

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

Abdul Majeed Mohamed Riswan,

Accused-Appellant

Hon. Attorney General,  
Attorney Generals Department ,  
Colombo 12.

Respondent

C.A. 39/2012

H.C. Chilaw Case No: 131/04

Before : Sisira J. de Abrew, J. (Acting P/CA) &  
P.W.D.C. Jayathilaka, J.

Counsel : Dr. Ranjit Fernando for the Accused-  
Appellant.  
Sarath Jayamanne D.S.G. for the  
respondent.

Argued &

Decided on : 25.11.2013

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Sisira J. de Abrew, J. (Acting P, C/A)

Heard both counsel in support of their respective cases. The accused-appellant in this case was convicted on his own plea for committing grave sexual abuse to a girl named Fathima Naleena. He was sentenced to a term of 7 years Rigorous Imprisonment and to pay a fine of Rs: 10,000/- carrying a default sentence of 6 months imprisonment and to pay a sum of Rs: 150000/- carrying a default sentence of 2 years imprisonment.

Being aggrieved by the said sentence the accused-appellant has appealed to this Court. The trial in this case commenced on 10/5/2006. The accused-appellant had been present at the commencement of the trial. Infact he had been present as the accused in this case in the trial Court till 25/3/2009. Thereafter he has gone aboard. He was produced in the High Court again on 17/8/2011. On 06/12/2011 accused was convicted of the charge on his own plea. After he was sentenced by the learned trial Judge he was released on bail on 06/02/2013. His

conviction was on 06/12/2011. Punishment was imposed only on 13/02/2012. It appears that from 13/02/2012 to 06/02/2013 he was inside the prison as a result of the punishment imposed on him. The fact that he was released on bail on 06/02/2013 is supported by a document produced by the learned counsel for the accused-appellant. This document shows that the learned High Court Judge has made an order releasing him on bail on 06.02.2013 . Registrar of this Court is directed to file the said document in the docket. It appears from the evidence that the accused has kept his male organ between the thighs of the victim girl and committed grave sexual abuse. This has been done on several occasions while a love affair between the accused-appellant and the victim girl was going on. However the girl's parents had come to know about this. Thereafter there was exchange of words between the two parents of the accused and the victim. The parents of the victim girl had requested the accused to marry the victim which had been refused by the parents of the accused-appellant. It appears that the parents of the accused-appellant and the sisters had assaulted the victim girl after they came to know about the love affair and sexual relationship that they had maintained. The

victim girl had sustained injuries. A separate case has been filed against the accused parents and sisters for the assaulting the victim girl. It appears that the accused-appellant had gone aboard during the pendency of the trial. But he has gone aboard after 4 1/2 years of trial in the original Court. After he was sentenced by the learned High Court Judge, he had been released on bail. This order was made one year after the sentence. Grave sexual abuse had been committed by the accused-appellant when there was a love affair between the girl and the accused-appellant. The girl was at that time 15 ½ years old. The accused at the time of the incident was a 23 year old boy. The complaint against the accused-appellant has been made nearly after two years of the incident. When we consider all these matters we feel that sending the accused-appellant again to the custody of the prison of the officers is not appropriate.

We feel that the Justice would be done if he is given a suspended sentence. After considering all these matters, we decide to set aside the term of 7 years imposed by the learned trial Judge. Under S.C. 3/2008 the Court has a discretion to impose a lessor sentence notwithstanding the fact that the minimum punishment has been prescribed by law. Considering

all these matters, we impose a term of 2 years Rigorous Imprisonment and suspend it for a period of 10 years. The fine and the amount of compensation ordered by the learned trial Judge remain unaltered . Learned High Court Judge of Chilaw is directed to issue a fresh committal indicating the sentence imposed by this Court. Subject to the above variation of the sentence, appeal of the appellant is dismissed.

*Appeal dismissed.*

ACTING PRESIDENT OF THE COURT OF APPEAL

P.W.D.C. Jayathilaka,J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/-