

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

CA 72-74/07

GALLE HIGH COURT NO. 1801/96

Wasantha Dayanath Umagiliyage
" Anoma", Sri Piyarathne Lane,
Bope, Galle.

3rd Accused-Appellant

Vs.

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

Respondent

CA 72-74/07**GALLE HIGH COURT NO. 1801/96**

BEFORE: VIJITH K MALGODA, PC. J (P/CA)
H.C.J. MADAWALA, J

COUNSEL: Rienzie Arsecularatne PC for the 2nd Accused-Appellant.

Nalin Ronando for 3rd Accused-Appellant.



Tenny Fernando for 4th and 5th Accused-Appellants.

Shavindra Fernando ASG PC for the Respondent.

DECIDED ON: 09.10.2015.

Vijith K Malalgoda, PC J (P/CA)

In this case originally there were five accused but the 1st accused is now dead. The 2nd to 5th accused-appellants are present before court and represented by Counsel. Learned Additional Solicitor General appears for the State. Counsel for the accused-appellant at this stage submits that they will not be canvassing the conviction but only be submitting certain facts with regard to the sentence already imposed. According to the sentences imposed on the accused-appellants, the 2nd to 4th accused-appellants were convicted for the first count of unlawful assembly and was the sentence of 6 months imprisonment with a fine of Rs. 2500/-. With regard to the 2nd count all 2nd to 4th accused-appellants were convicted and imposed eight years rigorous imprisonment with a fine of Rs. 7500/-. With regard to the 3rd count all 2nd to 4th accused were convicted and imposed a sentence of eight years rigorous imprisonment with a fine of Rs. 7500/-. With regard to the 4th count only the 2nd accused was convicted and imposed a

sentence of ten years rigorous imprisonment with a fine of Rs.10,000/-. With regard to the 5th count only the 5th accused was convicted and sentenced for 10 years rigorous imprisonment with a fine of Rs. 10,500/- With regard to the 7th count the 2nd accused was convicted and imposed the sentence of fifteen years rigorous imprisonment with a fine of Rs. 52,500/-. With regard to the 10th count the 5th accused was convicted and imposed a sentence of two years rigorous imprisonment with a fine of Rs. 2500/-. With regard to the 11th count only the 4th accused was convicted and imposed a sentence of 15 years rigorous imprisonment with a fine of Rs. 52,500/- .

When all the sentences are taken together the 2nd accused was convicted for the 1st, 2nd, 3rd, 4th and 7th counts. The 3rd accused was convicted for the 1st, 2nd and 3rd counts only. The 4th accused was convicted for the 1st, 2nd, 3rd and 11th counts. The 5th accused was convicted for the 5th and 10th counts only. The Counsel submits that the learned High Court Judge had not made a specific order with regard to the operation of the said sentences and therefore the said sentences are being considered as consecutive terms. The submissions by the learned counsel before this Court was that, considering the long period of time they have been incarcerated that is since their conviction on 21.02.2007, move that the Court to make those sentences to run concurrently. Counsel further requests this Court to consider to make order to operate the said sentences from the date of conviction i.e. from the 21.02.2007. Learned Counsel for the accused-appellant further requests the Court to consider a nominal deduction of the sentence already imposed on the accused considering their long in incarceration. Learned Additional Solicitor General submits that he has no objection for the applications by the learned Counsel for ^{making the sentences concurrent} ~~the consecutive~~ sentences and of the back dating of the sentence but he submits that considering the nature of this offence he cannot agree with regard to the

submissions of the learned Counsel for a reduction of the sentence. We are also mindful of the fact that the nature of this offence and of the view that this is not a fit and proper case to consider a reduction of sentence.

Considering all the submissions made by Counsel for both sides this Court make the following order:

The sentence imposed on all the accused (2nd to 5th) who are before this Court to run concurrent and therefore the 2nd accused will have to serve a period of 15 years. The 3rd accused to 8 years. The 4th accused 15 years and the 5th accused 10 years. The fines and the default terms already imposed will remain unchanged. Considering the submissions made by the Counsel for both parties we make further order to operate the said sentences with effect from the date of conviction that is from 21.02.2007. Subject to the above variations of the sentence the appeal stands dismissed.

PRESIDENT OF THE COURT OF APPEAL.

H.C.J. Madawal, J.

I agree.

JUDGE OF THE COURT OF APPEAL.

Mm/-.