

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRILANKA**

C.A. 90/2011

H.C. Chilaw Case No. H.C. 50/2009

Nuwan Buddhika Abeysinghe

Accused - Appellant

Vs.

The Attorney General

Respondent

C.A. 90/2011 : H.C. Chilaw Case No. H.C. 50/2009

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

Counsel : Tenny Fernando for the Accused-Appellant
Shanil Kuleratne, S.S.C. for the A.G.

Argued &

Decided on : 15.05.2015

Vijith K. Malalgoda, P.C.J.(P/CA)

It is brought to the notice of Court that some of the proceedings in this case had been led before H/L Justice H.C.J. Madawala in her capacity as a High Court Judge of Chilaw but she was not involved in delivering the judgment. Counsel for the Appellant has no objection for H/L Justice H.C.J. Madawala taking up this matter.

Accused-Appellant in this case was indicted before the High Court of Chilaw on three counts of rape. According to the facts of this case, the victim was only 8 years of age at the time the offence was committed. The Accused-Appellant was a boy who was 19 years of age.

At the trial after leading the evidence of the prosecutrix the accused had tendered a plea to all three counts.

Learned trial Judge after considering the matter, imposed a sentence of 10 years rigorous imprisonment and a fine of Rs. 5,000/- with a default term of 6 months simple imprisonment on each count and compensation of Rs. 300,000/- with a default term of 2 years simple imprisonment and also ordered the jail sentences imposed to run concurrent.

Learned counsel for the Accused-Appellant submits that he will be grateful if the Court can consider the reduction of the sentence already imposed, considering the fact that the accused was a young person, who was just passed 18 years at the time of commission of the offence. He further requests the Court to consider reducing the compensation of Rs. 300,000/- already imposed to a reasonable amount which he can manage to pay.

At this stage, learned Senior State Counsel appearing for the Attorney General objects to the reduction of the sentence already imposed for the reason that Court has imposed the minimum mandatory sentence. He further submits that there is no exceptional reasons to deviate from the minimum mandatory sentence already imposed. He further brings to the notice of Court the fact that

the victim was only 8 years at the time of commission of the offence. He leaves the matter of compensation with the Court.

We are of the view that this is not a fit case to reduce the sentence of the accused since the victim was only 8 years at the time the offence was committed.

The learned trial Judge had acted sympathetically when imposing the sentence of 10 years, which is the minimum mandatory sentence and also making an order to run sentence on all three counts concurrently. Therefore, we are not inclined to reduce or to change the above sentence imposed by the learned trial Judge. We are not going to change the fine of Rs. 5000/- on each count as well. However, with regard to the compensation ordered we too agree that the compensation should be an amount which the accused could pay. The victim will also be benefited by obtaining that money. If the Court imposes a heavy compensation which the accused cannot pay, the accused will prefer to serve the default term rather than paying the compensation. In such a situation the victim will not get anything.

Under these circumstances, we decide to reduce the compensation already imposed by the learned trial Judge to sum of Rs. 200,000/- and the default term will remain as two years simple imprisonment. We further make order to operate

the sentence from the date of conviction i.e. from 30.08.2011. Subject to the above variation, the appeal stands dismissed.

Registrar is directed to return the Case Record to the High Court, Chilaw to implement the said order.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala, J.

I agree

JUDGE OF THE COURT OF APPEAL

Cr/-