

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

**Court of Appeal Case No : CA HC/182/2013**

Dematamulla Gamage Prasan  
Mulanhena,  
yakkalamulla

**Petitioner**

**Vs.**

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

**Respondents**

**CA. No.182-2013**

**H.C. Galle No.3429/10 'A'**

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

COUNSEL : Tenny Fernando for the Accused-  
Appellant.

Dilipa Pieris D.S.G. for the Respondent.

DECIDED ON : 09.11.2017

S. Thurairaja, .PC. J.

Counsel for the Accused-Appellant Mr.Tenny Fernando submits as follows:

The indictment pertaining to this appeal consists of three charges of statutory rape occurred in 2008. In this case when the trial commenced the learned State Counsel and the Counsel for the Accused indicated to Court since there is another connected matter against the same accused both matters be amalgamated and taken up for trial together. Thereafter trial continued on both indictments. Pertaining to this particular appeal only the medical evidence was led. However, after the trial there was one Judgment pronounced on behalf of the both indictments thereafter two sentences were passed. According to the brief given to the Accused-Appellant the High Court number is 3429/10/A the learned High Court Judge has imposed 13 years Rigorous Imprisonment for each count in the indictment. It is

very respectfully submitted your Lordships that there is a procedural irregularity adopted by the learned High Court Judge contrary to the Criminal Procedure Code. Therefore it is very respectfully urged to consider sending this matter for re-trial a fresh on the same indictment.

Learned Deputy Solicitor General Mr. Dileepa Pieris states as follows:

The Accused-Appellant in this matter was indicted as my learned friend said for committing an offence of statutory rape dated between 01.01.2008 and 29.03.2008. The trial had commenced on the as per the brief of CA. 182/13 trial had commenced on the 21.1.13 but the journal entry under 10.10.12 indicates that another connected matter S.C.3429 B will be taken up together for trial along with this matter. Hence none of the lay witnesses' evidence or the evidence of investigating officers testimonies are not included in the brief only the Medical evidence is attached this brief. Therefore apart from that it is the same accused and the same victim in both cases. The so-called connected matter they prevails from offence of grave sexual abuse and present matter is in respect of a statutory rape, so the ingredient of the offence is also different when ruling the charges by the prosecution and ironically the learned trial judge had written one judgment dated 30.07.2013 pronouncing in 13 years Rigorous Imprisonment in respect of all 3 counts and in the same judgment concludes by stating it will be a total number of 20 years for both cases. Which I concedes that the erroneous judgment enter the

learned trial Judge were sentencing as well as a procedure adopted by the learned trial Judge when combining the victims evidence that was already led in 3429/10 B in respect of this matter. Hence I move from court to make an appropriate order.

Order

Heard the submissions of both counsels. When we peruse the court record we find that the trial Judge had complicated the matter by combining both cases together. We find the law especially the Criminal Procedure Code and the Judicator Act does not permit combining of trials against the accused persons at the High Court. In this case the matter is much worse because there are two indictments, one trial, two sentences and one Judgment. The Court after considering all pounced that this trial is patently wrong and declare that there is no trial. Therefore, we return this case record to the High Court of Galle to commence a fresh trial against the Accused-Appellant. Since the incident as further indictment had occurred somewhere in 2008.

The Registrar hereby directed to take steps to transmit the case record to the High Court of Galle forthwith.

JUDGE OF THE COURT OF APPEAL

S. Devika de L. Tennekoon. J.

I agree

JUDGE OF THE COURT OF APPEAL

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