

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

C.A. No: 78-79/10

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

Complainant

Vs.

Hapuarachchige Nihal Sisira Kumara Karunaratne
No. 76 A, Maulgama,
Kottawa.

Accused

And

Hapuarachchige Nihal Sis ira Kumara Karunaratne
No. 76 A Maulgama,
Kottawa.

Accused-Appellant

Vs.

Attorney General,
Attorney General's Department,
Colombo 12

Complainant- Respondent

Before : **Anil Gooneratne, J**
P.W.D.C. Jayathilaka, J

Counsel : Anil Silva P.C. with Lasitha Chathurange
for the Accused - Appellant.
Chathiya Goonesekara SSC for the AG

Argued &

Decided on : **31.03.2014**

Anil Gooneratne, J

Learned President's Counsel for the Accused - Appellant and as well as Senior State Counsel for the Respondent heard in regard to the facts of this case. The Accused - Appellant was indicted under section 486 of the Penal Code. Learned High Court Judge has convicted the accused and sentenced him for a period of 4 years rigorous imprisonment with a fine of Rs.50,000/- and a default sentence of 1 years rigorous imprisonment.

Learned President's Counsel submitted the facts in mitigation of the sentence. The position as at today is that a period of 12 years have lapsed from the date of offence. The offence committed on 20.11.2001. To briefly set down the facts of this case is that the OIC Haguranketha was on official duty on the date in question. He had been given instructions to remove flags and posters of the

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political parties in and around the place of a political meeting. The Accused Appellant was the Director of the Presidential Security Division (PSD). He had been on duty at another election meeting at Doramadulla. Her Excellency the President was scheduled to be present. It was also submitted, according to the evidence that transpired in the High Court that the above OIC of Haguranketha was also present at the meeting Doramadulla. Evidence reveals that there had been an exchange of words between the Accused = Appellant and the above O.I.C. Having considered the submissions of the Learned President's Counsel and also that of the Senior State Counsel it is our view that this is a fit case to act in terms of section 303 of the Criminal Procedure Code. As such this court will proceed to vary the sentence. Accordingly we vary the sentence for 2 years rigorous imprisonment suspended for a period of 5 years. However the fine imposed by the Learned High Court Judge remains unaltered (Rs.50, 000). Subject to the above variation of sentence the appeal is dismissed. Registrar is directed to send a copy of this order and the case record to the High Court of Kandy. We also direct the Learned High Court Judge to explain the liability under Section 304 of the Criminal Procedure Code, to the Accused - Appellant on being produced before the High Court.

Judge of the Court of Appeal

P.W.D.C. Jayathilaka, J

I agree

Judge of the Court of Appeal

Na/-