

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

In the matter of an appeal in terms of section 331 of the Code of Criminal procedure (amendment) Act No 21 of 1988 read with article 138 of the Constitution of The Democratic socialist Republic of Sri Lanka.

Court of Appeal No 313/18

The Democratic Socialist Republic of Sri Lanka

Chilaw HC No 53/2016

Complainant

Vs.

Heen Kenda Mudalige Chandrarathne

Accused

And now

Heen Kenda Mudalige Chandrarathne

Accused-Appellant

Vs

The Attorney General

Complainant-Respondent

Before:

N. Bandula Karunaratna J.

&

R. Gurusinghe J.

Counsel:

Mahinda Jayawardena AAL with Champika Monarawila AAL for the Accused-Appellant

Janaka Bandara SSC for the Complainant-Respondent

Written Submissions:

By the Accused-Appellant on 01.08.2019

By the Complainant-Respondent - Not filed

Argued on :

25.02.2022

Decided on :

09.03.2022.

N. Bandula Karunarathna J.

This appeal is from the judgment, delivered by the learned Judge of the High Court of Chilaw, dated 08.11.2018, by which, the accused-appellant, who is before this court, was convicted and sentenced to 30 years rigorous imprisonment and Rupees Two Hundred and Twenty Five thousand (Rs. 225,000/-) compensation.

The accused-appellant was indicted in the High Court of Chilaw on the following counts;

- Count 01:** that from 01.07.2007 up to 11.06.2008 and at Naragala, within the Jurisdiction of this Court the accused-appellant committed cruel sex on Herath Mudiyansele Akila Sanduni Kumari and thereby committed the offence of grave sexual abuse on Herath Mudiyansele Akila Sanduni Kumari, by shaking the male genitals keeping in between her thighs at Naragala within the Jurisdiction of this Court who is under sixteen years of age 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.
- Count 02:** that except during the same time and place and in the course of a different transaction the accused-appellant committed cruel sex on Herath Mudiyansele Akila Sanduni Kumari and thereby committed the offence of grave sexual abuse of Herath Mudiyansele Akila Sanduni Kumari, by shaking the male genitals keeping in between her thighs at Naragala within the Jurisdiction of this Court who is under sixteen years of age 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.
- Count 03:** that on or around 12.06.2008, within the Jurisdiction of this Court the accused-appellant committed cruel sex on Herath Mudiyansele Akila Sanduni Kumari and thereby committed the offence of grave sexual abuse on Herath Mudiyansele Akila Sanduni Kumari by keeping his male organ in between her thighs at Naragala within the Jurisdiction of this Court who is under sixteen years of age 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.

After the trial, the Learned Trial Judge found the accused-appellant guilty in respect of all 3 Counts and proceeded to impose the following sentences.

In respect of Count 01: 10 years rigorous imprisonment, fine of Rs. 2,500/- and carrying a default sentence of 3 months of simple imprisonment and compensation of Rs. 75,000/- to be paid to the prosecutrix and carrying a default sentence of 6 months simple imprisonment.

In respect of Count 02: 10 years rigorous imprisonment and fine of Rs. 2,500/- and carrying a default sentence of 3 months of simple imprisonment and compensation of Rs. 75,000/- to be paid to the prosecutrix and carrying a default sentence of 6 months simple imprisonment.

In respect of Count 03: 10 years rigorous imprisonment and fine of Rs. 2,500/- and carrying a default sentence of 3 months of simple imprisonment and compensation of Rs. 75,000/- to be paid to the prosecutrix and carrying a default sentence of 6 months simple imprisonment.

The Learned High Court Judge has not directed the sentences to run concurrently. Therefore, it could be considered to run consecutively. The accused-appellant preferred this appeal against the said conviction and sentence.

When this appeal was taken up for argument the learned counsel for the accused-appellant informs court that his client is not challenging the conviction. The accused-appellants is challenging only the sentence.

The learned counsel who appeared for the accused-appellant informed the court that he is 63 years of age and was not having any previous convictions. He is a father of 2 children. Therefore, requested from the court to impose 10 years of 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 are not the same or the facts constituting the two offences are quite different.

In the present case, the three offences were committed under the same transaction and therefore the accused-appellant should be given 10 years rigorous imprisonment to run concurrently.

The learned SSC appearing on behalf of the respondent informs the court that he has no objections to the application of the accused-appellant, to impose 10 years of rigorous imprisonment to run concurrently.

Considering the circumstances of the case we decide to impose 10 years rigorous imprisonment for each count to run concurrently with effect from 08.11.2018. The rest of the sentence will remain the same.

The registrar of this court is being directed to inform the prison authorities about this judgement and the original case record should be sent to the High Court of Chilaw along with a copy of this judgement forthwith.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree.

Judge of the Court of Appeal