

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

HC/197/15

Aswadume Gedara Thushara Danushka
Wimalasiri

Petitioner

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

Respondent

CA 197/2015

HC-Kandy-95/2014

Before : **S. Devika De L. Tennekoon, J. &
S. Thurairaja, P.C.J.**

Counsel : Tenny Fernando for the Accused appellant
Chethiya Gunasekera, DSG for AG

Decided on : 21.09.2017

S. Thurairaja, P.C.J.

The counsel for the Accused Appellant makes the following application that he has instructions from the Accused Appellant who is present in court produced by the Prison Authorities.

This is an appeal from the High Court of Kandy and Accused Appellant has been convicted for grave sexual abuse under Section 365(2)(b)(2) of the Penal Code and after the trial he has been convicted and sentenced to 7 years Rigorous Imprisonment and the fine of Rs. 5000/- in default 1½ years.

Further the counsel makes an application under Section 359 of the Criminal Procedure Code to withdraw this appeal and respectfully urge considering the facts of this case, especially the Accused has been in the custody since 23.07.2015 to make the sentence to be operated from the date of conviction.

The Learned Deputy Solicitor General submits as follows;

"I am thankful to my learned friend for withdrawing the appeal. I would like to bring your lordship's notice that the boy was 10 years of age at the time of the incident and he has given evidence. The Doctor who examined the boy also gave evidence at the trial. There are no material contradictions marked at the trial.

According to the doctor's report, MLR at page 10 doctor says opinion there is medical evidence of recent penetration in the anus.

I have no objection of implementing a sentence from the date of conviction because he was incarcerated from the date of conviction."

Considering the application of the Accused Appellant, the court grants leave to withdraw, under Section 359 of the Criminal Procedure Code. Since the Accused Appellant was remanded from the date of conviction namely, 23.07.2015, we direct the Prison Authorities to implement the sentence from the date of conviction.

Considering the facts of the case, and the submissions, it is disturbing us that there was no compensation awarded to the victim child. Therefore, the court acting under 359 of the Criminal Procedure Code and 365 (b) of the Penal code and impose Rs. 25,000/- compensation to be paid to the victim child namely Asoka Priyamantha Kumara.

If the compensation is not paid, we impose a default sentence of 6 months Simple Imprisonment which will be implemented consecutive to the substantive sentence.

Subject to the variation, withdrawal of the appeal is allowed.

Appeal is dismissed.

Registrar is directed to forward the case record to the Registrar of the High Court of Kandy to implement the sentence.

JUDGE OF THE COURT OF APPEAL

S. Devika De L. Tennekoon, J.

I Agree.

JUDGE OF THE COURT OF APPEAL

LA/-