

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

Court of Appeal Case No : CA HC/177/2013

D.M.Prakash.
Mulakahena,
Thalawa.

Petitioner

Vs.

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

Respondents

CA. No.177-2013

H.C. Galle No.3429/10

BEFORE : S.Devika de L. Tennekoon, J. &
S. Thurairaja, PC. J.

COUNSEL : Asanka Dissanayaka for the Accused-
Appellant.

Chethiya Gunasekara D.S.G.for the
Respondent.

DECIDED ON : 09.11.2017.

S. Thurairaja, PC. J.

Accused-Appellant is present in Court produced by the Prison Authorise.

Counsel for the Accused-Appellant takes up a preliminary issue and submits as follows.

There were two indictments against the Accused-Appellant before the High Court and one is High Court case No. 3429/10 relevant to this matter and there was another indictment that is 3429/10 A. In the High Court when these two cases were taken up for trial the learned State Counsel has made an application that both matters be heard together (at page 58 and 59 of the brief). The defence counsel also consented to that application. (at page 60 of the brief). However there are two distinct offences in those two matters. Regarding this matter the offence was grave sexual abuse. The other matter was statutory rape. Both matters have been taken together

and simultaneously heard by the learned High Court Judge. Proceedings also same in both cases. The learned High Court Judge has delivered one Judgment for both matters and my respectful submissions to Court is that there are provisions for joinder of charges in the Code of Criminal Procedure but there are no provisions for joinder of cases. My respectful submissions is that it is illegal and not a mere irregularity, capable of being cured. Accordingly grave and substantial miscarriage of justice has been caused to the accused-appellant. In this matter I would like to raise it as preliminary issue as indicated by the learned Deputy Solicitor General. I respectfully move that this matter be sent back for re-trial.

Learned Deputy Solicitor General Chethiya Gunasekara states as follows:

This incident was happened within the Jurisdiction of High Court of Galle. At the time of the incident the girl had been 14 years and 10 month and the application with regard to the amalgamation had been made on 08.08.2012 at page 58 and as my learned friend very correctly pointed out there is no provision in the Criminal Procedure Code to amalgamate cases although there is provision to joint chargers and I agree with my learned friend's submissions. So I have no objections sending the case back for re-trial.

Order

In this case the Accused is Dematamulla Gamage Prasan. The Attorney General had preferred an indictment containing 03 counts of grave

sexual abuse occurred somewhere in January 2007. The learned High Court Judge has combined this case together with another indictment forwarded by the Attorney General under case No. 3429/10/A at High Court of Galle. The Accused is a same person and we find that the learned trial Judge had combined both indictments and held one trial and passed Judgment and two sentences. We inclined to agree with the counsels because there is no provisions under the Code of Criminal Procedure Act and Judicature Act to combine a trial as combined in this case. In our view the procedure followed is patently wrong. Therefore we pronounce that there is no trial. Hence this matter is referred back to the High Court of Galle to commence a fresh trial against the Accused-Appellant. Since the alleged date of offence was in 2007, the Registrar of the Court of Appeal is directed to inform the Registrar of the High Court of Galle to give priority in listing this case for trial

JUDGE OF THE COURT OF APPEAL

S. Devika de L. Tennekoon. J.

I agree

JUDGE OF THE COURT OF APPEAL

CN/-