

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of an Application for Revision in terms of Article 138 and 154P of the Constitution read with section 364 and 365 of the Code of Criminal Procedure Act No. 15 of 1979 and High Court of the Provinces (Special Provisions) Act No.19 of 1990 (as amended).

Court of Appeal Case No:
CPA / 0061 / 22

High Court of Balapitiya Case No:
2741/21

Magistrate's Court of Balapitiya
Case No: **1627**

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

Complainant

Vs.

1.Lakmuni Chathuri Madhushika de Silva

2.Lakmuni Keerthi Chandralal de Silva.

Accused

AND NOW BETWEEN

Lakmuni Chathuri Madhushika de Silva,

No. 540, Wathurawela,

Kosgoda.

Presently at Galle Prison

1st Accused Petitioner

Vs.

Hon. Attorney General

Attorney General's Department

Colombo 12.

Complainant Respondents

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Anil Silva PC with K. Koralage and S. Neranga for the Petitioner.

W. Perera DSG for AG.

Argued on: 10.11.2022

Decided on: 13.12.2022

MENAKA WIJESUNDERA J.

The instant application has been filed to set aside the sentence imposed by the High Court of Balapitiya on 17.5.2022.

The Counsel appearing for the first accused petitioner (hereinafter referred to as the petitioner) stated the following facts,

- 1) The deceased is the estranged husband of the petitioner,
- 2) The 2nd petitioner is the father of the deceased,
- 3) The deceased and the petitioner had been living separately,
- 4) The deceased on several occasions had physically harassed the petitioner and as a result of which even on the date of the incident when the deceased had come to the house of the petitioner she had

not gone out to speak to him and the deceased had smashed the windows of the house of the petitioner, petitioner had called the police but they had not come and the deceased had waited in ambush and when the petitioner had gone out to the toilet she had been assaulted by the deceased and the brother of the petitioner and the 2nd accused had intervened and had assaulted the deceased.

- 5) At trial the accused had pleaded guilty and the trial judge had sentenced the
- 1) Petitioner to 7 years simple imprisonment with a fine and a default sentence and the
 - 2) The second accused to 2 years imprisonment suspended for ten years.

Hence the learned Counsel for the petitioner stated that there is a great disparity in the sentencing between the accused as such the petitioner is greatly prejudiced by the sentencing of the trial judge. The Counsel for the respondents stated that he too agrees that there is a great disparity in the sentencing of the accused but brought to the notice of Court that at the non-summery there were two other accused out of which one was the paramour of the petitioner and the evidence was that he had assaulted the deceased most.

Considering the submissions of both parties it is the considered view of this Court that in view of the conduct of the deceased and the steps the petitioner had taken before the incident that the sentence of the petitioner should be varied to 2 years simple imprisonment suspended for 10 years with the rest of the sentence to remain the same.

Subject to the above variation of the sentence the revision application is hereby dismissed.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.