

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 Code of Criminal Procedure Act No. 15 of 1979 (as amended) read with Article 138 of the constitution of the Democratic Socialist Republic of Sri Lanka.

CA No: CA/HCC/ 153-155/16
HC: Vavuniya: HC 2449/16

The Democratic Socialist Republic of Sri Lanka.

Complainant

Vs.

1. Kirige Wijeratnege Chamil Wijeratne
2. Herath Hamige Sandun Kumara
3. Appurralage Ajith Susantha

Accused

And now between

1. Kirige Wijeratnege Chamil Wijeratne
2. Herath Hamige Sandun Kumara
3. Appurralage Ajith Susantha

Accused- Appellants

Vs.

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

Complainant-Respondent

Before: N. Bandula Karunaratna J.

&

R. Gurusinghe J.

Counsel: Shanaka Ranasinghe PC with Tharaki Manchanayaka AAL for the 01st Accused-Appellant

N. Mihindukulasuriya AAL with Priyasala Padmasiri AAL for the 02nd and 03rd Accused-Appellants

Riyaz Bary SSC for the Complainant-Respondent

Written Submissions: By the 1st Accused-Appellant on 18.10.2018
By the 2nd and 3rd Accused-Appellants on 12.11.2018
By the Complainant-Respondent 05.10.2021

Argued on : 16.03.2022

Decided on : **23.03.2022.**

N. Bandula Karunarathna J.

This appeal is from the judgment, delivered by the learned Trial Judge of the High Court of Vavuniya, dated 07.10.2016, by which, the accused-appellants, who are before this Court, was convicted and sentenced each of them to 15 years rigorous imprisonment and a fine of Rupees Ten Thousand (Rs. 10,000/-) each in default 2 years simple imprisonment.

According to the indictment dated 11.02.2013 they were charged as follows;

That on or about the 04.09.2007, in Vavuniya, within the Jurisdiction of this Court, you the accused persons above named, by committing Robbery of cash amounting to Rupees 5,000/- a chain of the value of Rupees 18,000/- and a mobile phone of the value of Rupees 4,000/- from Nagarasa Kanthimalar you have thereby committed an offence punishable under section 380 of the Penal Code and at the time of committing such offence, you the accused persons have by using deadly weapons, such as a gun and a knife have committed an offence punishable under section 383 of the Penal Code read together with Section 32 of the Penal Code.

Upon pleading not guilty to the said charge the Prosecution led the evidence of the following witnesses.

- (i) Nagarasa Kanthimalar (PW 01)
- (ii) Suppaiah Kamal - Court Interpreter
- (iii) Sumith Prasad Ranasinghe - Chief Inspector of Police of the Vavuniya
- (iv) Kapila Bandara - Inspector of Police

The prosecution concluded its case whilst marking documents P 1 - P 7. On behalf of the defence, all three accused testified themselves whilst denying the charges levelled against them.

After hearing both parties' oral submissions learned High Court Judge pronounced his judgment on 07-10-2016 convicting all three accused of the charge levelled against them and imposed a sentence of fifteen years of Rigorous Imprisonment and a fine of Rs. 10,000/- failing to pay which two years simple imprisonment.

Being aggrieved by the said conviction and the sentence imposed, all three accused-appellants preferred an appeal.

The appellant has filed this appeal claiming that this sentence is excessive. The learned counsel for the accused-appellant informs Court on the date this matter was taken up for argument that he is not challenging the conviction. The learned counsel for the appellants requested to consider the following mitigating factors to reduce the sentence.

All three accused-appellants been in custody since 17.10.2007 up to now.

The learned counsel for the respondent argued that the reasons submitted to reduce the sentence on behalf of the accused-appellant are reasonable and they have saved the time of this court.

When I perused the translated brief, it is evident that the accused-appellants were in custody for more than 13 years and therefore can be considered for a lenient sentence. The incident had taken place in September 2007 which was during the LTTE disturbances.

Considering the circumstances of the case we decide to impose 7 years rigorous imprisonment instead of 15 years and a fine of Rupees Ten Thousand (Rs. 10,000/-) the default sentence is reduced to 6 months simple imprisonment. Also, we decide that all sentences run concurrently with effect from 07.10.2016.

Appeal dismissed subject to the above alteration.

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

Judge of the Court of Appeal

R. Gurusinghe J.

I agree.

Judge of the Court of Appeal