

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

**CA No: CA /HCC/0177/20
High Court Chilaw HC/38/2019**

An application for appeal under and in terms
of Section 331 of the Criminal Procedure Code
No. 15 of 1979

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

Complainant

Vs.

Chakrawarthige Akila Risinath Dabarera alias
Akila Risinath Dabarera

Accused

And Now Between

Chakrawarthige Akila Risinath Dabarera alias
Akila Risinath Dabarera

Accused-Appellant

Vs.

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

Complainant-Respondent

Before: **N. Bandula Karunarathna J.**

&

R. Gurusinghe J.

Counsel: Waruna Weerasooriya AAL for the Accused-Appellant

Chathurangi Mahawaduge SC for the Complainant-Respondent

Written Submissions: By the Accused-Appellant on 28.10.2021

By the Complainant-Respondent

Argued on : 06.05.2022

Decided on : 30.05.2022

N. Bandula Karunarathna J.

This appeal is preferred against the Judgement, delivered by the learned Judge of the High Court of Chilaw, dated 14.12.2020, by which, the accused-appellant, was convicted and sentenced to 18 years rigorous imprisonment and Rupees Seventy Thousand fine in default 2 months simple imprisonment and Rupees Six Hundred Thousand compensation in default 12 months simple imprisonment

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

The accused-appellant was indicted on the following counts and it was amended on the 04.03.2020;

Count 01: that on or between 01.07.2016 and 31.07.2016 the accused-appellant kidnapped Colabage Salin Naveen Dewishan who was under 16 years of age from his lawful guardian Hithanadurage Nirosha Swarnamali Silva, which is an offence punishable under section 354 of the Penal Code.

Count 02: that during the same time and place and in the course of the same transaction the accused-appellant committed cruel sex on Colabage Salin Naveen Dewishan and thereby committed the offence of grave sexual abuse of Colabage Salin Naveen Dewishan who is under sixteen years of age which is an offence punishable under Section 36 b(2)b of The Penal Code as Amended by Act No 22 of 1995.

Count 03: that during some other which doesn't cover the period mentioned in 01st charge the accused-appellant committed cruel sex on Colabage Salin Naveen Dewishan and thereby committed the offence of grave sexual abuse of Colabage Salin Naveen Dewishan who is under sixteen years of age which is an offence punishable under Section 365b(2)b of The Penal Code as Amended by Act No 22 of 1995.

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: 2 years rigours imprisonment, fine of Rs. 5,000/- and carrying a default sentence of 1 month of simple imprisonment.

In respect of Count 02: 18 years rigorous imprisonment and compensation of Rs. 300,000/- to be paid to the victim and carrying a default sentence of 12 months of simple imprisonment and a fine of Rs. 10,000/- and carrying a default sentence of 02 months simple imprisonment.

In respect of Count 03: 18 years rigorous imprisonment and compensation of Rs. 300,000/- to be paid to the victim and carrying a default sentence of 12 months of simple imprisonment and a fine of Rs. 10,000/- and carrying a default sentence of 02 months simple imprisonment.

The learned High Court Judge directed the sentences imposed on counts 02 and 03 to run concurrently. 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 informed Court that his client is not challenging the conviction. The accused-appellant is challenging only the sentence.

On 14.12.2020 when the case was mentioned before the learned trial Judge prosecution decided to amend the indictment. When it was read to the accused person, he decided to plead guilty to all 3 counts against him. The learned High Court Judge acted under section 197 of the Criminal Procedure Code, upon his plea convicted the accused person for the amended charges.

The learned trial Judge pronounced the sentence on 14.12.2020 and sentenced the accused person as follows;

- (i) He was sentenced to 2 years of rigorous imprisonment for the offence described in indictment 01, which is punishable under Section 354 of the Penal Code. A fine of Five Thousand Rupees (Rs.5000/-) was also imposed and in default lenient imprisonment for 1 month.
- (ii) He was sentenced to 18 years of rigorous imprisonment for the second offence punishable under Section 365 b (2) (b) of the Penal Code as described in the amended indictment. A fine of Ten Thousand Rupees (Rs.10,000/-) was also imposed and in default lenient imprisonment for 2 months.
- (iii) Further, it was decided that a fine of Three Hundred Thousand Rupees (Rs. 300,000/-) should be paid on behalf of the victim of the offence mentioned in the 2nd indictment of the amended indictment and if the compensation is not paid or defaulted, it will be imposed as a fine and if the fine is not paid lenient imprisonment for 12 months.
- (iv) He was sentenced to 18 years of rigorous imprisonment for the 3rd offence punishable under Section 365 b (2) (b) of the Penal Code as described in the amended indictment. A fine of Ten Thousand Rupees (Rs.10,000/-) was also imposed and in default lenient imprisonment for 2 months.
- (v) Further, it was decided that a fine of Three Hundred Thousand Rupees (Rs. 300,000/-) should be paid on behalf of the victim of the offence mentioned in the 3rd indictment of the amended indictment and if the compensation is not paid or defaulted, it will be imposed as a fine and in default lenient imprisonment for 12 months.
- (vi) It was decided that the imprisonment prescribed for the above 02nd and 03rd amendment indictments should run concurrently and be taken together.
- (vii) The amount of One hundred and Twenty Thousand Rupees (Rs. 120,000) which is 20% of the compensation of Six Hundred Thousand Rupees (Rs. 600,000/-) imposed on the victim in connection with the aforesaid 2nd and 3rd amendment Indictments, acting

under sub-section 28(1) (a) (2) of the Act No. 04 of 2015, the accused has been directed to pay to the fund established under Section 29 of the Act

On behalf of the accused-appellant the learned counsel requested that the sentence imposed on the accused-appellant be reduced and the mandatory imprisonment be imposed from the date of this judgment.

The learned counsel for the respondent says that when considering the gravity of this offence he should not be dealt with leniently. It is to be noted that he is an unmarried person without any previous convictions. He has pleaded guilty to the amended charges and he had saved valuable time in court.

It is a practice that an accused person who pleads guilty to the counts in the indictment should be treated leniently and given him a chance to rectify his mistakes and go back to the society as a good person. In the present case, the learned trial Judge had imposed 18 years of rigorous imprisonment each for the 2nd and 3rd counts to run concurrently.

There is no doubt that the accused-appellant is technically guilty of the offence described in section 365 b (2) b of the Penal Code. However, after considering the facts and the circumstances of the case and the submission of the counsel I hold that this is not a case where the accused-appellant should be given the maximum custodial sentence.

We set aside the sentence of 18 years of rigours imprisonment imposed on the accused-appellant in respect of counts 2 and 3. We impose 8 years of rigours imprisonment each for counts 2 and 3. The imprisonment is backdated to the date of the judgement namely 14.12.2020. The fine, the compensation and the default term ordered by the learned trial judge for each count are affirmed. The sentence for the 1st count which is 2 years of rigorous imprisonment and the fine will remain the same and the default term ordered by the learned trial Judge for the 1st count is also affirmed.

We direct the sentences to run concurrently.

Appeal dismissed. The sentence is differed.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree.

Judge of the Court of Appeal