153/12

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

In the matter of an appeal against the Order of the High Court under section 331 of the Code of Criminal Procedure Act No.15 of 1979 as amended.

Kankanam Vitharanage Chandrasekera
Alias Kiriputha

2nd accused-Appellant

C.A.Case No:-153/2012

H.C. Embilipitiya Case No:-53/2006

V.

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

Respondent

Before H.N.J.Perera, J. &

K.K.Wickremasinghe, J.

Counsel:-Neranjan Jayasinghe for the Accused-appellant

Shanaka Wijesinghe D.S.G for the Respondent

Argued On:-24.06.2015/12.08.2015/04.09.2015

Written Submissions:-15.10.2015

Decided On:-09.02.2016

H.N.J.Perera, J.

Out of the two accused indicted before the High Court of Embilipitiya, the 1st accused was charged for being in possession of 254.5 Kg of cannabis. He pleaded guilty and was convicted and sentenced to 2 years R.I. and to a fine of Rs 25,000/- carrying a default sentence of one year. The said sentence of 2 years R.I. was suspended for 5 years.

The 2nd accused-appellant was charged for aiding and abetting the said 1st accused. The 2nd accused-appellant pleaded not guilty to the charge and after trial he was convicted and sentenced to 5 years R.I. Being aggrieved by the said conviction and the sentence the 2nd accused-appellant has preferred this appeal to this court.

The said appeal was argued before court and when the matter was taken up before this court on 11.12.2015 before this court the learned Counsel for the accused-appellant stated to court that he will confine this appeal to the sentence imposed on the accused-appellant.

It was submitted on behalf of the 2nd accused-appellant that the 1st accused in this case had pleaded guilty to the said charge and had been given a suspended sentence. The 1st accused was charged for the possession of the said cannabis and that the learned trial Judge had sentenced him to 2 years R.I and suspended the said term of imprisonment for 5 years. But the 2nd accused-appellant who pleaded not guilty to the charge, after trial who was found guilty for aiding and abetting the 1st accused has been sentenced to 5 years R.I.

The main complaint of the Counsel for the accused-appellant was that the 2nd accused-appellant had been treated differently by the learned trial Judge because he has decided to go to trial without pleading guilty

to the said charge against him. It was contended on behalf of the 2nd accused-appellant that he should not be treated differently merely because the 2nd accused-appellant had exercised his right to go to trial without pleading guilty to the said charge for aiding and abetting the 1st accused for the commission of the said offence. It was submitted by the Counsel for the 2nd accused-appellant that the fact his client has pleaded not guilty and opted to go to trial should not be considered as an additional ground when imposing the punishment.

On perusal of the said judgment of the learned trial Judge we are not in agreement with the submission made by the Counsel for the 2nd accused-appellant that the learned trial Judge was influenced by the fact that the 2nd accused-appellant has pleaded not guilty to the said charge when he imposed the said sentence on the 2nd accused-appellant. But we clearly see a disparity of the sentences imposed by the learned trial Judge on the 1st accused and the 2nd accused-appellant. The question that must be considered is whether the sentence imposed on the 2nd accused-appellant was excessive.

Since the main accused in this case, the 1st accused-appellant has been given a lenient sentence by the learned trial Judge, we see no reason why the 2nd accused-appellant who was charged only for aiding and abetting the 1st accused to commit the said offence should be dealt otherwise.

In Kenneth John Fawcett and Others Vol.5 C.A.R.(sentencing) 1983, 158 it was held that the case was an example of the problems which could arise when a number of accused, charged with offences arising out of a series of incidents when they were acting together, are tried on different occasions by different Judges. Where a number of men are indicted, and some plead guilty and others not guilty, Judges should set their hearts against agreeing to deal with those who plead guilty at a different time from those who plead not guilty. Unless there are most unusual

circumstances those who are charged together should be dealt with together.

It was further held that the approach of the Court was to ask whether right thinking members of the public, with full knowledge of all the relevant facts and circumstances, would consider that something had gone wrong with the administration of justice.

This court is of the opinion that in the instant case the public would say that something had gone wrong.

When we consider all the facts and circumstances in this case, we feel that justice would be served if a suspended term is imposed on the 2nd accused-appellant. We set aside the five years rigorous imprisonment on the 2nd accused-appellant and sentence him to 2 years rigorous imprisonment and suspend the said term to five years. We also impose a fine of Rs.25,000/-on the 2nd accused-appellant and in default to a term of 1 year R.I.

Subject to above variation of the sentence, the appeal of the 2ndaccused-appellant is dismissed.

JUDGE OF THE COURT OF APPEAL

K.K.Wickremasinghe, J.

I agree.

JUDGE OF THE COURT OF APPEAL