

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

CA. No. 184/2009

H.C Vauniya Case No:1955/07

Susei Sudarshan
Murukkan.

Appellant

Vs.

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

Respondent

C.A 184/2009**H.C Vauniya Case No:1955/07**

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

Counsel : Indika Mallawarachchi for the Accused-Appellant.
H.I. Peiris S.S.C for the Respondent.

Argued &

Decided on : 04.08.2015.

Accused-Appellant is present in Court produced by the
Prison Authorities.

Vijith K. Malalgoda PC J (P/CA).

In this matter the Accused –Appellant Soosai Sutharasan was indicted in the High Court of Vauniya on two counts namely kidnapping a girl by the name of Arogyanadan Anusha below the age of 16 years on 12.06.2004 an offence punishable under Section 354 of the Penal Code and also for committing rape on her on the same day. The Accused-Appellant was absent at the trial and the trial had proceeded in absentia. The learned Trial Judge after hearing the prosecution evidence being satisfied with the said evidence had convicted the accused in the year 2004 and sentenced him to seven years rigorous imprisonment for the 1st count and 15 years rigorous imprisonment on count

No:02 with a fine of Rs. 10,000/- with default six months rigorous imprisonment and also compensation of Rs. 20,000/ in default of one year rigorous imprisonment. The learned High Court Judge has further ordered for the above sentences to run consecutively.

The said accused was later apprehended and produced before the High Court of Vauniya in December 2009. When the matter was taken up before the learned High Court Judge on 16.12.2009 the learned High Court Judge had held a 241 (3) inquiry and concluded that he is not satisfied with the material placed before the Court and therefore pronounced the judgment which has already been made by the learned High Court Judge on the accused.

Counsel appearing for the Accused-Appellant submits that she will not be canvassing the conviction before this court but only be canvassing the sentence. She submits that suspect was only 17 years of the age at the time when the offence committed and also submits that the victim who is a neighbour of the suspect, used to visit the suspect's house very often. The day in question the victim visited the house of the accused and at that time the suspect had requested the victim to make an egg for him and thereafter while she was making the egg he had raped this girl. Counsel submits that both the offences referred to in the indictment are interwoven and therefore if the court can make the said two orders to run concurrently that will meet the ends of justice.

Learned Senior State Counsel appearing for the Attorney General has no objection considering the age of the accused when committed the offence. We agree with the view taken up by the Learned Senior State Counsel and therefore make order that the sentences imposed on Count No: 1 and 2 to run concurrent. However the fine already imposed by the High Court Judge and the compensation ordered, remain unchanged. The counsel for the Accused-Appellant further requests to implement the said sentence from the date on which the sentence was pronounced on the accused i.e. with effect from 16.12.2009. We make order to operate the sentence with effect from 16.12.2009, subject to the above variation the appeal is dismissed.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala, J.
I agree.

JUDGE OF THE COURT OF APPEAL.

Vkg/-