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

In the matter of an Appeal in terms of Section 331 (1) of the Code of Criminal Procedure Act No 15 of 1979.

Democratic Socialist Republic of Sri Lanka

COMPLAINANT

CA/58/2010

H/C Jaffna case No.1311/09

Kanagaratnam Pirabakaran

ACCUSED

And,

Kanagaratnam Pirabakaran

ACCUSED-APPELLANT

Vs,

Attorney General
Attorney General's Department
Colombo 12.

RESPONDENT

Before: **Vijith K. Malalgoda PC J (P/CA) &**

H.C.J. Madawala J

Counsel: S. Panchadseran with N. Srikantha for the Accused-Appellant

H. Jayaneththi SC, for the AG

Argued on: 16.09.2015

Written Submissions on: 12.10.2015, 16.12.2015

Judgment on: **24.06.2016**

Order

Vijith K. Malalgoda PC J

The accused-appellant was indicted before the High Court of Jaffna for committing rape of one Nagarasa Sasikala, a girl below the age of 16, an offence punishable under section 364 (2) (e) of the Penal Code as amended by Act No.22 of 1995.

When the indictment was served on the accused-appellant on 26.01.2010 the accused-appellant pleaded not guilty to the indictment against him and the case was fixed for trial 23.03.2010.

On 23.03.2010 the accused-appellant who was represented by an Attorney at Law on that day had withdrawn his earlier plea of not guilty and pleaded guilty to the indictment.

Section 197 of the Code of Criminal Procedure Act No. 15 of 1979 as amended by Act No. 14 of 2005 which refers to recording of plea of guilt when the trial was before a Judge without jury, reads thus;

"197 (1) the accused pleads guilty to:-

a) The offence with which he is indicted, or

b) A lessor offence for which he could be convicted on that indictment and the court and the Attorney General are willing to accept that plea,

and it appears to the satisfaction of the Judge that he rightly comprehends the effect of his plea, the plea shall be recorded on the indictment and he may be convicted there on,

> Provided that when the offence so pleaded to is one of murder, the Judge may refuse to receive the plea and cause the trial to proceed in like manner as if the accused had pleaded not guilty.

When the accused-appellant tendered the plea of guilty to the indictment on 23.03.2010 the Learned Trial Judge had convicted the accused –appellant on his own plea and sentence was put off for 29.04.2010.

It was further revealed that the court after recording the said conviction based on the accused-appellant's own plea, had permitted the accused-appellant to pay Rs. 60000/- as compensation to the victim before imposing the sentence. Accordingly when the case was called on 29.04.2010 the accused-appellant had payed Rs. 10000/- and the matter was again mentioned before the High Court on 09.06.2010 but the accused-appellant had not paid any part of the compensation he had agreed to pay until 07.07.2010 when the matter was called before a new High Court Judge. The Learned Counsel who appeared for the accused-appellant on that day, whilst referring to the provisions of section 203 and 283 (4) of Code of Criminal Procedure Act No 15 of 1979 had argued that there is no provision for the new High Court Judge to impose a sentence. The Learned High Court Judge who considered the said objection had overruled the objection and imposed a sentence of 10 years Rigorous Imprisonment with a fine of Rs. 15000/- in default 2 years Simple Imprisonment and Rs. 75,000/- compensation in default 3 years Simple Imprisonment.

Section 203 of the Code of Criminal Procedure Act reads thus;

> When a case for the prosecution and defence are concluded the Judge shall forthwith or within 10 days of the conclusion of the trial record a verdict of acquitted or conviction giving his reasons therefore and if the verdict is one of conviction pass sentence on the accused according to law.

Whether the provision referred to above are mandatory or not was considered in the case of ***Anura Shantha V. Attorney General 1999 (1) Sri LR 299*** and held that "the provisions of section 203 of the Code of Criminal Procedure Act are directory and not mandatory. This is a procedural objection that has been imposed upon court and its non compliance would not affect the individual a failure of justice."

As observed by this court, when the accused had withdrawn his plea of not guilty and tendered a plea of guilty before the High Court Judge on 23.03.2010 the High Court Judge after satisfaction, that the accused rightly comprehends the effect of his plea under section 197 of the CPC had correctly recorded the plea of guilt and accordingly convicted him of the indictment against him.

Once the conviction is recorded by the High Court Judge the next step is to impose a sentence according to law and as observed by this court, the time frame stipulated under section 203 is directory but not mandatory, and there by a sentence imposed after laps to 10 days from the date of conviction will not become void merely because it was pronounced after the 10 days period.

It was further argued that the High Court Judge who assumed duties after the retirement of the previous judge who recorded the plea of guilt is not empowered to impose a sentence on the accused and therefore the court should permit the accused-appellant to withdraw the plea of guilt already recorded in court.

With regard to a withdrawal of plea the only provision available in the Code of Criminal Procedure Act is with regard to a plea tendered in the Magistrate Court and not before the High Court.

Section 183 (1) of the Code of Criminal Procedure Act No. 15 of 1979 which refers to the withdrawal of a plea in the Magistrate Court reads thus;

183 (1) "if the accused upon being asked if he has any cause to show why he should not be convicted makes a statement which amounts an unqualified admission that he is guilty of the offence of which he is accused, his statement shall be recorded as nearly as

possible in the words used by him; and the Magistrate shall record a verdict of guilt and pass sentence upon him according to law and shall record such sentence.

Provided that the accused may with the leave of the Magistrate withdraw his plea of guilt at any time before sentence is passed upon him, and in that event the Magistrate shall proceed to trial as if a conviction has not been entered.

The said provision was discussed in the case of ***S.J. Pandian Vs. S.O. Sugathapala BASL Law Journal*** (unreported 1983-1990 Vol 1 page 235) and the court held "that the proviso to section 183 (1) has not taken away the discretion of the Magistrate to grant or not to grant leave to withdraw plea of guilt. The only person who would be qualified to exercise such a discretion would be the Magistrate before whom the plea was tendered because he alone would know whether the plea of guilt tendered amounted to an unqualified admission in terms of section 183 (1). The word "the" in the phrase,.. "with leave of the Magistrate", in the proviso, can only refer to the Magistrate before whom the accused made the unqualified admission that he is guilty of the offence."

In the said case the Court of Appeal had given a strict interpretation to the proviso to section 183 (1) and, in the absence of such proviso to section 197 of the Code of Criminal Procedure Act this court is not inclined to give wide interpretation to the above provision since that was not the intention of the legislature when it permits the High Court Judge to accept a plea of guilty "when it appear to the satisfaction of the Judge that the accused rightly comprehends the effect of the plea."

The silence in section 197 cannot be considered infavour of an accused who wanted to withdraw his plea already tendered before the High Court, since the legislature was mindful of withdrawal of a plea tendered before the Magistrate and not before the High Court. In the absence of such provision, the next issue before this court is whether an incumbent judge is deprived of imposing a sentence in a case where a conviction had already imposed.

If the Learned Judge who recorded the conviction is available in the service to pronounce the sentence but due to an administrative act he is not available to pronounce the Judgment, the said situation can be rectified by administrative decisions but, if the Judge who recorded the conviction is not available due to some incapacity, in such a situation it is the duty of the court to give a purposive interpretation to the legislature.

In the case of ***Wickramarathne V. Samarawickrema (1995) 2 Sri LR 2,*** S.N. Silve (J) (as he was then) observed that; "The basic rule of interpretation is that the legislative objective should be advanced and the provisions be interpreted in keeping with the purpose of the legislature, interpretation should not have the effect of defeating the objective of the legislature and of detracting from its purpose."

In the absence of any specific provision in section 203 or in any other provision in the Criminal Procedure Code preventing the incumbent judge to pronounce the sentence, or any other provision in contrary, this court is of the view that there is no restriction imposed by the provision of section 203 or any other provision in chapter XVIII of the Criminal Procedure Code for the incumbent Judge to pronounce the sentence.

Under these circumstances we see no merit in the argument raised by the Learned Counsel for the accused-appellant before this court. We therefore dismiss this appeal and affirm the conviction and sentence imposed on the accused-appellant.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala J

I agree,

JUDGE OF THE COURT OF APPEAL