

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

**CA 108/2014**  
HC-Kalutara-924/07

Liyana Kangkanamge Don Keerthi

Diyapaththugama Vidanalage Gunawathi Samarasingha

**Accused - Appellant**

**Vs.**

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

**Respondent**

CA 108/2014

HC-Kalutara-924/07

Before : **H.N.J. Perera, J. &**  
**K.K. Wickramasinghe, J.**

Counsel : Thanuka Nandasiri for the Accused Appellant  
Anoop de Silva, SSC for AG

Decided on : 23.07.2015

**H.N.J. Perera, J.**

Counsel for the Accused Appellant states that he has instructions from the accused appellant to withdraw this appeal. But states to Court that he has also instructions to make an application under Section 359 of the Criminal Procedure Code and moves that the said sentence imposed by the learned High Court Judge be backdated from the date of conviction namely 10.03.2014. Counsel submits that the Accused Appellants are over 60 years of age and that they are not in good health and moves that the Court take these matters into consideration and

to direct that the sentence be implemented from the date of conviction.

Counsel for the Respondent vehemently objects to this application and states that the learned High Court Judge has considered all these matters before imposing the sentence on the accused appellants and also states that there is evidence in this case that the Accused Appellant had prevented the deceased being taken to hospital immediately after the incident. Therefore, she moves that the said application be disallowed.

After considering the submissions of both counsel, we are of the view that learned High Court Judge has considered all the facts that have been placed before this court by the counsel for the Accused Appellant and sentenced the accused appellant accordingly. We cannot come to the conclusion that the sentence imposed by the learned High Court Judge is excessive.

After considering the submissions made by the learned counsel for the Accused Appellant, we are of the view that there is no reason for us to make an order under section 359 of the Criminal

Procedure Code and therefore, application made by the counsel for the Accused Appellant to Act under Section 359 of the Criminal Procedure Code is refused.

Therefore, Application for withdrawal of the appeal is allowed.

Appeal dismissed.

**JUDGE OF THE COURT OF APPEAL**

**K.K.Wickramasinghe, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**

**LA/-**