

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

Court of Appeal Case No : CA HC/175/2015

Diganwala Durayalage Anura
Rathnayake

Petitioner

Vs.

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

Respondents

01 C.A. No. 175/2015

H.C.Chilaw No. 149/2004

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

COUNSEL : Sharon Serasinha for the Accused-Appellant
Rohantha Abeysuriya SDSG for the respondent.

ARGUED AND

DECIDED ON : 11th January, 2018

S. THURAIRAJA P.C. J.

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

Heard submissions of both Counsels. The Counsel for the accused-appellant submits that she is challenging the conviction on the grounds of identity and non-consideration of the dock statement. Further, she makes submissions regarding the sentence. During the submissions Counsel states that the accused was not properly identified at the trial and there are certain shortcomings in the identity of the accused. In addition to that, she states that the dock statement has not been properly considered by the learned trial Judge.

Anyhow, the Counsel submits that this incident alleged to have happened in 24th October 1995 before the amendment to the

Penal Code was brought in. Therefore, the new amendment and the minimum mandatory sentence will not be applicable to this case.

The Counsel also submits that at the time of the incident, the accused-appellant was 16 years of age and seeks indulgence of Court to show mercy on the accused and she seeks a lenient sentence under the old law.

The learned Senior Deputy Solicitor General submits that still the identity is established even though it is not very satisfactory. Further he submits regarding the sentence he leaves it in the hands of Court and he concedes to the fact that the accused was of his tender ages and this case was under the old law. Therefore, there is no minimum mandatory sentence.

Considering all the factors, specially the incident had happened in 1995 and the accused-appellant was 16 years of age at the time and he is submitting to Court that he is repenting for the incident that had happened. We also note that the accused-appellant was absent on many occasions during the trial and that was the cause of this delay. Anyhow, considering all material factors, we affirm the conviction and vacate the sentence imposed by the learned trial Judge and impose the following sentence:

1. One year rigorous imprisonment on the 1st count and a fine of Rs.5000/= in default 03 months simple imprisonment
2. Three and half years (3 ½) rigorous imprisonment on the 2nd count and fine of Rs. 5000/= in default 03 months simple imprisonment.

Considering the submissions made by both counsel, we order the both sentences to run concurrently.

The Prison Authorities is hereby directed to implement the sentence from the date of conviction namely, 23rd July 2015. If the fine is not paid the default sentence will be operative 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

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