

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

In the matter of an appeal in terms of Section 331 (1) 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.

The Democratic Socialist Republic of Sri Lanka.

Complainant

CA - HCC 175/2018

Vs.

High Court of Kuliyaipitiya
Case No: HC 065/2017

1) Jayasinghe Mudiyanalage Gamini Dayaratne

Accused

And Now Between

1) Jayasinghe Mudiyanalage Gamini Dayaratne

Accused-Appellant

Vs.

The Honourable Attorney General,
Attorney General's Department,
Colombo 12

Complainant-Respondent

BEFORE : N. Bandula Karunaratna, J.

: R. Gurusinghe, J.

COUNSEL : Sahan Kulathunga

For the Accused-Appellant

Anoopa de Silva, DSG

For the Respondent

ARGUED ON : 06/09/2022

DECIDED ON : 22/09/2022 along with HCC 193-2018

R. Gurusinghe, J.

The Accused Appellant was indicted in the High Court of Kuliypitiya for having committed intercrural sex on a 15-year-old boy, an offence punishable in terms of Section 365 B (2) b of the Penal Code.

The Evidence-in-Chief of PW1 (the victim, who was a 23-year-old man at the time of the trial) has been led. The appellant pleaded guilty. He was convicted upon the plea of guilty and sentenced to 15 years rigorous imprisonment and fined Rs. 25,000/- with a default term of 10 months Simple Imprisonment. In addition, the appellant was ordered to pay Rs. 200,000/- as compensation to

PW1. The appellant had already paid Rs. 100,000/- to PW1 on 27.02.2018 in open court.

Counsel for the appellant submitted that 15 years rigorous imprisonment was excessive in the circumstances of the case and sought a reduction in the term of imprisonment. The Learned Deputy Solicitor General appeared for the respondent submitted that, she had no objection to the reduction of the prison term. However, she pointed out that the offence carries a 7-year minimum mandatory sentence.

The appellant offered to plead guilty even prior to the commencement of the trial, but it was not allowed at that time. After the evidence-in-chief of PW1 was completed, the plea of guilty of the appellant was recorded and sentenced as mentioned above.

As per the evidence of PW1, the appellant had not threatened nor had he used any sort of violence on the victim. The victim had sustained no injuries. Besides the victim had a cordial relationship with the appellant. Although the victim was a 15-year-old boy at that time, he had never made a complaint to anybody, not even to his parents, about the appellant. The appellant had no previous convictions.

Considering the above circumstances, I am of the view that the sentence imposed on the appellant is excessive. I, therefore, set aside the sentence and substitute the same with the following sentence.

(1) Seven years rigorous imprisonment, (2) a fine of Rupees 10,000/- and if defaulted, three months Simple Imprisonment, (3) Rs. 100,000/- compensation to PW1, which had already been paid.

I further direct that the term of imprisonment is deemed to have been served from the date of incarceration, namely 26.7.2018.

The appeal is partially allowed. The sentence varied.

Judge of the Court of Appeal

N. Bandula Karunaratna, J.

I agree.

Judge of the Court of Appeal