

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

In the matter of an Appeal under Section 15(b) of the Judicature Act, No.2 of 1978 by the Honourable Attorney General under Section 331 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.

Democratic Socialist Republic of Sri Lanka

**Court of Appeal Case No.
HCC/0043-0044/2019**

Complainant

V.

**High Court of Kurunegala
Case No. HC/118/2016**

1. Karunapedige Jeewan Samansiri
Ihala Kalugamuwa, Wellarawa.
2. Nawarathna Mudiyansele
Buddhika Prasad
Galewewa, Thisogama, Bingiriya.
3. Palaniappan Sevanadiya
No. 5, Laima, Rotariwatta,
Jalaskanda Road, Dikoya, Hatton.
4. Kumarapedi Arachchilage
Nilantha Sarath Kumara
Ihala Koonkadawala,
Weerapokuna, Bingiriya.
5. Arachchilage Priyanka Kumara
Danwila, Boraluwewa.
6. Lekamlage Indika Nuwan
Sampatha, Kosgahagoda,
Boraluwewa.

7. Pathiraja Mudiyansele Nimal
Siriwardane
Danwila, Boraluwewa.
8. Ramanayake Appuhamilage
Ranjan Ramanayake
Boraluwewa, Boraluwewa.
9. Ramanayake Appuhamilage
Jayalath Sujith Kumara
Haakalawa, Boraluwewa.
10. Arachchilage Mahinda Kumarasiri
Boraluwewa, Boraluwewa.
11. Ramanayake Appuhamilage Sisira
Kumara
Boraluwewa, Boraluwewa.
12. Ramanayake Appuhamilage Neel
Ramanayake
Boraluwewa, Boraluwewa.
13. Sooriya Hetti Mudiyansele
Sunil Priyanka alias Threewheel
Sunil
Kosgahagoda, Boraluwewa.
14. Lekamlage Lalith Premakumara
Boraluwewa, Boraluwewa.
15. Sembakutti Arachchilage Aruna
Shantha
Boraluwewa, Boraluwewa.
16. Lekamlage Ajantha Samaraweera
Kosgahagoda, Boraluwewa.
17. Samarathunga Arachchilage
Nilantha Samarathunga
Kosgahagoda, Boraluwewa.

18. Sembakutti Arachchilage Luxman
Kosgahagoda, Boraluwewa.
19. Arachchilage Asanka Indrajith
Kosgahagoda, Weerapokuna.
20. Warnakulasooriya Anil
Krishantha
Kahatagaswewa, Boraluwewa.

Accused

AND NOW BETWEEN

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

Complainant– Appellant

V.

1. Karunapedige Jeewan Samansiri
Ihala Kalugamuwa, Wellarawa.
2. Nawarathna Mudiyanseleage
Buddhika Prasad
Galewewa, Thisogama, Bingiriya.
4. Kumarapedi Arachchilage
Nilantha Sarath Kumara
Ihala Koonkadawala,
Weerapokuna, Bingiriya.
5. Arachchilage Priyanka Kumara
Danwila, Boraluwewa.
6. Lekamlage Indika Nuwan
Sampatha, Kosgahagoda,
Boraluwewa.
7. Pathiraja Mudiyanseleage Nimal
Siriwardane

Danwila, Boraluwewa.

8. Ramanayake Appuhamilage
Ranjan Ramanayake
Boraluwewa, Boraluwewa.
9. Ramanayake Appuhamilage
Jayalath Sujith Kumara
Haakalawa, Boraluwewa.
10. Arachchilage Mahinda Kumarasiri
Boraluwewa, Boraluwewa.
11. Ramanayake Appuhamilage Sisira
Kumara
Boraluwewa, Boraluwewa.
12. Ramanayake Appuhamilage Neel
Ramanayake
Boraluwewa, Boraluwewa.
13. Sooriya Hetti Mudiyansele
Sunil Priyanka alias Threewheel
Sunil
Kosgahagoda, Boraluwewa.
14. Lekamlage Lalith Premakumara
Boraluwewa, Boraluwewa.
15. Sembakutti Arachchilage Aruna
Shantha
Boraluwewa, Boraluwewa.
16. Lekamlage Ajantha Samaraweera
Kosgahagoda, Boraluwewa.
17. Samarathunga Arachchilage
Nilantha Samarathunga
Kosgahagoda, Boraluwewa.
18. Sembakutti Arachchilage Luxman
Kosgahagoda, Boraluwewa.

19. Arachchilage Asanka Indrajith
Kosgahagoda, Weerapokuna.

20. Warnakulasooriya Anil
Krishantha
Kahatagaswewa, Boraluwewa

Accused – Respondents

BEFORE : **K. PRIYANTHA FERNANDO, J. (P/CA)**
WICKUM A. KALUARACHCHI, J.

COUNSEL : Shaminda Wickrema, State Counsel for the
Complainant – Appellant.

Palitha Fernando, PC with Lakmal
Karunaratne for the 1st, 2nd, 4th - 8th, 10th -
15th, 17th, 19th and 20th Accused –
Respondents.

Ranil Samarasooriya with Nalaka
Samarakoon for the 16th and 18th Accused –
Respondents.

Duminda De Alwis with Charuni De Alwis
for 9th Accused – Respondent.

Dharshana Kuruppu with Chinthaka
Udadeniya, Sajini Elvitigala and Dineru
Bandara for the (PW2) Aggrieved Party.

ARGUED ON : 25.02.2022 and 24.03.2022

WRITTEN SUBMISSIONS

FILED ON : 20.12.2019 by the Complainant – Appellant.

28.07.2020 by the 16th and 18th Accused -
Respondents.

22.05.2020 by the 1st, 2nd, 4th – 8th, 10th – 15th,
17th, 19th and 20th Accused – Respondents.

JUDGMENT ON : 08.04.2022

K. PRIYANTHA FERNANDO, J.(P/CA)

1. The 1st to 20th accused were indicted in the High Court of *Kurunegala* on the following counts:
 - I. Being a member of an unlawful assembly punishable in terms of Section 140 of the Penal Code.
 - II. Attempted murder punishable in terms of Section 300 to be read with Section 146 of the Penal Code.
 - III. Voluntarily causing hurt to deter a police officer from his duty punishable in terms of Section 323 read with Section 146 of the penal Code.
 - IV. Voluntarily causing hurt to deter a police officer from his duty punishable in terms of Section 323 read with Section 146 of the penal Code.
 - V. Committing robbery of the official firearm of a police officer punishable in terms of Section 4 of the Offences against public property Act read with Section 146 and Section 380 of the Penal Code.
 - VI. Using criminal force to deter a police officer from discharge of this duty punishable in terms of Section 344 to be read with Section 146 of the Penal Code.
 - VII. Attempted murder punishable in terms of Section 300 to be read with Section 32 of the Penal Code.
 - VIII. Voluntarily causing hurt to deter a police officer from his duty punishable in terms of Section 323 read with Section 32 of the penal Code.
 - IX. Voluntarily causing hurt to deter a police officer from his duty punishable in terms of Section 323 read with Section 32 of the penal Code.
 - X. Committing robbery of the official firearm of a police officer punishable in terms of Section 4 of the Offences against public property Act read with Section 32 and Section 380 of the Penal Code.
 - XI. Using criminal force to deter a police officer from discharge of this duty punishable in terms of Section 344 to be read with Section 32 of the Penal Code.
2. Upon serving the indictment on the accused (1st, 2nd, 4th to 20th accused) and upon pleading guilty, the accused respondents were sentenced as follows:

On Count No. 1 – Three months’ rigorous imprisonment, in addition Rupees Ten Thousand fine, in default of payment of such fine, imprisonment for one month.

On Count No. 2 – Three months’ rigorous imprisonment, a fine of Rupees Ten Thousand in addition, and in default of payment of such fine, one month’s imprisonment. In addition, each accused was ordered to pay Rupees Fifty Thousand as compensation to PW2.

On Count No. 3 – A fine of Rupees Ten Thousand, in default of such payment of fine, one month’s imprisonment. In addition, each accused was ordered to pay Rupees Fifty Thousand each to PW4.

On Count No. 4 – A Rupees Ten Thousand fine, in default of payment of such fine, one month’s imprisonment. In addition, each accused was ordered to pay Rupees Fifty Thousand to PW3.

On Count No. 5 – Three months’ rigorous imprisonment, in addition a fine of Rupees Thirty Five Thousand, in default of such fine, one month’s imprisonment.

On Count No. 6 – The learned trial Judge has not imposed a sentence on count No. 6 on the basis that the offence in count No. 6 is embedded in count No. 2.

3. The learned High Court Judge has also not imposed any sentence on counts 7 to 11 on the basis that they are alternative to counts 2 to 6 respectively. Further, the above imprisonment sentences imposed on the accused respondents were suspended for ten years.
4. As the 3rd accused was absent from Court, the learned High Court Judge ordered to try the 3rd accused in absentia.
5. Being aggrieved by the above sentences imposed on the accused respondents, the Honourable Attorney General preferred the instant appeal on the basis that the sentences imposed on the accused respondents are inadequate. The following grounds of appeal were pursued by the learned State Counsel for the complainant appellants;
 - I. The learned trial Judge imposing a suspended sentence for the 5th count was erroneous and contrary to law and

fact, and has failed to consider the principles of law relating to a suspended sentence.

- II. The learned trial Judge has failed to impose appropriate terms of imprisonment on the accused.
- III. The learned trial Judge has failed to consider the aggravating circumstances when ordering the amount to be paid as compensation to the victim.

6. Facts in brief.

The incident has taken place on 30th March 2006, the day that the provincial council election was held. Upon receiving information to the *Rasnayaka* Police Station that illegal sand mining was being done using heavy machinery, police officers have gone to the place of the incident where they observed sand being loaded into two trucks. After detaining the trucks, the police officers have chased behind the backhoe machine that was used to load sand into the trucks. The driver has fled leaving the backhoe in a shrub without leaving the key. When the police officers tried to start the machine with the aid of the mechanics, the 11th accused respondent has come with a gang and assaulted the police officers. Inspector *Karunadheera* (PW2) was assaulted heavily on his head with a shovel, and also the other officers. PW2 has lost the vision in one eye, his skull was fractured and the face was disfigured. As a result of the above injuries, PW2 has lost his employment as a police officer.

7. The learned State Counsel contended that the prescribed sentence by law for the 5th count is imprisonment of either description for a term not less than one year but not exceeding twenty years, whereas the learned High Court Judge has failed to impose at least the minimum sentence prescribed by law.
8. On the day of the hearing of this appeal, it was noted that the 9th accused respondent was not represented by Counsel, nor was he produced in Court. It was brought to the notice of Court that the 9th accused respondent is serving a term in another case and therefore he has not received proper notice of this appeal. Therefore, this Court decided to hear only the appeals against the 1st, 2nd, 4th to 8th, and 10th to 20th accused respondents. The appeal against the 9th accused respondent was fixed for argument to be taken up separately after duly notifying the 9th accused respondent. Upon being produced by the prison authorities, the learned Counsel for the 9th accused respondent submitted to Court that the 9th accused respondent also would associate with the submissions made by the

learned President's Counsel for the other respondents, and that he would not therefore file written submissions. However, the learned counsel for the 9th accused respondent made submissions as to why the sentence imposed on him should not be enhanced.

9. It is the contention of the learned State Counsel for the complainant appellant that the learned High Court Judge has failed to consider the prescribed minimum mandatory sentence for the offence in count No.5. The learned State Counsel further submitted that in the given aggravating circumstances, the sentence should be much more than the prescribed minimum sentence of imprisonment and a deterrent custodial sentence is warranted.
10. It is the submission of the learned State Counsel that the Judge's discretion to deviate from the minimum mandatory sentence mentioned in the decided judicial precedence should not be applied in this case in favour of the accused respondents, in the given aggravating circumstances.
11. The learned President's Counsel for the 1st, 2nd, 4th to 8th, 10th to 15th, 17th, 19th and 20th accused respondents submitted that although he concedes that assaulting of police officers on duty has to be considered seriously, the Court ought to take into account that the offences were committed about fifteen years ago. The learned President's Counsel submitted that adequate compensation has been ordered in the civil case by the District Court. It was further submitted that not only the accused respondents but also their twenty families will be affected if this Court imposes a custodial sentence 15 years after the offence was committed. The learned President's Counsel heavily relied on the judgment by the Supreme Court in case *SC Reference No. 03/2008*, where it was held that prescribing a minimum mandatory sentence in section 364(2) (e) of the Penal Code is in conflict with Articles 4 (c), 11 and 12(1) of the Constitution and the High Court is not inhibited from imposing a sentence that is deemed appropriate in the exercise of its judicial discretion notwithstanding the prescribed minimum mandatory sentence. The Supreme Court followed the same principle in cases *SC Appeal No. 89A/2009* and also in *SC appeal 17/2013*.
12. The learned Counsel for the 16th and 18th accused respondents associated with the submissions made by the learned President's Counsel for the 1st, 2nd, 4th to 8th, 10th to 15th, 17th, 19th and 20th accused respondents.

13. The learned Counsel for the 9th respondent submitted that the Court may take into consideration the fact that he pleaded guilty and also that he has been in remand for a considerable period of time.
14. The learned Counsel for the aggrieved party (victim) submitted that the learned High Court Judge has failed to give any reason for deviating from the prescribed minimum mandatory sentence in count No. 5. Counsel further submitted that the serious injuries caused to the victim, (PW2 in the indictment) that resulted the loss of his employment in the Police Department and the circumstances of the offending, warrants a custodial sentence.
15. The prescribed sentence for the offence in count No. 5 is imprisonment for either description for a term not less than one year but not exceeding twenty years, and with a fine of One Thousand Rupees or three times the value of the property in respect of which such offence was committed, whichever amount is higher. This reflects the seriousness with which the legislature has taken this offence. The learned High Court Judge sentenced the accused respondents to three months' rigorous imprisonment and it was suspended for ten years. In addition, a fine of Rupees Thirty Five Thousand each was imposed with a default sentence of one month's imprisonment.
16. Section 303 of the Code of Criminal Procedure Act No. 15 of 1979 (CCPA) provides for a Court to order suspending the whole or part of the sentence imposed on an accused.

“303. (1) Subject to the provisions of this section, on sentencing an offender to a term of imprisonment, a court may make an order suspending the whole or part of the sentence if it is satisfied, for reasons to be stated in writing, that it is appropriate to do so in the circumstances, having regard to-

 - (a) the maximum penalty prescribed for the offence in respect of which the sentence is imposed;*
 - (b) the nature and gravity of the offence;*
 - (c) the offender's culpability and degree of responsibility for the offence;*
 - (d) the offender's previous character;*
 - (e) any injury, loss or damage resulting directly from the commission of the offence;*
 - (f) the presence of any aggravating or mitigating factor concerning the offender;*
 - (g) the need to punish the offender to an extent, and in a manner, which is just in all of the circumstances;*

- (h) *the need to deter the offender or other persons from committing offences of the same or of a similar character;*
- (i) *the need to manifest the denunciation by the court of the type of conduct in which the offender was engaged in;*
- (j) *the need to protect the victim or the community from the offender;*
- (k) *the fact that the person accused of the offence pleaded guilty to the offence and such person is sincerely and truly repentant; or*
- (l) *a combination of two or more of the above.*

(2) *A court shall not make an order suspending a sentence of imprisonment if-*

- (a) *a mandatory minimum sentence of imprisonment has been prescribed by law for the offence in respect of which the sentence is imposed; or*
- (b) *the offender is serving, or is yet to serve, a term of imprisonment that has not been suspended; or*
- (c) *the offence was committed when the offender was subject to a probation order or a conditional release or discharge; or*
- (d) *the term of imprisonment imposed, or the aggregate terms of imprisonment where the offender is convicted for more than one offence in the same proceedings, exceeds two years.”*

17. In terms of Section 303 (2) (a), no order of suspending a sentence of imprisonment can be made if a mandatory minimum sentence is prescribed by law for the offence in respect of which the sentence is imposed. In the instant case, the learned High Court Judge has not only imposed a lesser sentence of imprisonment than the minimum sentence prescribed by law in respect of count No.5, but also suspended the imprisonment sentence contrary to Section 303 (2) (a).

18. Their Lordships of the Supreme Court have clearly decided that the minimum mandatory sentence in Section 364 (2) (e) of the Penal Code is in conflict with Articles 4(c), 11 and 12(1) of the Constitution and that the High Court is not inhibited from imposing a sentence that it **deems appropriate** in the exercise of its judicial discretion notwithstanding the minimum mandatory sentence (**SC Reference 3/2008**).

19. The learned High Court Judge has not only imposed a sentence of imprisonment that is less than the prescribed minimum sentence, but also suspended the sentence contrary to Section 303 (2) (a) of the CCPA. I am of the view that if the learned High Court Judge deem sit appropriate to deviate from the expressed provisions in Section 303 using the judicial discretion as held by the *Supreme Court SC Reference No. 3/2008*, it is incumbent upon the learned High Court Judge to give sufficient reasons for deviating from the said expressed provisions of the Law. Judgments including the sentencing judgments delivered in the High Court are reviewable. Therefore, it is important that sufficient reasons to justify the decision are included in the judgment. Even otherwise, parties are entitled to know as to how the learned High Court Judge came to the conclusion including the sentence. The sentencing judgment must contain the prescribed sentence for the offence, aggravating and mitigating factors and the circumstances which were relevant to decide on the final sentence. In the instant case, the learned High Court Judge has not only failed to give reasons for deviating from the minimum prescribed sentence, but also failed to give any reason as to how he arrived at the final sentence.
20. Now I will turn to the sentence imposed by the learned High Court Judge to see whether it is appropriate in the circumstances. In this case, the police officers were on duty when they were assaulted and robbed of the official weapon that was in the possession of PW2. It was not just an assault, but PW2 was severely assaulted causing permanent injuries.
21. In case of *Regina V. Colin Dickson [2005] EWCA 1826, 2005 WL 1935284*, England and Wales Court of appeal held;
- “It seems to us that essentially the same factors will come into play when determining the appropriate sentence for assaults on police officers. Such are attacks are, of course particularly grave, and we agree with the learned judge that any attack on a police officer who is carrying out his duty has to be treated very seriously.”*
22. The assaulting of police officers who perform their duty, by gangs of offenders must not be condoned and should be denounced by Court to preserve law and order. Offenders of this kind should be with dealt seriously, imposing deterrent punishment to deter the offenders as well as the public in general. There should be an element of deterrence to others. Immediate custodial sentence is

warranted on offenders of this kind, otherwise a wrong message will be sent to the society.

23. In case of **R. V. Zamagias [2002] NSWCCA 17** it was held; (as cited in O'Malley on sentencing (3rd Ed))

“It will be clear from this passage that amongst the considerations that a sentencing judge must have regard to, in deciding within the second stage of the sentencing process on the subsidiary issue as to whether or not the suspension of a sentence in its entirety might be appropriate in a particular case, are (1) the nature of the offence committed (2) the objective seriousness of the criminality involved, (3) the need for general or specific deterrence and (4) the subjective circumstances of the offender.”

24. In case of **Dulla and Others V. The State AIR 1958 All198** Court observed;

“... The twin objects of punishment are to prevent a person who has committed a crime from repeating it and to prevent others from committing similar crimes. The sentence passed on the offender must be the least that will achieve both these objects. In deciding the measure of punishment the Court ought to take into consideration the nature of the offence, the circumstances in which it was committed, the degree of deliberation shown by the offender, and his age, character and antecedents.”

25. In case of **Regina V. Darran marshall [2015] EWCA Crim 474**, England and Wales Court of appeal held;

“The Judge rightly said that when dealing with cases of this kind it was the collective effort of the offending as a whole, not just the individual conduct of the offender, which must be considered when sentencing. Moreover, when offences of this kind are committed by large groups, the sentence passed must include an element of deterrence.”

26. All the above cases suggest that an immediate custodial sentence is warranted in the instant case. The mitigatory factors are that some of the accused respondents are first offenders. All accused respondents are entitled to a considerable discount for their early guilty plea. Apart from the element of deterrence, the impact on the victim PW2 who received permanent physical injuries that resulted in the loss of his employment in the Police also has to be taken as an

aggravating factor when imposing the sentence on the accused respondents.

27. The learned President's Counsel for the accused respondents submitted that the lapse of a 15-year time period after the commission of the offence should be considered in awarding a non-custodial sentence at this stage as that would affect the families of the accused respondents. However, on perusal of the Court record, it is noted that the trial in the High Court had delayed for a considerable period of time due to the fact that one of the accused was absconding, and on certain occasions some of the accused were being absent taking turns.
28. As mentioned in Section 303 (1) of the Code of Criminal Procedure Act, the Court making an order suspending the whole or part of the sentence if it is satisfied should state the reasons in writing. The learned High Court Judge in this case has failed to give such reasons as to why the sentences were suspended. Section 303 (1) provides the circumstances upon which the trial Judge may consider suspending the sentence. However, out of the factors mentioned from (a) to (k) in Section 303(1), only factors mentioned in (d) (for some of the accused respondents) and (k) can be considered in favour of the accused respondents. Therefore, the factors not in favour of the accused respondents which can be taken against the accused respondents to impose a custodial term, override the factors in favour of the accused respondents, including the lapse of time after commission of the offence. In the above premise, it is my considered view that the sentences imposed by the learned High Court Judge on the accused respondents are too lenient and grossly inadequate. Therefore, the sentences imposed on the accused respondents are set aside and the following sentences as ordered in paragraphs 31 – 34 of the judgment are substituted. When imposing the sentences all aggravating and mitigating factors mentioned before, are considered.
29. In terms of Section 146 of the Penal Code when an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, every person who, at the time of committing of that offence is a member of the same assembly is guilty of that offence. However, when deciding on the sentence on each member, the Court will consider aggravating and mitigating factors which are common to all accused, as well as specific to each accused such as the degree or extent of participation.

30. It is observed from the fingerprint reports filed of record that the 1st accused respondent *Karunapedige Jeewan Samansiri* had two previous convictions. The 6th accused respondent had two previous convictions including threatening a police officer who was on duty. The 9th respondent had two previous convictions for committing offences of theft and robbery respectively. Therefore, the 1st, 6th and 9th accused respondents will not be entitled to any discount for being first offenders.

31. The 1st, 6th and 9th accused respondents are sentenced as follows:

Count No. 1: Rigorous imprisonment of six months, in addition, a fine of Rupees Ten Thousand, in default of payment of such fine, simple imprisonment of one month.

Count No. 2: Rigorous imprisonment of four years, in addition, Rupees Ten Thousand fine, in default of payment of such fine, simple imprisonment of one month. In addition, the 1st, 6th and 9th accused respondents are ordered to pay Rupees Fifty Thousand each as compensation to the PW2 *Karunadheera Mudalige Pradeep Kumara Karunadheera*, in default of payment of such compensation, six months' simple imprisonment.

Count No. 3: Rigorous imprisonment of one year, in addition, a fine of Rupees Ten Thousand, in default of payment of such fine, simple imprisonment of one month. In addition, the 1st, 6th and 9th accused respondents are ordered to pay Rupees Fifty Thousand each as compensation to PC34846 *Dewasinghe Arachchilage Rohana Dewasinghe* (PW4), in default of payment of such compensation, six months' simple imprisonment.

Count No. 4: Rigorous imprisonment of one year, in addition, a fine of Rupees Ten Thousand, in default of payment of such fine, simple imprisonment of one month. In addition, the 1st, 6th and 9th accused respondents are ordered to pay Rupees Fifty Thousand each as compensation to *Kachchakaduge Ajith Kumara* (PW3), in default of payment of such compensation six months' simple imprisonment.

Count No. 5: Rigorous imprisonment of four years, in addition, a fine of Rupees Thirty One Thousand Five

Hundred, in default of payment of such fine, simple imprisonment of one year.

32. The 11th accused respondent is sentenced as follows:

Count No. 1: Rigorous imprisonment of six months, in addition, a fine of Rupees Ten Thousand, in default of payment of such fine, simple imprisonment of one month.

Count No. 2: Rigorous imprisonment of five years, in addition, Rupees Ten Thousand fine, in default of payment of such fine, simple imprisonment of one month. In addition, the 11th accused respondent is ordered to pay Rupees Fifty Thousand as compensation to the PW2 *Karunadheera Mudalige Pradeep Kumara Karunadheera*, in default of payment of such compensation, six months' simple imprisonment.

Count No. 3: Rigorous imprisonment of one year, in addition, a fine of Rupees Ten Thousand, in default of payment of such fine, simple imprisonment of one month. In addition, the 11th accused respondent is ordered to pay Rupees Fifty Thousand as compensation to PC34846 *Dewasinghe Arachchilage Rohana Dewasinghe* (PW4), in default of payment of such compensation six months' simple imprisonment.

Count No. 4: Rigorous imprisonment of one year, in addition, a fine of Rupees Ten Thousand, in default of payment of such fine, simple imprisonment of one month. In addition, the 11th accused respondent is ordered to pay Rupees Fifty Thousand each as compensation to *Kachchakaduge Ajith Kumara* (PW3), in default of payment of such compensation six months' simple imprisonment.

Count No. 5: Rigorous imprisonment of five years, in addition, Rupees Thirty One Thousand Five Hundred fine, in default of payment of such fine, simple imprisonment of one year.

When deciding on the sentence on the 11th accused respondent, apart from the mitigating and aggravating factors mentioned above, it is taken into consideration the fact that the 11th accused respondent is the person who led the gang and took a prominent role in assaulting the PW2.

33. The 2nd, 4th, 5th, 7th, 8th, 10th, and 12th to 20th accused respondents are sentenced as follows:

Count No. 1 : Rigorous imprisonment of three months, in addition a fine of Rupees Ten Thousand, in default of payment of such fine, simple imprisonment of one month.

Count No. 2: Rigorous imprisonment of two years, in addition, Rupees Ten Thousand fine, in default of payment of such fine, simple imprisonment of one month. In addition, the 2nd, 4th, 5th, 7th, 8th, 10th, and 12th to 20th accused respondents are ordered to pay Rupees Fifty Thousand each as compensation to the PW2 *Karunadheera Mudalige Pradeep Kumara Karunadheera*, in default of payment of such compensation, six months' simple imprisonment.

Count No. 3: Rigorous imprisonment of six months, in addition, a fine of Rupees Ten Thousand, in default of payment of such fine, simple imprisonment of one month. In addition, the 2nd, 4th, 5th, 7th, 8th, 10th and 12th to 20th accused respondents are ordered to pay Rupees Fifty Thousand each as compensation to PC34846 *Dewasinghe Arachchilage Rohana Dewasinghe* (PW4), in default of payment of such compensation six months' simple imprisonment.

Count No. 4: Rigorous imprisonment of six months, in addition, a fine of Rupees Ten Thousand, in default of payment of such fine, simple imprisonment of one month. In addition, the 2nd, 4th, 5th, 7th, 8th, 10th and 12th to 20th accused respondents are ordered to pay Rupees Fifty Thousand each as compensation to *Kachchakaduge Ajith Kumara* (PW3), in default of payment of such compensation six months' simple imprisonment.

Count No. 5: Rigorous imprisonment of two years, in addition, Rupees Thirty One Thousand Five Hundred fine, in default of payment of such fine, simple imprisonment of one year.

34. The sentences of imprisonment on all the accused respondents on each count, is ordered to run concurrently. However, simple imprisonment sentences ordered on default of fines and compensation should run consecutively.

35. It was submitted that upon filing action in the District Court, compensation to the victims has been ordered by the District Court. The learned District Judge may have taken into account the amounts of compensation ordered by the High Court when deciding the quantum. Therefore, this Court will not interfere with the quantum of compensation to the victims ordered by the learned High Court Judge.

Appeal is allowed to the above extent.

PRESIDENT OF THE COURT OF APPEAL

WICKUM A. KALUARACHCHI, J.

I agree.

JUDGE OF THE COURT OF APPEAL