

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

In the matter of an Application under Section 331 (1) of the Code of Criminal Procedure Act No. 15 of 1979.

The Democratic Socialist Republic of Sri Lanka

Puttalam HC Case No: CA/HCC/23/18

High Court Puttalam Case No: HC/20/2017

Complainant

Vs.

Karunaratne Mudiyansele Samantha Priyalal
alias Lal Mama alias Marasinghe Mudiyansele
Saman Pushpakumara

Accused

And now between

Karunaratne Mudiyansele Samantha Priyalal
alias Lal Mama alias Marasinghe Mudiyansele
Saman Pushpakumara

Accused-Respondent

Vs.

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

Complainant-Respondent

Before: **N. Bandula Karunaratna J.**

&

R. Gurusinghe J.

Counsel: Sahan Kulatunga AAL for the Accused-appellant

R. Bary DSG for the Complainant-Respondent

Written Submissions: By the Accused-appellant on 10.09.2018

By the Complainant-Respondent - 09.10.2018

Argued on : 13.01.2022

Decided on : 19.01.2022

N. Bandula Karunarathna J.

This appeal is preferred against the Judgement, delivered by the learned Judge of the High Court of Puttalam, dated 25.04.2018, by which, the accused-appellant, was convicted and sentenced to 24 years Rigorous Imprisonment.

The accused-appellant, hereinafter referred to as the "appellant", was indicted in the High Court of Puttalam on the following charges;

1. that he committed the offence of grave sexual abuse by licking the female genitals on Demuni Tharushi Sandumuni Pushpakumara (a female under 16 Years of age) at Dunumadalawa - Saliyawewa within the jurisdiction of this Court, on or around 15.07.2013, which is an offence punishable under section 365(B)(2)(b) of the Penal Code as amended by Act No 22 of 1995, 29 of 1998 and 16 of 2006.
2. that he committed the offence of grave sexual abuse by shaking the male genitals keeping on the female genitals on Demuni Tharushi Sandumuni Pushpakumara (a female under 16 Years of age) at Dunumadalawa - Saliyawewa within the jurisdiction of this Court, on or around 15.07.2013, which is an offence punishable under section 365(B)(2)(b) of the Penal Code as amended by Act No 22 of 1995, 29 of 1998 and 16 of 2006.

The case has been taken up for trial after the accused-appellant pleaded not guilty to the charges against him. Eight witnesses gave evidence for the prosecution and P 1 - P 2(a) were marked as documents. Only the accused-appellant has given a dock statement on behalf of the defence.

The girl was born on 07.08.2005 and was identified as a person under the age of 16 at the time of the indictment. Those facts were admitted under Section 420 of the Criminal Procedure Code.

After the trial, the accused-appellant was found guilty of two counts of grave sexual abuse by the learned High Court judge, and accordingly, the accused-appellant was sentenced to 12 years of rigorous imprisonment for each count to run consecutively and ordered that the accused-appellant pay compensation of Rs. 100,000/- to the victim in default 3 years simple imprisonment. A fine of 25,000/- for each count was ordered to pay and in default, another 3 years of simple imprisonment was imposed.

Aggrieved by the said decision of the learned High Court judge, the accused-appellant preferred this appeal.

When this matter was taken up for argument on 13.01.2022 the learned counsel appeared for the accused-appellant indicated that his client has decided not to challenge the conviction but to challenge only the sentence. The appellant was sentenced to 12 years of rigorous imprisonment for each count to run consecutively.

The Learned Counsel who appeared for the accused-appellant informed the court that he was not having any previous convictions and he is a father of 3 children. Therefore, requested from the court to impose the 12 years rigorous imprisonment on each count to run concurrently.

It was decided in MOHD. Akhtar Hussain Alias Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs (Prevention) Ahmedabad & ORS (date of judgment 31.08.1988) 1988 AIR 2143, 1988 SCC (4) 183, 1988 SCALE (2)552, 1988 SCR Supl. (2) 747 and JT 1988 (3) 586, as follows;

HELD: 1. Section 427, Cr. P.C. relates to the administration of criminal justice and provides the procedure for sentencing. The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.

In the present case, the two offences were committed under the same transaction and therefore the accused-appellant should be given 12 years rigorous imprisonment to run concurrently.

The learned DSG appearing on behalf of the respondent informs the court that he has no objections to the application of the accused-appellant.

Considering the circumstances of the case we decide to impose 12 years rigorous imprisonment for each count to run concurrently with effect from 25.04.2018. The rest of the sentence will remain the same.

The registrar of this court is being directed to inform the prison authorities as well as the High Court of Puttalam, about this judgement forthwith.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree.

Judge of the Court of Appeal