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

In the matter of an appeal under and in terms of the Section 331 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.

Court of Appeal Case No: **HCC / 301 / 2019**

High Court of Vauniya Case No: **2772 / 2018**

Democratic Socialist Republic of Sri Lanka.

Vs.

Rasakumar Thirukumar

Accused

AND NOW BETWEEN

Rasakumar Thirukumar

Accused – Appellant

Vs.

Hon. Attorney General

Attorney General's Department

Colombo 12.

Respondent

Before: Menaka Wijesundera J.

B. Sasi Mahendran J.

Counsel: Ershan Ariaratnam for the Accused – Appellant

Shanil Kularatne D.S.G for Respondent.

Argued on: 01.03.2023

Decided on: 29.03.2023

MENAKA WIJESUNDERA J.

The instant appeal has been lodged to set aside the judgment and sentence dated 19.7.2019 by the High Court of Vavuniya.

The accused appellant had been indicted on 4 counts and they are,

1) for committing rape under section 364 (2) of the Penal Code between 1.12.2015 to 15.1.2015

2) for commuting an offence under section 345 of the Penal Code on 15.12.2015,

3) for committing an offence under section 364 (2) of the Penal Code between 15.12.2015 to 23 .12.2015,

4) for committing an offence of rape under section 364 of the Peal Code between 15.12.2015 to 23.12.2015.

The appellant had pleaded guilty and upon the conclusion of the trial the learned High Court Judge had convicted the appellant for all counts and had imposed a sentence of 27 years in totality with the sentence for the first charge to be served first and the second subsequently and

the sentences for the third and the fourth to be served concurrently but subsequent to the 1st and the second sentences for the respective charges.

At the stage of argument, the Counsel appearing for the appellant stated that he is only canvassing the sentence and not the conviction imposed by the learned High Court Judge. He further averred that the sentence in totality is excessive and the Counsel of both sides weregiven a chance to make submissions in mitigation before the sentencing.

The learned Counsel for the respondents conceded the fact that the sentence imposed by the learned High Court Judge is excessive but he brought to the notice of Court that the victim at the time was 15 years and the appellant at the time of the offence was 25 years of age and was married and was a father.

Upon considering the submissions of both parties this Court is of the opinion that the learned High Court Judge had failed to give an opportunity for both parties to make submissions in mitigation which has deprived the appellant of pleading for the mercy of Court before sentencing.

Hence the rigorous imprisonments imposed on the appellant is varied as below,

1) For the 1st count 10 years rigorous imprisonment ordered ,
2) For the second count 1 year's rigorous imprisonment ordered,
3) For the third count 10 years rigorous imprisonment ordered,
4) For the fourth count 10 years rigorous imprisonment ordered,

and the sentences to be back dated to the date of the conviction and the sentences pertaining to the terms of imprisonment of all charges to run concurrently. The rest of the sentences of fine and compensation to remain the same, subject to the above variation the instant appeal is dismissed.

Judge of the Court of Appeal.

B.Sasi Mahendran J.

I agree.

Judge of the Court of Appeal.