

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

In the matter of an Application for Revision under Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka, read with the provisions in chapter XXIX of the Code of Criminal Procedure Act No. 15 of 1979 and section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

C A (PHC) APN / 131 / 2016

High Court of Balapitiya

Case No. H C B 1484 / 12

Sarath Kumarasiri Rathnayake,

ACCUSED PETIONER

-Vs-

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

RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel : Kamal Suneth Perera for the Accused Petitioner.

Shanil Kularathne DSG for the Attorney General.

Argued on: 2017-05-15.

Decided on : 2017 - 08 - 08

JUDGMENT

P Padman Surasena J

The Accused Petitioner in this case was indicted by the Hon. Attorney General in the High Court of Balapitiya alleging that he, on or about 2007-

04-12, at Karandeniya, had committed rape of a girl below the age of 16 years, an offence punishable under section 364 (2) (e) of the Penal Code as amended by Act No 22 of 1995.

The Accused Petitioner, upon the charge in the indictment being read over and explained to him, had pleaded not guilty to the charge. The trial had then begun on 2014-02-20. Thereafter at the tail end of the said trial i.e. on the date fixed for the learned defence counsel to make his final address before court, the Accused Petitioner had opted to plead guilty to the charge moving to withdraw the plea of not guilty he had earlier tendered.

Learned High Court Judge had then recorded his plea of guilt, permitting him to withdraw his previous plea of not guilty and had proceeded to hear learned counsel for both parties on the question of the quantum of the sentence. Having heard the submissions learned High Court Judge had sentenced the Accused Petitioner to a term of 08 years RI and to a fine of Rs. 500/= along with a default sentence of 01 week imprisonment.

It is this sentence which the Accused Petitioner seeks to revise in this application. It is his prayer in this application that the remainder of the sentence to be served by him be converted to a suspended sentence.

Thus, the task before this court in this case is to ascertain whether there are any grounds to allow such an application.

It is the followings which have been urged as grounds by the Accused Petitioner in this regard;

- I. that the learned High Court Judge had used evidence led against him at the trial to decide the quantum of sentence;
- II. that the learned High Court Judge had evaluated the said evidence in his order regarding the sentence;
- III. that the learned High Court Judge did not order compensation to the victim;
- IV. that the Accused Petitioner received legal advice that his sentence would be suspended if he pays a reasonable compensation;
- V. that the Accused Petitioner has two children;

It is the view of this Court that the learned High Court Judge is entitled to take the evidence led in the case into consideration in the run up to his decision with regard to the quantum of the sentence. He is also entitled to evaluate such evidence as the quality of evidence would have a direct

bearing on his decision. Thus nothing turns out from the 1st and the 2nd grounds above.

With regard to the 3rd and 4th grounds above all what this Court has to say is that it is neither the accused nor his counsel who decides the sentence. Indeed this Court time and again has frowned upon the practice of sentence bargaining¹.

The fact that the Accused Petitioner has two children is a ground common to all the accused who have children. This Court at many occasions had held that mere having children cannot be considered as a reason to escape from punishment by a person who had pleaded guilty to a serious charge. Hence the 5th ground too cannot be considered as a ground upon which the Accused Petitioner is entitled to a suspended sentence.

When learned Deputy Solicitor General raised the issue that there are no exceptional circumstances in this case, learned counsel for the Accused Petitioner relied upon paragraph 29 of the petition which he stated containing the exceptional circumstances he relied on. However learned counsel for the Accused Petitioner conceded that those matters were not

¹ Attorney General V Balapuwaduge Jayalath Mendis 1995 (1) SLR 141.

placed before the learned High Court Judge on behalf of the Accused Petitioner. In any case these are not grounds that could be considered for the assessment of sentence.

In these circumstances none of the above grounds could be considered as grounds upon which the learned High Court Judge could have acted under section 303 of the Code of Criminal Procedure Act. This is so because none of these situations constitute grounds set out in section 303 of the Code of Criminal Procedure Act as amended by Act No. 47 of 1999.

Further this Court has to stress the necessity for the learned trial judges to address the issues of public interest in deciding the appropriate sentence to be imposed on an accused who has been convicted. It is necessary that trial judges, when deciding the quantum of sentences must bear in mind that the public interest in sentencing must prevail over the welfare of the convicted accused².

Perusal of the order made by the learned High Court Judge shows to the satisfaction of this Court that he had carefully considered all aspects he ought to have considered before passing the sentence. This Court cannot

² Attorney General V Ranasinghe 1993 (2) SLR 81.

find any basis to deviate from the course of action that was adopted by him in this case.

In these circumstances this Court has no basis to interfere with the order of the learned High Court Judge. Thus, this Court decides to refuse this application. It should stand dismissed.

We make no order for costs.

Application is dismissed.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL