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

Kankanam Arachchige Premadasa alias
Kamkanam Arachchige Premadasa.

Accused-appellant.

C.A.Appeal No. 49/09 with

CA.(PHC) APN No. 19/2011 (Rev) -Vs-

Republic of Sri Lanka.

High Court Hambantota No. 258/07

High Court Matara No. 137/08 Respondent

MC. Tissamaharama : BR 198/06

Before: **Sisira . J. de Abrew, J &**

P.W.D.C. Jayathilaka, J

Counsel: Chrishmal Warnasuriya with Dushantha Kularathne for the Accused-Appellant in C.A.Appeal No. 49/09 and the Accused-Appellant-Petitioner in CA.(PHC) APN No. 19/2011.

Dilan Ratnayake SSC for the Respondent.

Argued &

Decided on: **17.09.2013.**

Sisira. J. de Abrew, J

Heard both counsel in support of their respective cases.

The accused-appellant in this case was convicted on his own plea of two charges under section 298 of the Penal Code. He was sentenced to a term of 05 years Rigorous Imprisonment on the 1st count and to pay a fine of Rs. 2500/- carrying a default sentence of 03 months Rigorous Imprisonment. The learned High Court Judge imposed the same sentence on count No. 2. Being aggrieved by the said sentence the accused-appellant has appealed to this court. He has also filed a Revision application. Learned counsel for the accused-appellant submitted that although the accused-appellant was convicted on his own plea, he has never instructed his Attorney-at-law to plead guilty but the Attorney-at-Law pleaded guilty. I now consider whether the said submission is correct or not. According to page 54 of the original record, the learned High Court Judge has read the indictment to the accused-appellant. The accused-appellant has pleaded guilty to

both charges. The accused-appellant has filed an affidavit to strengthen the argument advanced by learned counsel for the accused-appellant. But we find even in the petition of appeal filed by the accused-appellant, the accused-appellant does not take up the ground that had been advanced by the learned counsel for the accused-appellant. When we consider the above material, we are unable to agree with the submission made by the learned counsel for the accused-appellant. We therefore reject it.

The accused-appellant is trying to contradict the High Court record. Can he do that ? In finding an answer to this question, I am guided by the judgment of Justice Canekeratne in Gunawardena vs Kelaart 48 NLR page 522- wherein His Lordship held thus:- "The Supreme Court will not admit affidavits which seek to contradict the record kept by the Magistrate". In ***Jayaweera Vs Assistant Commissioner of Agrarian Services 1996(2) SLR page 70***; His Lordship Justice Jayasooriya held thus;- " There is a presumption that official and legal acts are regularly and correctly performed. It is not open to the petitioner to file a convenient and self-serving affidavit for the 1st time before the Court of Appeal and thereby seek to contradict either a quasi judicial act or judicial act. If a litigant wishes to contradict the record he must file necessary papers before the

court of first instance, initiate an inquiry before the court and thereafter raise the matter before the Appellate Court so that the appellate Court would be in a position on the material to make an adjudication on the issues with the benefit of the order of that Court."

Applying the principles laid down in the above judicial decisions, I hold that a litigant is not entitled to impugn the correctness of a judicial record by making a convenient statement before the court of Appeal. This view is also supported by the judicial decision in the ***Officer-in-Charge of Amparai Vs Bamunusinghe Arachchilage Jayasinghe*** C.A.Appeal No. 37/1988-CA (PHC) APN No. 38/1998 decided on 08.09.1998. When I consider all these matters the fact that he did not instruct the Attorney-at-Law to plead guilty but the Attorney-at-Law pleaded guilty on his behalf cannot be accepted. Learned counsel for the accused –appellant submitted that it was possible for the accused-appellant to withdraw the plea of guilt tendered by him. Has the accused-appellant discharged this function in the Original Court ? The answer is No. The accused-appellant has not made any application to the learned High Court Judge to withdraw his plea of guilt.

Next question that must be considered is whether the sentence imposed by the learned High court Judge is excessive or not. Learned Counsel for the accused-appellant submits that the sentence imposed by the learned High Court Judge is excessive. I now advert to this question. The accused-appellant at the very first opportunity without wasting time of Court pleaded guilty. He is a Government Servant. The learned Trial Judge has considered all these matters and has made a direction that both terms of imprisonment should run concurrently. Learned counsel for the accused-appellant submitted that the two victims in this case did not have riding licence and that their father S. Sugathadasa has also admitted this fact in the civil case filed by him in Tissamaharama High Court in case No. M/725-Document marked P5 in the Revision Application.

Considering all these matters we hold that the sentence imposed by the learned High Court Judge is little excessive. We therefore set aside the 05 years rigorous Imprisonment imposed by the learned High court Judge and sentence him to a term of 3 years Rigorous Imprisonment on the 1st count. We impose the same punishment on the 2nd count.

We direct that both term of imprisonment should run concurrently. The fines imposed by the learned High Court Judge remain unaltered. The accused-appellant who is now on bail should submit his bail.

Judge of the Court of Appeal

P.W.D.C. Jayathilaka, J

I agree.

Judge of the Court of Appeal

Kpm/-