

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

**CA 58/2011**

HC Badulla 77/2001

M. Sinnaiah

**Accused - Appellant**

**Vs.**

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

**Respondent**

**Before** : Vijith K. Malalgoda, PC, J.(P/CA) &  
H.C.J. Madawala, J.

**Counsel** : Amila Palliyage for the accused appellant.  
Rohantha Abeysuriya DSG for the AG.

**Argued &**

**Decided on** : 08.05.2015

**VIJITH K. MALALGODA, PC, J.(P/CA)**

Heard Counsel in support of this <sup>Appeal</sup> application.

At the out set, the Counsel for the accused appellant submits that he will not be challenging the conviction of this case but will be canvassing the sentence only. According to him, the accused-appellant in this case was a 27 years old married man at the time when the offence was committed. The victim was a 13 year old girl living in the same area. The evidence was that the accused had taken the girl away from her house to Welimada area and stayed at a place known to him for two days until they <sup>were</sup> ~~be~~ apprehended by the Police. The accused's version was that he eloped with the girl due to a love affair he had with the girl. However, the girl admits having a love affair with the accused but, submits that on this particular day she never went with the consent but she was taken in a van by the accused after giving some toffees. However, the learned Counsel for the accused-appellant submits the evidence of two witnesses, van driver and the owner of the house in Welimada area where both of them have said that they never suspect that the girl being taken

without her consent. According to the medical evidence there were no fresh hymenal tare found on the victim but, there were two old tares found. Pprosecutrix in her evidence had denied any previous sexual relationship with the accused. Learned Counsel for the accused appellant's position was that the victim was trying to hide the fact that she<sup>was</sup> having an affair and a sexual relationship with the accused even prior to her eloped with the accused. Learned Deputy Solicitor General submits that the girl was only 13 years when she was taken by the accused who was 27 years of age and a married man. Contention of the learned Deputy Solicitor General was that he has taken the advantage of the minor age of the victim. We agree with the submissions of the learned Deputy Solicitor General on this issue. We are mindful of the submissions made by the learned Deputy Solicitor General and Counsel for the accused-appellant as well. After considering all these issues, we are of the view that we should not interfere with the ~~sentence imposed on the~~ custodial sentence imposed on count one and count two but decide to make order to run both sentences <sup>concurrently</sup> consecutively. The accused was ordered a fine of Rs. 7500/- and a compensation of Rs. 50,000/- in default terms of 08 months rigorous imprisonment on the fine and 04 years rigorous imprisonment on the compensation.

We make order that the default term on the fine to remain as 08 months but make it a simple imprisonment. The default term on the compensation is reduced to a period of two years simple imprisonment. Subject to the above variation, the sentence will remain.

At this stage, Counsel for the accused appellant makes an application under Section 359 of the Criminal Procedure Code to consider imposing the sentence from the date of the conviction. We make

order to commence the date of the sentence of 12 years rigorous imprisonment with effect from the date of conviction that is from 01.08.2011. Both sentences to run concurrent from that date.

Subject to the above variation the appeal stands dismissed.

We order the Registrar to return the record to the High Court of Badulla in order to implement the above sentence.

**PRESIDENT OF THE COURT OF APPEAL**

**H.C.J. MADAWALA, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL.**

KRL/-