

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

The Democratic Socialist Republic
of Sri Lanka,

V.

C.A. Case No. 224/17

**H.C.Balapitiya Case No.
HCB 1948/17**

1. Addarage Dhanushka Sampath
Sandaruwan
2. Addarage Sameera Samapth

Accused

And NOW

Addarage Dhanushka Sampath Sandaruwan

1st Accused Appellant

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

Respondent

BEFORE

: **K.K. WICKREMASINGHE, J
K. PRIYANTHA FERNANDO, J**

COUNSEL : Anuja Premaratne PC with Imasha Senadheera for the Accused/Appellant.
Riyaz Bary, SSC for the A.G.

ARGUED ON : 28.05.2019

WRITTEN SUBMISSIONS

FILED ON : 10.12.2018 by the Respondent.
16.05.2018, 28.06.2019 by the Accused Appellant

JUDGMENT ON : 06.08.2019

K. PRIYANTHA FERNANDO, J.

01. 1st Accused Appellant (Appellant) and the 2nd Accused were indicted in the High Court of Balapitiya. Out of the 3 counts in the indictment, count No.01 was against both Appellant and the 2nd Accused, and counts No. 02 and 03 were against the Appellant. On 27.04.2017, the indictment was served on both Appellant and the 2nd Accused, and both pleaded not guilty to the charges. Both accused persons have moved for postponements on several occasions to consider the possibility of tendering a plea of guilty, and on 26.09.2017, both accused persons have not come to Court. On

27.09.2017 both accused surrendered to Court by way of a motion filed by counsel and moved Court to withdraw the earlier plea and to plead guilty. Upon reading and explaining the charges in the indictment to the Appellant and the 2nd Accused, they pleaded guilty to their respective charges. The learned High Court Judge after convicting the Appellant and the 2nd Accused on their own plea of guilty, sentenced both accordingly.

02. On count No. 03, the charge against the Appellant was having in possession of a gun in contravention of Section 22(1) read with Section 22(3) of the Fire Arms Ordinance and the learned High Court Judge sentenced him to imprisonment for life. Being aggrieved by the said sentence of imprisonment for life on count No.03, the Appellant preferred the instant appeal.
03. Counsel for the Appellant submitted that, the charge did not specify the gun the Appellant was in possession and therefore the charge is misleading. Appellant pleaded guilty expecting a lenient punishment, he submitted.
04. Section 22(1) of the Firearms Ordinance provides;

'No person shall have in his custody, or possess or use, any gun, unless he shall hold a licence therefore in accordance with this Ordinance (herein referred to as a gun licence).'
05. The penal section (Section 22(3)) as amended by Act No.22 of 1996 provides;

'(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 not less than 10 years and not exceeding 20 years;

Provided that where the offence consists of having the custody or possession of, or of using, an automatic gun or repeater shot gun, the offender shall be punished with imprisonment for life; ...'

06. Count No. 03 in the indictment clearly specifies the penal section as *"punishable under section 22(3) to be read with section 22(1) of the Firearms Ordinance"*.
07. Indictment contains the list of productions that the prosecution intends to produce and also the list of witnesses that the prosecution intends to call. No.01 and No.03 in the list of productions are, a gun, and a government analyst report, respectively. They are not only disclosed to the defence by the prosecution, but also copies are handed over to the Accused with the indictment. Government analyst report that was disclosed clearly specifies that the gun sent for analysis is a T56 Automatic Rifle. Counsel had appeared for the Appellant in the High Court. During the sentencing submissions in the High Court, State Counsel had clearly stated about the automatic gun that was in possession of the Appellant and also the prescribed punishment by law. Counsel for the Appellant never disputed the same. Therefore, the contention of the counsel that the Appellant was

mised as the charge did not specify the gun, is untenable. Possessing any gun without a licence is an offence in terms of section 22(1). When it comes to sentencing, section 22(3) applies and that was clearly mentioned in the charge. I am of the view that the Appellant was not misled by the charge as mentioned before. It has not caused any prejudice to the Appellant.

08. Counsel for the Appellant in his written submissions filed on 28.06.2019, after the oral arguments, submitted that the learned Trial Judge failed to satisfy himself that the Appellant rightly comprehended the effect of his plea, and therefore had not followed the procedure laid down in section 197 of the Criminal Procedure Code.
09. The journal entry dated 27.09.2017 clearly demonstrates that the learned Trial Judge had read and explained the charges to the Appellant. Further, as I explained before in paragraph 01 of the judgment, when considering the sequence of events that had taken place between 27.04.2017 and 27.09.2017, it is clear that the Appellant was well aware of what he was charged for. It was on application by his own counsel that the charges were again read and explained to the Appellant on 27.09.2017, at which point the Appellant pleaded guilty. Therefore, the contention above by the counsel for the Appellant is untenable.
10. Counsel for the Appellant further contended that, however, the sentence imposed by the learned Trial Judge is excessive. Inviting the attention of the Court to S.C. Appeal No. 17/2013 and S.C. Reference 03/2008, counsel submitted that notwithstanding the prescribed minimum mandatory

sentence, learned High Court Judge should have imposed a lenient sentence in the given circumstance.

11. Decided cases from the Superior Courts that the Counsel for the Appellant invited the attention of this Court are, cases of sexual offences where young offenders got involved with underage victims with consent. Circumstances of those cases are quite different to this case. This is a case where the Appellant possessed a T56 automatic gun without a licence. Committing serious offences including murder and robbery using automatic guns are very prevalent in this country. Court has to take serious cognizance of that fact in sentencing such offenders. Intention of the legislature is clear when the amendment was brought in the year 1996, to the Fire Arms Ordinance, prescribing severe sentences. The mitigatory factors mentioned on behalf of the Appellant are more of personal in nature, and I do not see any reason to deviate from the mandatory sentence prescribed by law. Therefore, I see no reason to interfere with the mandatory sentence imposed by the learned High Court Judge.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

K.K. WICKREMASINGHE, J

I agree.

JUDGE OF THE COURT OF APPEAL