

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

Court of Appeal Case No : CA HC/88/2016

R.A.Darmadasa

No. 54

Samodagama,

Hambantota.

Petitioner

Vs.

Hon Attorney General.

Attorney General's Department,

Colombo 12.

Respondents

CA. No: 88-2016 : H.C. Hambanthota 17-2005

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

COUNSEL : Janaka Gamage for the Accused-Appellant.
L. Karunanayaka, SSC. for the Respondent.

DECIDED ON : 13.11.2017

S. Thurairaja, PC. J.

Accused Appellant present in Court produced by the Prison Authorities.

Assigned Counsel informs Court that he has instruction from the Accused-Appellant not to contest the conviction but the sentence. The Accused-Appellant also confirms the stance. The Accused-Appellant was charged under section 355 (b)(2) of the Penal Code. After the trial, he was given 20 years Rigorous Imprisonment and Rs. 5000 fine and default three month in addition to the Rs.200,000/- compensation to be paid to the victim in default two years Rigorous Imprisonment.

Both counsel assisted the court with the facts of the case. It appears that the accused and the victim are related as father and daughter. This is a case of grave sexual abuse committed by the father on his daughter. Learned trial Judge has considered all factors judicially, and evaluated the evidence

before the court and imposed 20 years Rigorous Imprisonment and fine and compensation as mentioned above.

Counsel for the Accused-Appellant submits that the Accused is 59 years old and he has a daughter from another marriage has a medical condition to be supported by him. Further counsel submits that the Accused-Appellant has no means and he is a day to day wage earner to support his family. That shows that the Accused-Appellant can give only moral support to his child. Counsel for the Accused- Appellant submits that the minimum sentence is reduced in 2006 to 07 years Rigorous Imprisonment. This matter was discussed in Rathnayaka Mudiyansele Sunil Vs. A.G. in case No 199/2009 decided on 08.03.2012. In that case the court has observed that the subsequent amendment can be used at the time of sentence.

In this case the question is to decide whether the sentence imposed by the learned High Court Judge was appropriate. Considering the fact the relationship between the accused and the victim was father and daughter, the learned Trial Judge has taken it very seriously. This Court also endorse the same view, because in our society a girl's most trusted male person is her father. If the father breach the trust and bond, entire society will collapse. Specially girls will not have any male person to trust upon. This court also mindful of the sentiment of safeguarding the relationship of father and daughter.

The Accused-Appellant is not contesting the conviction and also appealing to this court to re-consider or give concession to his sentence on following grounds.

1. His age and understood his mistakes.
2. He has children and wife to look after.

Senior State Counsel informs Court that she leaves the matter to the Court to decide the quantum of sentence. Considering all factors specially the gravity of the offence and all mitigatory circumstances stated by the counsel, we affirm the conviction and decided to impose the following sentence. The 20 years Rigorous Imprisonment is reduced to 15 years Rigorous Imprisonment. Apart from that all the other conditions in the sentence will remain as it is. Further, sentence to be operated from the date of conviction.

The Prison Authority is hereby directed to implement the sentence from the date of conviction namely 26.07.2016.

The Registrar is hereby directed to transmit the original case record to the Registrar of the High Court of Hambanthota to implement the sentence.

JUDGE OF THE COURT OF APPEAL

S. Devika de L. Tennekoon, J.

CN/-

JUDGE OF THE COURT OF APPEAL