

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

**Court of Appeal Case No : CA HC/159/2015**

A.A.Ajith Kumara,  
Gaswaththa handiya asala niwasa,  
Walimada road,  
Bandarawela.

**Petitioner**

**Vs.**

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

**Respondents**

C.A. NO. 159/2015

H.C. Badulla No. 11/2013

BEFORE : DEVIKA DE L. TENNEKOON, J &  
S, THURAIRAJA, PCJ.

COUNSEL : Neranjan Jayasinghe for the Accused-Appellant.  
Shanaka Wijesinghe D.S.G. for the Respondent.

ARGUED AND

DECIDED ON : 19<sup>th</sup> January, 2018

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**S, THURAIRAJA, PCJ.**

Accused-appellant is present in Court produced by the Prison Authorities.

Counsel for the accused-appellant has obtained instructions from the accused-appellant to withdraw the application and makes submissions pointing certain shortcomings in the judgment and the conviction. The accused-appellant present in Court when inquired in Sinhala confirms that he wants to withdraw the appeal and he wants the Counsel to make submissions. Counsel submits that ;

(1) there are several shortcomings in this case including the date of offence. The date of offence is not certain in the judgment.

(2) There is a family dispute very much after the incident namely, the accused and his wife and the child who was the wife's sister's son living with the grandmother and visiting the house of the accused to watch TV and to spent time. The family dispute was reported in somewhere in 2<sup>nd</sup> week of June and this complaint was made after that incident. Counsel submits that there are lot of shortcomings but to save the time of Court, he wishes to make an appeal to the Court to consider shortcoming and default in the sentence and reduction in the sentence namely, he moves the Court to give the minimum mandatory sentence. Further he submits that he is not challenging the conviction.

The Deputy Solicitor General who is appearing for the Attorney General, maintaining the highest tradition of the Department admits that there are certain shortcoming but he states the incident as it described is serious of nature. Therefore, he supports the conviction and regarding the sentence he leaves to the discretion of the Court. Considering all the submissions the Court favourably considered the application made by the accused-appellant and decides as follows:-

1. Since the conviction is not challenged we affirm the conviction but we observe the evidence and the judgment. Therefore, we decided to reconsider the sentence imposed.

On the accused-appellant. We impose 07 years Rigorous Imprisonment instead of 10 years Rigorous Imprisonment.

2. All the other conditions namely, Rs.10,000/= fine in default 06 months imprisonment will remain as it is. Further Rs.100,000/= compensation to be paid to the victim child in default of 12 months Rigorous Imprisonment will also remain as it is. The 7 years Rigorous Imprisonment will be implemented from the date of conviction. We direct the Prison Authorities to implement the sentence from the date of conviction namely, 18<sup>th</sup> of September 2015.

Conviction affirmed. Sentence varied.

JUDGE OF THE COURT OF APPEAL

**DEVIKA DE L. TENNEKOON, J**

I agree.

JUDGE OF THE COURT OF APPEAL

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