Cases of indecent touching, threats by an older man on small girl seem to attract a custodial sentence. The trial judge had failed to consider the facts of the case. The victim had been 12 years. The accused was 31 years older than the victim. The incident had taken place without the consent of the victim. The accused's violent behavior and the gravity of the offence had not been duly considered The trial judge had not addressed his mind properly to the specific guidelines listed under sec 303(1) (a) to (d), no specific reasons given in imposing a non custodial. Accused sentenced for 7 years
King –v- Paulu Peiris 95 NLR 45	Where a jury finds and accused guilty of culpable homicide on the ground that he has exceeded the right of private defence, a sentence of ten years may be regarded as having erred on the side of severity. If however, he is found guilty of culpable homicide because he had lost his self-control by reason of grave and sudden provocation or because he inflicted the fatal injury in a sudden

	fight, the sentence may be regarded as a proper one
AG –s- Valikuntha Vasan 53 NLR 558	An offender guilty of contempt of court should not be permitted to go unpunished merely because he acknowledges his offence and express regret. It is apparent such an offender shall not be dealt with sec 306 of the CPC
M.K.Fernando –v- the Queen 74 NLR 159	When a person is convicted of an offence of sec 317 of penal code, Sentence of imprisonment is mandatory
SG –vs- Kitnasamy 42 NLR 347	An accused person who used a knife should not be treated with leniency unless there are good grounds for so doing. 6 months of prison sentence was substituted instead of the fine originally imposed on the accused
AG –vs- Mendis (1995) 1 SLR 138	Factors to be considered in sentencing; 1. gravity of the offence 2.punishment provided in the statute 3.punishment to be deterrent 4.effectiveness of the sentence 5.nature of the offence on which the offender has been found to be guilty on 6.difficulty in detection 7. nature of the loss to the victim 8.profit accrued to the accused in the event of non-detection 9.Point of view of the accused 10.the interest of the society 11.mechanism and manipulation resorted by the accused 12.the effect of committing the crime 13.persons who are affected by the crime 14. the ingenuity with which it has been committed 15. Involvement of others in committing the crime
AG –v- Jinak Sri Uluwaduge and another (1995) 1 SLR 157	In determining the proper sentence, the judge should consider the gravity of the offence as it appears from the nature of the act itself and should have regard to the punishment provided in the Penal Code or other statute under which the offender is charged. He should also regard

	the effect of the punishment as a deterrent and consider to what extent it will be effective. ….. the opinion of the prosecutor as to what sentence should be imposed is irrelevant. The AG is not estopped in appeal from taking an entirely different stand on sentence from that taken by his representative who appeared in the High Court.
Don Percy Nanayakkara –v- The Republic (1993) 1 SLR 71	In assessing punishment the court has to consider the matter from the point of both the offender and the public. The accused who has held high public office and exercised extensive statutory powers has subverted the very basis of this confidence by his conduct in dishonestly showing favour to persons with whom he was acquainted.
Kasinathar Thangarasa –v- Sambonathe Tharronachari 46 NLR 283	Court should not take into consideration a previous conviction in imposing a sentence except where the court has to consider the applicability under specific law such as the Prevention of Crimes Ordinance otherwise it may operate punishing a man twice over for one offence
AG –v- H.N. De Silva 57 NLR 121	In determining the sentence, a judge should, • Consider the gravity of the offence as it appears from the nature of the act itself • Should have regard to the punishment provided in the PC/statute under which he is charged • Should regard the effect of the punishment as a deterrent and consider to what extent it will be effective • If the offender held a position of trust or belonged to a service which enjoys the public confidence that must be taken into account in assessing the punishment • Difficulty in detection • Public welfare of the State outweighs the previous good character, antecedents and age of the offender
M Gomes –v- W.V.D. Leelaratne	The provisions of sec 325 of the CPC [current

66 NLR 233	306] not applicable to grave offences; • A judge in determining the proper sentence should first consider the gravity of the offence as it appears from the nature of the act itself. Should have regard to the punishment provided in the penal code or the statute under which he is charged
The Queen –v- H.G. Haramanis 58 NLR 228	Accused who committed grave offences deserves a long prison term
Jamel –v- Haniffa 8 NLR 35	Given the fact the appellant disturbed and attacked a sanitary inspector while on duty, he deserves a longer period of imprisonment.
The King –v-s Edwin 47 NLR 575	Points to consider; • Extreme young age of the accused or an aged accused with a clean record • Good character • Previous animosity led to complaining & the failure of the police to take appropriate action which led to escalation of the situation
Thilakaratne –v- AG (1989) 2 SLR 191	There is a disparity in the sentences passed on the 1st accused and those passed on the 2nd and 3rd accused. Generally speaking, uniformity in sentencing is desirable, but not where the facts and circumstances against each accused are different. The evidence in this case revealed that the 1st accused was armed with a pistol fired a shot with it, and then proceeded to cause extensive injuries with a knife on Semasinghe during the course of this robbery. Further, the 1st accused has previous convictions. Therefore the court saw no reason to interfere with the sentences passed on the 1st accused-appellant
AG –v- Gunaratne and others (1995) 2 SLR 240	The offence had been committed in respect of public property – in broad day light – salaries to be paid to Government teachers and the money to supply free mid day meal to school children – two of the accused were police officers HCJ failed to give reasons of imposing a

	suspended term of imprisonment. The offence calls for the imposition of a custodial sentence.

The authorities referred to above show the manner in which mitigating and aggravating factors have been considered by courts. Having looked at those authorities, I will now turn to consider whether the learned High Court Judge is correct when he imposed a twelve year imprisonment on the accused in this case. As mentioned hereinbefore in this judgment, the applicable provision of law in this instance is the first limb of Section 297 of the Penal Code. Hence, the punishment for the offence to which the accused was convicted ranges from 10 to 20 years of imprisonment.

In Attorney General Vs. Ranasinghe & Others[3], the Court of Appeal has referred to the decision in the case of Keith Billam[4] in which the Lord Chief Justice in a contested case of rape, a figure of five years imprisonment was taken as the starting point and then considered the aggravating and the mitigating circumstances to determine the sentence. Sarath Silva J. (as he was then) has quoted the observations by Lord Chief Justice and it reads as follows:

"The crime should in any event be treated as aggravated by any of the following factors: (1) violence is used over and above the force necessary to

[3] 1993(2)Sri L.R.at page88
[4] Keith Billam (1986) Vol.82 Criminal Appeal Reports 347

commit the rape; (2) a weapon is used to frighten or wound the victim; (3) ..... Where any one or more of these aggravating features are present, the sentence should be substantially higher than the figure suggested as the starting point."

In the case at hand, the accused was convicted for an offence punishable with imprisonment that ranges from 10 to 20 years. Having considered the gravity of the offence and the circumstances under which the incident has taken place, I decide that 15 years is the point that should be the starting point to determine the period of sentence to be imposed on the accused in this case. I am not inclined to deduct or enhance the sentence by considering the mitigating and aggravating factors submitted by the parties at this appeal stage since it is the duty of the trial judge to do so.

However, by looking at the sentence, it appears that the learned High Court Judge has addressed his mind carefully to those mitigating and aggravating factors. Particularly when looking at the 12 year imprisonment that had been imposed when the stipulated sentence ranges from 10 to 20 years, it is abundantly clear that the learned High Court Judge has adequately taken into consideration the mitigating factors in this instance.

Therefore, it is my considered opinion that twelve year imprisonment imposed on the accused by the learned High Court Judge is not incorrect. In the circumstances, I do not see any reason to interfere with the sentence

imposed on the accused in this instance. For the aforesaid reasons, this application to revise the conviction and the sentence is refused. Accordingly, this application is dismissed. No costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

MALINIE GUNARATNE, J.

I agree

JUDGE OF THE COURT OF APPEAL