

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

**In the matter of an appeal under
and in terms of Section 331 of the
Criminal Procedure Code Act No.
15 of 1979.**

The Attorney General of the Democratic
Socialist Republic of Sri Lanka.

Plaintiff

**Court of Appeal
Case No. 142/2016**

Vs,

Mahayagodage Ranjith Rohana Perera
alias Podiunnahe.

Accused

And Now Between

The Attorney General of the Democratic
Socialist Republic of Sri Lanka

Plaintiff-Appellant

**High Court of Avissawella
Case No. 87/2013**

Vs,

Mahayagodage Ranjith Rohana Perera
alias Podiunnahe.

Accused-Respondent

**Before : S. Thurairaja PC, J &
A.L. Shiran Gooneratne J**

**Counsel : Dr. Jayatissa De Costa PC for the Accused- Respondent
Rohantha Abeysuriya SDSG for the Plaintiff- Appellant**

**Written Submissions : Accused-Respondent –2nd October 2018
Plaintiff- Appellant – 28th August 2018**

Argued on : 30th August 2018

Judgment on : 19th October 2018

Judgment

S. Thurairaja, PC. J

This is an appeal preferred by the Attorney General against the sentence imposed on the Accused Respondent (hereinafter sometimes referred to as the "Respondent") in High Court case No. 87/2013, High Court of Avissawella.

The Attorney General had indicted the Accused-Respondent, Mahayagodage Ranjith Rohana Perera alias Podiunnahe and the 1st count is for possessing a T-56 automatic weapon punishable under Section 22(3) read with Section 22(1) of the Firearms Ordinance No.33 of 1916 as amended by Act No.22 of 1996. 2nd count is unauthorized possession of a shotgun punishable under Section 22(3) read with Section 22(1) of the Firearms Ordinance No.33 of 1916 as amended by Act No.22 of 1996. The 3rd count is in the same transaction, the offence of keeping a shotgun without a licence punishable under Section 22(3) read with Section 22(1) of the Firearms Ordinance No.33 of 1916 as amended by Act No.22 of 1996 and 4th count is possessing of 35 live cartridges punishable under the Explosives Act as amended by Act no.33 of 1969 and Act no.18 of 2005.

Indictment was served on 10th March 2013 and the matter was fixed for trial. On the 4th day of trial, 11th August 2016 the Accused-Respondent pleaded guilty for all four counts in the indictment. Accordingly he was imposed following sentences.

1. For the 1st count he was imposed Rs.10,000/- fine, in default 2 years simple imprisonment, further sentence of 6 months rigorous imprisonment.
2. For the 2nd count he was imposed Rs.10,000/- fine, in default 2 years simple imprisonment, further sentence of 6 months rigorous imprisonment.
3. For the 3rd count he was imposed Rs.10,000/- fine, in default 2 years simple imprisonment, further sentence of 6 months rigorous imprisonment.
4. For the 4th count he was imposed Rs.25,000/- fine, in default 5 years simple imprisonment, further sentence of 6 months rigorous imprisonment.

Learned Trial Judge had suspended the sentence of 6 months on each count and suspended the same for a period of 20 years.

Being aggrieved with the sentence imposed on the Accused-Respondent, the Attorney General preferred this appeal stating that the sentence is illegal. Therefore he seeks a relief from this Court to impose a lawful sentence stipulated under the relevant law.

It is observed the Accused-Respondent had pleaded guilty to all four counts. Therefore Section 14(b) (1) of the Judicature Act No. 2 of 1978 is to be considered.

"Any person who stands convicted of any offence by the High Court may appeal there from to the Court of Appeal-

In a case tried without a jury, as of right, from any conviction or sentence except in the case where-

- i. The accused has pleaded guilty; or*
- ii. The sentence is for a period of imprisonment of one month of whatsoever nature or a fine not exceeding one hundred rupees:*

Provided that in every such case there shall be an appeal on a question of law or where the Accused has pleaded guilty on a question of sentence only.

Now the appeal before the Court is only against the sentence. It should be appropriate to see the relevant law, for the purpose of easy reference; the relevant sections are reproduced below.

Section 22 of the Firearms Ordinance No.33 of 1916 as amended by Act No.22 of 1996-

(1) No person shall have in his custody, or gun possess or use, any gun, unless he shall hold a licence therefor in accordance with this Ordinance (herein referred to as a gun licence).

(2) *Nothing in this section contained shall apply or extend-*

- (a) *to any licensed manufacturer, dealer, or repairer in respect of any gun in his custody or possession for the purpose of his business ; or*
- (b) *to any person employed by any such manufacturer, dealer or repairer to carry or convey any gun, for the purpose of his business, in respect of such carriage or conveyance; or*
- (c) *to the custody of any gun by any person entrusted by a person duly licensed to possess a gun with temporary custody, whether a servant of the owner or otherwise, of any gun for which a licence has been obtained ; or*
- (d) *to any member of the family of a deceased person, who held at the time of his decease a licence to possess a gun, until the expiration of one calendar month from such decease ; or*
- (e) *to any watcher or other person employed in the protection of immovable property or crops in respect of the use for the purpose of his employment of any gun for which such his employer is licensed : Provided that such watcher or other person holds a permit in accordance with section 34; or*
- (f) *to the possession of any gun by any person who shall have obtained or removed the same under any permit issued under this Ordinance, for a period of ten days after the date on which he shall have so obtained or removed it:
Provided that such person shall make no use of such gun during the said interval; or*
- (g) *to the possession of any gun by any person who shall have been the holder of a licence for such gun, but whose licence shall have expired, for a period of ten days after the date of such expiration : Provided that such person shall make no use of such gun during the said interval; or*
- (h) *to the possession of any antique, obsolete or unserviceable gun kept as a curiosity or ornament, and certified as such by the licensing authority;*

(i) to the possession and use of a gun by any person in respect of which the Minister has, by writing under the hand of the Secretary, given a permit to such person:

Provided that the Minister may at his discretion in like manner cancel or revoke any such permit.

(3) Any person contravening the provisions of this section shall be guilty of an offence against this Ordinance and shall on conviction be punishable

a) for the first offence with a fine not exceeding ten thousand rupees or with rigorous imprisonment for a period not exceeding five years or with both such fine and imprisonment;

(b) for the second or any subsequent offence, with rigorous imprisonment for a period of not less than ten years and not exceeding twenty years:

Provided that where the offence consists of having the custody or possession of, or of using, an automatic gun or repeater shotgun, the offender **shall be punished with imprisonment for life:**

Provided further that where the offence consists of having the custody and possession of, or of using a smooth bore shotgun of the muzzle-loading variety, the offence, shall be punishable as provided for in section 44.

(4) Every offence under this section shall be finger printable upon conviction as if such offence were included in the Schedule of finger printable offences under the Prevention of Crimes Ordinance.

(emphasis added.)

Section 9(2) of the Explosives Act as amended by Act no.33 of 1969 and Act no.18 of 2005-

"Subject to the provisions of section 10, no person shall, except under the authority of a permit, import, export, acquire, possess, transport or use any explosives for any purpose other than that of such business as is referred to in subsection(1). (2) Subject to the provisions of section 10, no person shall, except under the authority of a permit, import, export, acquire, possess, transport or use any explosives for any purpose other than that of such business as is referred to in subsection(1)."

It is the submission of the Deputy Solicitor General that the only sentence for the 1st count can be imposed as per the Firearms Ordinance is life imprisonment. Therefore the sentence imposed in the present case is illegal and inappropriate.

The President's Counsel for the Accused-Respondent had submitted two written submissions and an affidavit from the Accused-Respondent. The Counsels are relying on the Judgment of the **Attorney General vs Ambagala Mudiyansele Samantha (SC Appeal No. 17/2013)** and submits that there is no minimum mandatory sentence condition can be imposed on the judicial authorities. Hence the Trial Judge can impose any sentence he thinks deemed to be fit.

I carefully perused the said judgment and two other judgments referred in that said case. It will be appropriate to refer the Supreme Court judgment delivered on under the case no. SC Appeal 17/2013 dated 12th March 2015. That was an appeal by the appellant arising out of CA 297/2008 and High Court of Kurunegala 259/2006.

According to the said judgment, the facts of the case described as follows.

"The Appellant, a labourer in occupation had married the victim's sister. They had no children in that marriage. The victim's sister had left the country without the consent of the husband about a year after the marriage. The Appellant was then invited by the victim's parents ie his mother in law and father in law, to

come and live with them in their house. The victim was a 15 year old girl attending school. Only four of them lived in that house. The girl was found to be pregnant when her mother took her to the hospital when she was unwell. Then the pregnancy was 5 months old. The parents stopped her going to school; told the Appellant not to come home again; took her to another village and kept her there, with an older married couple who had no children, having in mind to hand over the baby to them when it is born. The parents did not go to the Police. The victim girl did not make any complaint to the Police.

Most unexpectedly, some outsider had informed the Police of the area that the Appellant and the victim were mysteriously missing from that house. It is only then that the Police had launched an investigation and found that the girl was away in another house whereas the Appellant was living with his parents in his village closed by. The statement made to the Police revealed that the girl was only 15 year old, and then the Appellant was taken into custody and was later enlarged on bail.

The victim gave birth to a baby girl on 19/07/2007 in the Kuliypitiya Base Hospital. It is the Appellant who informed the Registrar of Births of the area that the baby girl was born, according to her birth Certificate filed of record. It is mentioned therein that the father of the baby is the Appellant, A.M. Samantha Sampath and that the parents were not legally married. It is accepted that at the time of her birth, the baby girl Sanduni Wasana had a father, the Appellant and a mother, the victim.

The Attorney General forwarded an indictment to the High Court dated 04/08/2006. It was taken up for trial on 28/10/2008 for the first time. The Appellant pleaded guilty to the charge of rape of a girl below 16 years and he was subject to punishment by the High Court under Section 364(2)(e) of the Penal Code as amended by Act N0.22 of 1995. The baby Sanduni Wasana is being paid maintenance by the Appellant and moreover he visits the school as

the father of the child when called upon to do so; has arranged the transportation to and from the school and sends money to maintain the child. The High Court imposed a punishment of 2 years Rigorous Imprisonment suspended for 10 years and imposed a fine and compensation."

Further the Supreme Court has observed as follows.

"In the present case, we must look at the big picture with the victim of rape the Appellant, the father of the child born, and the 10 year old child who was born into this world as a result of the victim having been raped. The victim of rape never complained to the Police until after a pregnancy of 5 months when Police on its own came to the victim in search of her when an outsider informed the Police of her missing from the home. There was no chance for the victim to give evidence as the Appellant pleaded guilty to the charge of statutory rape of the victim. There is a bar for the victim and the Appellant enter into a marriage as the Appellant is already legally married to the victim's sister who is living abroad. The child is been looked after by the Appellant father in the eyes of the society, and the child is depend on the income earned by the Appellant."

It will be mandatory for us to refer SC Reference 03/2008. This case also based on similar facts to the decision made in Supreme Court SC Appeal 17/2013. The applicability of SC Reference 03/2008 was clearly explained by another Supreme Court decision in SC 179/2012.

*"this however in the eyes of Court **would only apply in cases when the Accused under the age of 16...**"*(Re-produced as it is.)

Considering the purpose of sentencing in Firearms Ordinance No.33 of 1916 as amended by Act No.22 of 1996, the legislature considering the public interest especially protection of the public, had imposed a minimum mandatory sentence. In our view it will not appropriate to reduce or considering of giving lenient sentence without valid reasons is inappropriate.

This Court should be mindful of the law and the purpose of the law. Therefore considering all these circumstances I am of the view that sentence imposed is inappropriate. Considering the facts the Accused-Respondent virtually had a mini-armoury. He had no valid or reasonable explanation to offer why he had possessed so many weapons and live ammunitions.

Considering all we find the sentence is inappropriate. Hence we vacate the sentence imposed on the 1st count and we impose life imprisonment.

For the 2nd count we vacate the sentence imposed and impose life imprisonment.

For the 3rd count we vacate the sentence imposed and impose life imprisonment.

The sentence imposed on the 4th count is affirmed.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

A.L. Shiran Gooneratne, J

I agree,

JUDGE OF THE COURT OF APPEAL