

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

In the matter of an appeal from the judgment of the
Provincial High Court of Monaragala.

Court of Appeal case no. CA/253/2013

H.C. Monaragala case no. 399/2008

1. Maussagedara Asanka Bandara
2. Bandiyage Laxman Wijeyweera
3. Medaella Pahalagedara Somathilake

Accused Appellants

Vs.

Hon. Attorney General

Complainant Respondent.

Before : L.T.B. Dehideniya J

: K.K. Wickramasinghe J

Counsel : Teny Fernando for the 1st and 3rd Accused Appellants.

: M.L. Jayarathne with M.D.T. Bandara for the 2nd Accused
Appellant.

: H.I. Peiris DSG for the Attorney General

Argued on : 26.05.2017

Decided on : 02.06.2017

L.T.B. Dehideniya J.

The Accused Appellants were indicted before the High Court of Monaragala on a charge of robbery of the relics from a temple, punishable under section 380 read with section 32 of the Penal Code. After trial all the accused Appellant were convicted and sentenced for 7 years RI. Being aggrieved by the judgment, all the accused appealed against the conviction and the sentence. At the argument stage, the Accused Appellants did not contest the conviction and limited the appeal to the sentence.

The learned Counsels for the Appellants submitted the mitigatory factors and moved that the sentence be reduced and make an order to give effect to the sentence to be operative from the date of sentence in view of the fact that the Appellants were incarcerated since then. The learned DSG submitted the facts of the case for the Court to decide.

Several persons, covering their faces, have come to the temple in the night and robed some relics from there threatening the head priest and the two others who were at the temple at that time. The police detected the Appellants soon after the incident, with the relics, in the middle of the night, at a bus stop. The identification of the Appellants by the head priest of the temple is unsatisfactory because he has admitted that the Appellants were in the police station and he identified them there before the identification parade. The learned High Court Judge was satisfied with the circumstantial evidence that the Appellants were detected soon after the incident with the relics and held that the charge was proved beyond reasonable doubt. The Accused Appellants are not contesting the conviction.

All three Accused Appellants were young persons at the time of committing the offence. They were married persons with small children.

With the incarceration of the Accused Appellants, their children are suffering.

The Accused Appellants were denied bail pending appeal and they are incarcerated from the date of conviction, which is from 04.12.2014.

We consider all these mitigatory factors. We set aside the order of the learned High Court Judge sentencing the Appellants for seven years and we order all the Accused Appellants to be sentenced for six (6) years Rigorous Imprisonment. We further order that the term of imprisonment shall be operative from the date of conviction.

The fine and the default term ordered by the learned High Court Judge are unchanged.

Judge of the Court of Appeal

K.K.Wicramasinghe J.

I agree.

Judge of the Court of Appeal