

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

CA 46/2013

HC Panadura Case No: 2075/05

A.D.G. Rohitha Fernando

A.D. Nishantha Fernando

Defendant-Appellant

Vs.

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

Complainant - Respondents

C.A. 46/2013

H.C. Panadura Case No: 2075/05

Before : L.T.B. Dehideniya, J. &
K.K. Wickremasinghe, J.

Counsel : Amila Palliyage for the Accused-Appellant.
A. Jinasena SDSG. for the Respondent.

Argued &

Decided on : 02/06/2017

L.T.B. Dehideniya, J.

Learned Counsel for the Accused-Appellant states:

"In this matter on behalf of 2nd and 5th accused in the indictment, I making an application in particular with regard to the 2nd Accused-appellant I humbly challenging the conviction and the sentence and confining myself only with regard to the question of implementation of the sentence imposed by the learned trial Judge from the date of the sentence namely 15.02.2013 and when this matter was taken up for argument on the previous day which was brought to the notice of Your Lordship's Court that the 5th Accused in this matter who was convicted for causing hurt to the deceased person. In the course of the same transaction is willing to pay a sum of Rs: 250,000/-

as compensation to the aggrieved party and respectfully moved Your Lordship's Court to consider the payment of such compensation as mitigatory act when suspending the sentence imposed on the 5th Accused imposed by the learned trial Judge and according to the order dated 15 02.2013, the learned trial Judge had imposed 07 years Rigorous Imprisonment and a fine of Rs: 15,000/- carrying a default sentence of six months simple imprisonment and with regard to the 5th Accused a term two years Rigorous Imprisonment a sum of Rs: 10000/- as a fine carrying a default sentence of six months simple Imprisonment.

Under these circumstances the relatives of two appellants are before Your Lordship's with the amount agreed on behalf of the 5th accused to be paid to the aggrieved party. And My Lord and My lady on behalf of the 2nd accused who has preferred this appeal before Your Lordships' Court I respectfully making an application under Section 359 of the Criminal Procedure Code and move to withdraw this appeal preferred by the 2nd Accused and respectfully move Your Lordship's to make an order directing the Prison Authorities to implement the sentence imposed by the learned trial Judge which is 7 years Rigorous Imprisonment from the date of sentencing namely 15.02 2013 and with regard to the sentence of the 5th accused the matter of sentence with the Lordship's hand and Lordships may please to consider the fact that a sum of Rs: 250,000/- to the aggrieved party as a mitigatory fact.

Senior Deputy Solicitor General states that My Lord and My Lady I agreeing and by learned trial Judge in respect of the 2nd and 5th Accused-Appellant on the 15.02.2013, I respectfully submits that the state has no objection in back dating the sentence of the 2nd Accused-Appellant i respectfully invite Your Lordship's and Lady ship's attention to the fact that the mother and the brother of the deceased person have been summoned by Your Lordship's Court. Therefore I consider whether respectfully quite to be prudent.

I respectfully submits for Your Lordship's Court to make inquiries from the said persons who are present before Your Lordship's court as to whether they are agreeable to accept that compensation the appellants are willing to pay. This submissions I make on the premise that I have had the experience in one of the matters where the similar proposal had been made and the aggrieved party insisted on getting the sentence imposed and implemented but they didn't want the compensation cases do differ according to the personalities and so therefore Your Lordship's Court to may please to inquire from the parties who are present before Your Lordship court whether they are willing to accept the compensation with or not. Based on that I will inform of the state position with regard to the implementation of the in respect of the 5th accused -appellant. The deceased mother Warnakulasuriya Sengakuttiarachchige Manel Vjith Fernando and the brother Mahapalage Janaka Mahesh Pieris are present in court. They were called in front of the Court and asked whether they are willing to accept the compensation of Rs: 250,000/- and they informed Court that they are willing to accept the compensation. The SDSG also

states that the learned trial Judge had imposed a period of two years imprisonment and a fine of Rs: 10,000/- in respect of the 5th accused-appellant. Therefore Your Lordship's Court may direct into pay Rs: 10,000/- the fine and the state has no objection in view of the fact that the compensation a sum of Rs: 250,000/- is to be paid today to the aggrieved party and they are willing to accept the same for the two year period of imprisonment to be converted into a noncustodial sentence."

The compensation of Rs: 250,000/- is paid in open Court to the mother of the deceased.

At this stage after accepting the money , the mother of the deceased requests to Court to advised the 5th accused to behaviour in good manner.

Order

In view of the circumstances of the case and the submissions made by both parties we are of the view that the sentence imposed on the 5th accused appellant be varied and the application of the 2nd accused-appellant to withdraw the appeal be allowed. Accordingly, we allow the 2nd accused-appellant's application to withdraw the appeal. We dismiss the 2nd accused-appellant's appeal, acting under Section 359 of the Criminal Procedure Code. We order that the sentence imposed on 2nd accused-appellant be back dated and implemented from the date of sentence namely from 15.02.2013.

We order to suspend the terms of imprisonment of 2 years imposed on 5th accused-appellant for 20 years.

We do not make any changes to the fine imposed on both accused appellants. The fine of Rs: 15000/- with a default term of 6 months simple imprisonment on the 2nd accused-appellant and Rs: 10,000/- fine with a default term of six months simple imprisonment on the 5th accused appellant stand unchanged.

Registrar is directed to send a copy of this order to the High Court of Panadura.

JUDGE OF THE COURT OF APPEAL

K.K Wickremasinghe,J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/-