

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

In the matter of an appeal in terms of Section  
31(1) of the Code of Criminal Procedure Act,  
No. 15 of 1979 read with Article 138 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.

The Democratic Socialist Republic of Sri  
Lanka.

**Complainant**

CA. No. 281/2018

**Vs.**

High Court of

Mohomad Nilam Mohomaad Sameer

Colombo

**Accused**

Case No.107/2017

**And Now Between**

Mohomad Nilam Mohomaad Sameer

**Accused-Appellant**

**Vs.**

The Honourable Attorney General,

Attorney General's Department,

Colombo 12

## **Complainant-Respondent**

BEFORE : N. Bandula Karunarathna, J.

: R. Gurusinghe, J.

COUNSEL : Neranjan Jayasinghe for the Accused-Appellant.

Sanjeewa Dissanayake DSG., for the Respondent.

ARGUED ON : 15.03.2021

DECIDED ON : 31.03.2021

**C.A. No. 281/2018**

**H.C. Colombo No. 107/2017**

R. Gurusinghe, J.

The Accused-Appellant was indicted in the High Court of Colombo for committing offence punishable under Section 5(2) of the Offences against Public Property Act, No. 12/1982 as amended by the Act No. 28 of 1999 read with Section 403 of the Penal Code.

Charges levelled against the Appellant are as follows:

On or about 3<sup>rd</sup> September 2005, the appellant had pawned four false bangles to the People's Bank Liberty Plaza branch, pretending them as

gold bangles under the No. 5063296 to Emil Pathmarajan and obtained Rs.40,000/-.

On or about 5<sup>th</sup> of September 2005, the appellant had pawned five false bangles to the same bank pretending them as gold bangles under the No. 5063322 to Herath Hamige Punchi Bandara Seneviratne and obtained Rs. 49,000/-.

On or about 7<sup>th</sup> of September 2005, the appellant had pawned four false bangles pretending them as gold bangles under the No. 5063394 to Herath Hamige Punchi Bandara Seneviratne and obtained Rs. 42,800/-.

After trial the appellant was convicted of all charges. He was sentenced to 10 years rigorous imprisonment for each count and fined Rs. 120,000/- for the first count and Rs. 147,000/- for the second count and Rs. 128,000/- for the third count. In default imposed rigorous imprisonment for a period of two years each.

Being aggrieved by the said conviction and the sentence the appellant preferred this appeal.

When this appeal was taken up for hearing learned Counsel for the Appellant submitted that the appellant was not proceeding to have the conviction set aside. The appellant now seeks only a reduction of the sentence.

Learned Deputy Solicitor General for the Respondent submitted the learned High Court Judge had set out reasons for the sentence imposed on the appellant. If the appellant was indicted separately for the charges, he would not be able to seek sentences to run concurrently. As

a general rule, even sentenced on the same day the sentences for each offence should run consecutively.

Learned Deputy Solicitor General for the Respondent submitted the Judgment of the Supreme Court in the case Aswan Mohamed Riswan Vs. Attorney General C.A. Revision No. C.A. (PHC) APM 141/2013, H.C. Ratnapura H.C. No. 25/2010, Decided on 25<sup>th</sup> March 2015 which stipulates guidelines regarding sentencing; where Justice K.T. Chithrasiri has discussed the objectives of sentencing and the factors that should be taken to consideration before a sentence is determined.

The following factors were enumerated in the aforesaid judgment.

- (a) *The maximum and the minimum (if any) penalty prescribed for the offence;*
- (b) *The nature and gravity/seriousness of the particular offence.*
- (c) *The offender's culpability and degree of his/her responsibility for the offence;*
- (d) *Mental state of the accused at the time the offence was committed;*
- (e) *Evidence as to pre-arrangement for the commission of the offence;*
- (f) *The impact of the offence on any victim and the injury, loss or damage caused as a result of the offence committed;*
- (g) *Whether the offender pleaded guilty to the offence and if so, the stage in the proceedings at which the offender did so or the stage at which it was indicated;*
- (h) *The conduct of the offender during the trial as an indication of remorse or the lack of remorse;*

- (i) Any action taken by the offender to make restitution of the injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider;*
- (j) The offender's previous character, good or bad;*
- (k) Imprisonment should be used when no other sentence is adequate;*
- (l) Proportionality between the crime and the sentence;*
- (m) Possibility of reforming the offender;*
- (n) To ensure consistency in deciding sentences;*
- (o) Presence of any aggravating or mitigating factors concerning the offender or any other circumstance relevant to the commission of the offence; and*

The sentence under Section 4(2) of the Offences against the Public Property Act is imprisonment of either description for a term not less than two years but not exceeding twenty years and with the fine Rs.1000/-or three times the amount in relation to each such offence was committed, whichever amount is higher.

The sentence of Section 403 of the Penal Code is imprisonment of either description for a term which may extend for seven years, and shall be liable to fine.

In the case of Attorney General Vs. Gunaratne and others [1995] 2 SLR 240, the Court of Appeal imposed two years rigorous imprisonment for accused convicted for robbery of public property. In that case the accused were indicted on a charge of robbery of a sum of Rs.58,400/- being public property. They pleaded guilty to the charge. Each accused was sentenced to a term of two years rigorous imprisonment suspended for a period of five years and ordered to pay a sum of Rs. 2500/- each as State costs.

The Attorney General appealed against this order in respect of the sentence imposed on the accused on the basis that the facts and circumstances disclosed the commission of a serious offence and the accused deserved a deterrent punishment.

The Court of Appeal set aside the sentence imposed by the learned High Court Judge on 22.09.93 and imposed on each of the 1st, 2nd and 3rd accused-respondents a sentence of 2 years R.I. imposed on each of the accused-respondent and a fine of Rs. 175,200/- In default, sentenced each of the accused-respondent to a term of 2 years' R.I.

The maximum punishment for robbery armed with any deadly weapon is twenty years of rigorous imprisonment. In that case the accused had robbed Rs. 58,400/- of public money from a principal of a school. The bag containing the money was grabbed by one of the accused. Thereafter the accused went away having fired a shot in the air.

When comparing the case in hand and above referred to Attorney General Vs. Gunaratne and others (Supra) a term of 36 years of imprisonment can be considered as excessive.

In the case of Soman vs State of Kerala on 14 December, 2012, the Supreme Court of India had observed the lack of guidelines regarding punishment. Paragraph 12 of that Judgment states as follows;

*12. Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice. There are no legislative or judicially laid down guidelines to assist the trial court in meting out the just punishment to the accused facing trial before it after he is held guilty of the charges.*

In State of Punjab v. Prem Sagar the Supreme Court of India observed as follows;

*2. In our judicial system, we have not been able to develop legal principles as regards sentencing. The superior courts except making observations with regard to the purport and object for which punishment is imposed upon an offender, have not issued any guidelines. Other developed countries have done so.*

(<https://indiankanoon.org/doc/27726153/> accessed 30.3.2021)

We also have the issue of inconsistency and disproportionality of punishment because of the lack of guidelines regarding sentencing.

Ordinarily, when offences arise out of unrelated facts or incident consecutive sentences would be appropriated. However, it is our view that to impose consecutive sentences for offences committed at the same time exceeding the statutory maximum is undesirable.

The sentence should not be greater than the culpability of the offender. It is difficult to arrive at a just and proportionate sentence for multiple offending simply by adding together notional single sentences. The offender's behaviour together with the factors personal to the offender and other factors should be considered.

Now the age of the appellant is 57 years. He is suffering from a kidney disease. Life expectancy of a male in Sri Lanka is 72 years. Further, the accused had made an admission under Section 420 of the Criminal Procedure Code. When considering the above factors, we are of the view that the aggregated length a term of 36 years of imprisonment is not proportionate. Therefore, we order that ten years of rigorous imprisonment for each count should run concurrently.

We further direct that the sentence is deemed to have been served from the date of the conviction namely, 14<sup>th</sup> November 2018. Terms in default also reduce to one-year rigorous imprisonment for each fine. Fines imposed on the appellant are not changed.

Subject to the changes of the sentence, appeal of the accused-appellant is dismissed

Judge of the Court of Appeal

**N. Bandula Karunaratna, J.**

I agree.

Judge of the Court of Appeal