

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

Jayalath Ralalage Maduranga Jayalath

Accused-Appellant

C.A.07/13

H.C. of Ampara Case No.

HC/AMP/1240/2007.

Vs.

The Republic of Sri Lanka

Respondent

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

Counsel : Jeffry Zeinudeen for the accused-appellant
Rohantha Abeysuriya, D.S.G. for the A.G.

Argued &

Decided on : 20.02.2014

Sisira J. de Abrew, J.

Heard both counsel in support of their respective cases.

The accused-appellant in this case, on his own plea, was convicted for count No. 1, 2, 4 & 5 of the indictment. On count No. 1 he was sentenced to a term of 2 years rigorous imprisonment (R I) and to pay a fine of Rs. 10,000/- carrying a default sentence of 6 months imprisonment. Same punishment was imposed on count No. 2, 4 & 5. The learned trial Judge has not made any direction whether the terms of imprisonment imposed by her should run concurrently or consecutively. Being aggrieved by the said sentences imposed by the learned trial Judge, the accused-appellant has appealed to this Court. Learned counsel makes submissions to get the all terms of imprisonment to run concurrently. Learned Deputy Solicitor General however submits that, on charge No. 4, it is necessary for Court to order compensation. On this matter he brings to the notice of Court Section 365 B (2)(a) of the Penal Code. We find that the learned trial Judge has not complied with Section 365 B (2)(a) of the Penal Code. Learned counsel for the accused-appellant submits that, at the time of the incident, the accused-appellant was only 16 years of age. He therefore makes an application to make an order to run the sentences concurrently. We have considered the submissions made by both parties in the Original Court. We have considered the submissions of both Counsel in this Court. Learned Deputy Solicitor General however objects to the said direction (to run concurrently) being given as the incident was a cruel one. However, when we consider the submissions made by the leaned prosecuting State Counsel in the High Court, we feel that the main offender in this case is not the 1st accused but the 2nd accused. From the submissions we understand the 1st accused (the accused-appellant) to a very great extent assisted the

2nd accused. Considering all these matters, we make the following order. Term of imprisonment imposed on Count No. 1, 2 & 5 should run concurrently. The sentence of 2 years rigorous imprisonment imposed on the 4th count should run in addition to the sentences imposed on Count No. 1, 2 & 5. Therefore, the total imprisonment that he has to undergo is only 4 years. Since the learned trial Judge has failed to impose compensation in compliance with Section 365 B (2)(a) of the Penal Code, we impose a sum of Rs. 30,000/= as compensation on count No. 4 carrying a default sentence of 6 months simple imprisonment. Default sentences must be implemented in addition to the said four years Rigorous Imprisonment.

Learned trial Judge is directed to issue a fresh committal indicating the directions given by this Court. We direct the Prison Authorities to implement the sentence from the date of sentencing by the learned trial Judge.

ACTING PRESIDENT OF THE COURT OF APPEAL

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

I agree

JUDGE OF THE COURT OF APPEAL

Cr/-