

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

**Court of Appeal Case No : CA HC/208/2014**

T.A.P.D.Priyankara.

**Petitioner**

**Vs.**

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

**Respondents**

**BEFORE** : **S. Devika de L. Tennekoon, J**

**S. Thurairaja, P.C, J**

**COUNSEL** : Amila Palliyage for the Accused Appellant.

Lakmali Karunanayake, SSC for the AG

**DECIDED ON** : 11.12.2017

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**S. Thurairaja, P.C, J**

Counsel for the Accused Appellant informs Court that he had got instructions from his Client, the Part of the non- summary was heard by the Presiding Judge.

Today it is mentioned for both Counsels to inform the outcome of their discussions. It is observed by the Presiding Judge Justice Tennekoon that this matter had come up before her when she was presiding as a Magistrate at the Magistrate's Court of Horana. Both Counsel submit that since the Accused is moving to withdraw the appeal, they have no objections of having the matter before H/L Justice Devika de L. Tennekoon. The Counsel for the Accused Appellant makes submissions and submit that he is not contesting the conviction and that he seeks reconsideration of the sentence imposed on the Accused-Appellant. Both Counsel make submissions on the facts and the law. The Counsel for the Accused Appellant submits that there is ample evidence of cumulative provocation of a sudden fight and the Accused Appellant had reason to be provoked because, his younger sister who was fallen in love, when she was in tender ages, thereafter she was betrayed by the deceased. As a concerned brother he was provoked of by this incident. He submits that they will be

challenging only the quantum of the sentence namely that 10 years rigorous imprisonment imposed is excessive. Senior State Counsel Ms. Lakmali Karunanayake who is appearing for the State maintaining the highest tradition of the Attorney General's Department and submits that, the facts does not warrant a conviction under Section 296 and its absolutely falls under Section 297. Further, considering the mitigatory circumstances submitted in the original Court as well as in the Appellate Court, and the submissions of reduction of the Sentence, we find that the conviction is lawful, therefore we affirm the conviction. Regarding the Sentence we find it is little excessive. Therefore, we impose 6 years rigorous imprisonment and other conditions namely, fine and the compensation will stand as it is. Since the Accused Appellant is incarcerated six years rigorous imprisonment will be implemented from the date of conviction.

We direct the Prison Authorities to implement the sentence from 31.07.2014. If the Accused- Appellant failed to pay the fine and the compensation the default sentence will be implemented consecutively.

Appeal regarding the sentence is allowed.

JUDGE OF THE COURT OF APPEAL

**S. Devika de L. Tennekoon, J**

I agree

JUDGE OF THE COURT OF APPEAL

YD/-