

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

In the matter of an appeal from the High Court in terms of section 331 of the Code of Criminal Procedure Act

The Democratic Socialist Republic of Sri Lanka.

Complainant

CA/HCC/071/2018

VS

High Court of Colombo
Case No: HC/4131/2008

Vidisinghe Suresh Kumara

Accused

And now between

Vidisinghe Suresh Kumara

Accused- Appellants

VS

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

Complainant -Respondent

BEFORE : N. Bandula Karunaratna, J.
: R. Gurusinghe, J.

COUNSEL : Weerasena Ranaheva
for the accused-appellant

Shanil Kularatne, SDSG
for the respondent

ARGUED ON : 21/06/2022

DECIDED ON : 27/07/2022

R. Gurusinghe, J.

The Accused was convicted in the High Court of Colombo for having committed the offence of trespass, punishable under Section 433 of the Penal Code and robbery, punishable under Section 383 of the Penal Code.

The appellant was sentenced to three months rigorous imprisonment for trespass and three years rigorous imprisonment for robbery. A fine of Rs. 2500/- was imposed, and he was also ordered to pay Rs. 425,000/-, as compensation.

The appellant does not contest the conviction. He only seeks to have a reduction in the sentence that was imposed on him. Counsel for the appellant submitted that the appellant deserves a suspended sentence.

Learned Senior Deputy Solicitor General for the respondent pointed out that at least two conditions set out in Section 303 (1) a to Section 303(1) 1 of the Code of Criminal Procedure Act as amended by Act No. 47 of 1999 must be there to impose the suspended sentence. Those conditions are as follows:

- (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.

Having regard to the above-mentioned stipulated circumstances, I consider the facts put forward for the appellant, seeking a reduction of sentence.

The offence was committed in 2004. The appellant had been in remand custody for more than three years and the appellant did not have any previous convictions. Counsel for the appellant also submitted that there were no subsequent offences other than the offence for which he was convicted. The appellant is married and he has two children. One daughter who is 17 years old, is sitting for the exams.

The appellant is now on bail.

This case has constantly been worrying him for the last 18 years. As he had not committed any subsequent offences, it could be considered that he had reformed since then. He had been in remand custody for over a period of 3 years. In many jurisdictions, the time that is spent in custody prior to the trial is taken into account when imposing a sentence. Example Section 428 of the Code Of Criminal Procedure, India.

428. Period of detention undergone by the accused to be set off against the sentence or imprisonment. Where an accused person has, on conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction

shall be restricted to the remainder, any, of the term of imprisonment imposed on him.

Section 24 of the Crimes (Sentencing Procedure) Act 1999 of NSW is as follows:

24. In sentencing an offender, the court must take into account-

- (a) any time for which the offender has been held in custody in relation to the offence, and...

I think that sending him to jail after 18 years of the offence, is not appropriate. Having regard to the above circumstances, I set aside the sentence of three years rigorous imprisonment and, therefor, substitute a sentence of two years rigorous imprisonment on the accused-appellant, suspended from the date of conviction for a period of seven years. The three months imprisonment is also suspended for seven years from the date of conviction.

The fine and compensation imposed on the appellant remain the same.

Subject to this variation in the sentence, the appeal is dismissed.

Judge of the Court of Appeal

N. Bandula Karunaratna, J.

I agree.

Judge of the Court of Appeal