

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

C.A.No.159-161/2011

H.C.Negombo No.HC 280/2006

Dehiwalage Niranjan Sanjeewa Perera

A. Dinusha Nishantha

H.S. Dinesh Kumara

Appellants

Vs.

Hon Attorney General
Attorney General's Department,
Colombo 12.

Respondent

C. A. No. 159-161/2011

H.C.Negombo No.HC 280/2006

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

Counsel : Dr. Ranjit Fernando for the 1st Accused
-Appellant.
Indika Mallawaarachchi for the 2nd Accused
-Appellant
Dilan Rathnayake SSC for the Respondent.

Argued and

Decided on : 06.12.2013.

Sisira J. de Abrew,J (Acting P/CA)

Accused – appellants are present in Court produced by the Prison Authorities.

Heard both Counsel in support of their respective cases.

The accused – appellants in this case were charged with the murder of a man named Jayaweeraage Dharmaratne and a woman named Waduge Nandawathi. They were also charged for causing simple hurt to Vithanagamage Wijeratne (3rd count), Sumudu Nirmali (4th count), Hettiarachchige Siriwardena (5th count) and Hettiarachchige Nilanga Hettiarachchi (6th count). They were also charged with the robbery of cash and jewellery from the possession of said Dharmaratne. Prosecution led the

evidence of Vithanagamage Wijeyaratne at the trial. After his evidence the accused-appellants pleaded guilty, in respect of 1st and the 2nd counts to the offence of culpable homicide not amounting to murder on the basis of sudden fight. They also pleading^{ed} guilty to 2nd to 7th counts. On the first count each accused-appellant was sentenced to a term of six years rigorous imprisonment and to pay a fine of Rs. 10,000/= carrying a default sentence of 6 months simple imprisonment. Same punishment was imposed in respect of the 2nd count. They were, on each count of 3rd, 4th and 5th, were sentenced to a term of 6 months rigorous imprisonment and to pay a fine of Rs. 5,000/= carrying a default sentence 3 months simple imprisonment and to pay a sum of Rs.25,000/= as compensation to each victim, carrying a default sentence of twelve months imprisonment. To the 7th count each accused-appellant was sentenced to a term of one year rigorous imprisonment and to pay a fine of Rs. 5,000/= carrying a default sentence of three months simple imprisonment. Learned trial Judge directed that all terms of imprisonment should run consecutively. We note that the accused-appellants were convicted on their own plea. Learned Counsel for the accused-appellant makes an application to relax the direction made by the learned trial Judge with regard to the running of the sentences consecutively. In respect of 3rd, 4th, 5th and 6th counts we note that the fine imposed by the trial Judge is illegal as only a fine of Rs.1,000/= could be imposed on a charge of 314 of the Penal Code. We therefore set aside the fine of Rs.5000/= imposed by the learned trial Judge in respect of 3rd, 4th, 5th and 6th counts and substitute a fine of Rs.1000/= in place of fine of Rs.5000/=. In default of the fine of Rs.1000/= we impose a default sentence

of one month simple imprisonment. The learned trial Judge has imposed six months rigorous imprisonment in respect of 3rd, 4th, 5th and 6th counts and made a direction to run the said term of imprisonment consecutively. We set aside the said direction and direct that the six months term of imprisonment imposed on 3rd, 4th, 5th and 6th counts should run concurrently with term of one year imprisonment imposed on count No.7. Thus in respect of 3rd, 4th, 5th, 6th and 7th counts a total imprisonment would be only one year rigorous imprisonment. We do not interfere with the direction made by the learned trial Judge with regard to the consecutive sentences on count No.1 and 2. The terms of imprisonment imposed on count No. 1 and 2 should run consecutively. Therefore, the total imprisonment that they have to undergo is 13 years rigorous imprisonment. The default sentence should be implemented in addition to the term of 13 years rigorous imprisonment. We direct the Prison Authorities to implement the sentence from the date of sentencing by the learned trial Judge. The Learned High Court of Negombo is directed to issue a fresh committal indicating the sentence imposed by this Court.

ACTING PRESIDENT OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL

WC/-