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

In the matter of an Appeal made under
Section 331 of the Code of Criminal
Procedure Act No.15 of 1979

**Court of Appeal No:
CA/HCC/0176/2016**

Sinnathurai Sivachandran alias Prabu

**High Court of Vavuniya
Case No. HC/1881/2005**

Accused- Appellant

vs.

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

Complainant-Respondent

BEFORE : **Sampath B. Abayakoon, J.**
P. Kumararatnam, J.

COUNSEL : **M.Shihar Hassan for the Appellant.**
Riyaz Bary, DSG for the Respondent.

DATE OF APPLICATION: **13/09/2022**

DECIDED ON : **04/10/2022**

ORDER

P. Kumararatnam, J.

On 07/06/2022 the Counsel for the Appellant made an application to withdraw the appeal subject to back dating the sentence. The learned Deputy Solicitor General informed this Court that he has no objection for the said application. Considering the fact that the Appellant has been in incarceration from the date where the sentence was pronounced on him, the sentence was ordered to be effective from the said date namely, 12/10/2016.

On 13/09/2022 the learned Counsel for the Appellant made an application to re-consider the order made by this Court on 07/06/2022. The Counsel of the Appellant now seeking an order to make the two-jail terms imposed by the learned High Court Judge to run concurrently.

The learned Deputy Solicitor General appearing for the Respondent citing Section 359 of the Code of Criminal Procedure Act No.15 of 1979, submitted to this Court that this application cannot be considered as the proceedings have already been terminated before this court.

The above-named Accused-Appellant was indicted in the High Court of Vavuniya under Sections 354 and 364(2) of the Penal Code for committing statutory rape on or about 06th December 2002.

After the conclusion of the evidence of two witnesses the Appellant absconded the court. Hence the trial continued ex parte thereafter. The Appellant was found guilty of the charges and the Learned High Court Judge of Vavuniya has imposed following sentences on him on 08th February, 2007.

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1. For the first count- 07 years rigorous imprisonment with a fine of Rs.5000/-.
 2. For the second count- 15 years rigorous imprisonment with a fine of Rs.10000/-

As the learned High Court Judge made no order with regard to the implementation of the sentence, the sentences remained to run consecutively.

Being aggrieved by the aforesaid conviction and sentence the Appellant preferred this appeal to this court and withdrawn the same on 07/06/2022.

The Appellant was connected via Zoom from prison when his Counsel made this fresh application on his behalf.

Background of the case

According PW1, the prosecutrix after a brief love affair with the Appellant, had eloped with him and lived as husband and wife for about a month. She was 15 years when she eloped with the Appellant on her free will and the Appellant was 20 years old. As the cohabitation become miserable, she had returned to her parents and lodged a complaint in the police. As a result, the Appellant was arrested and indicted in the High Court of Vavuniya.

Counsels are expected to act in their client's best interests and defend their case with enthusiasm. If the Counsel fails to make appropriate submissions to re-consider the sentence imposed specially before an Appellate Court upon the withdrawal of his appeal, then the Appellant become the victim of ineffective assistance from his Counsel. In this case had an appropriate application been made before this court to run the sentence concurrent, the outcome would have been beneficial to the Appellant. Due to this shortcoming, the benefit the Appellant anticipated upon his withdrawal of his appeal had not been materialized.

In this case the Counsel who appeared for the Appellant had failed to make an application to run the sentences concurrently. Even though this Court reminded him about this opportunity, surprisingly it had been neglected. Realizing his failure, the Counsel now seeks this Court's indulgence to make the sentences to run concurrently.

The ultimate expectation of a litigant in a law suit is to have his case dispensed with his favour. In this case the expectation has not materialized in his favour due to the excusable neglect of the Counsel who defended the Appellant. Hence, justice demands to correct this mistake due to the exceptional nature of this application.

Hence, applying judicial discretion of this Court, I allow this application and make the order to run the sentences imposed to run concurrent to each other, effective from the date of the judgment, namely 12/10/2016.

Accordingly, the application is allowed.

The Registrar of this Court is directed to send a copy of this order to the High Court of Vavuniya forthwith.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL