

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

1. Waduwegedera Dayananda,
2. Don Eliyas Wijesinghelage
Warnakumara.

Accused-Appellants.

C.A.Appeal No.89-90/2009

High Court Anuradhapura No.190/02

-Vs-

Republic of Sri Lanka.

Respondent

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

Counsel: **Dr. Ranjit Fernando for the Accused-Appellant.
Shanil Kularatne SSC for the Respondent.**

Argued and

Decided on: 13.12.2013

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

Heard both counsel in support of their respective cases. After arguing the case learned counsel for the accused-appellants submits that he does not challenge the conviction. He only makes submissions to get the sentence reduced. The two accused-appellants and the 2nd accused in the indictment were convicted for raping a woman named Ariyawathie and were sentenced to a term of 10 years Rigorous Imprisonment, to pay a fine of Rs. 5000/- carrying a default sentence of 6 months Rigorous Imprisonment and to pay a sum of Rs. 100,000/- as compensation to the victim carrying a default sentence of 3 years Rigorous Imprisonment.

According to the facts of this case Ariyawathie on 31.12.94 came to the market site in Anuradhapura carrying some vegetable with the intention of selling the same on the following day. She came to Anuradhapura town around 11 p.m. The 2nd accused at this time made an improper suggestion with regard to sexual activities to Ariyawathie which was refused by her.

However later, she was taken to a nearby boutique which was being built. The 2nd accused first raped her in the halfly built boutique and thereafter the 1st

and the 3rd accused raped her. Following day around 4 o' clock she made a complaint to the police and the police arrested the accused-appellants.

Learned counsel appearing for the accused-appellant submits that the sentence imposed by the learned trial judge is excessive. He further submits that the default sentence in respect of the non-payment of compensation is excessive. The 2nd accused did not appeal. When we consider the facts of the case we decide not to interfere with the term of 10 years imprisonment imposed by the learned trial Judge but we feel that we should interfere with the compensation and the default sentence ordered by the learned trial judge. We feel that the compensation ordered by the learned trial judge is excessive and the default sentence is also excessive.

We therefore set aside the amount of compensation imposed by the learned trial judge and order each accused-appellant to pay a sum of Rs. 30,000/- compensation to the victim carrying a default sentence of 6 months imprisonment.

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We direct that the sentence imposed by the learned trial judge should be implemented from the date of sentencing by the learned trial judge. The learned trial judge is directed to issue a fresh comital indicating the sentence imposed on the accused-appellants by this Court.

Subject to the above variation of the sentence the appeals of the appellants are dismissed.

ACTING PRESIDENT OF THE COURT OF APPEAL

P.W.D.C. Jayathilaka, J

I agree.

JUDGE OF THE COURT OF APPEAL

Kpm/-