

132/2012

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

Dickmadu Godage Gunarathna

Eththalawatta, Atakalapanna

Accused-Appellant

C.A.Case No:-132/2012

H.C.Matara Case No:-79/2007

V.

The Hon. Attorney General

Attorney General's Department,

Colombo 12.

Before:- H.N.J.Perera, J &

K.K.Wickremasinghe, J

Counsel:-Thilak Marapana P.C. with Chamith Marapana for the

Accused-Appellant

Dileepa Peiris S.S.C. for the Respondent.

Argued On:-05.05.2015

Written Submissions:-14.05.2015

Decided On:-10.06.2015

H.N.J.Perera,J.

The accused-appellant was indicted with another accused for conspiracy to commit Criminal breach of trust between 1st April 2001 and 31st

November 2001 under section 113 (b) read with section 102 punishable under section 391 of the Penal Code.

The 1st accused was further charged with committing criminal breach of trust of Rs.4,181,704.12 and the 2nd accused for abetment of count No.2.

After trial the court acquitted the accused-appellant on counts 1 and 3 but the learned High Court Judge convicted the 1st accused-appellant on count 2.

The learned High Court Judge sentenced the 1st accused-appellant to a term of 7 years R.I, Rs. 500,000/-fine and in default 1 year R.I and further ordered compensation of Rs. 500,000/-to be paid to the complainant, failing a further period of 1 year R.I. in default.

Aggrieved by the said sentence of the learned High Court Judge the 1st accused-appellant had preferred this appeal to this court.

When this matter was taken up for argument before this court the learned P.C. for the accused-appellant confined his submissions to the severity of the sentence. It was contended on behalf of the accused-appellant that the learned High Court Judge has misdirected himself in regard to the imposition of the maximum sentence for the offence convicted. It was further submitted that the learned High Court Judge has failed to consider the matters urged on behalf of the accused-appellant in his plea in mitigation of sentence, especially that he had been on remand for a continuous period of three years.

Furthermore, in a civil case filed by the complainant party for the recovery of the amounts stated to have been misappropriated by the accused-appellant, the parties have now reached a settlement whereby the accused-appellant had agreed to pay Rs.22 lakhs in installment of one lakh per month. To date 10 lakhs have been paid and in these

circumstances to consider to set aside the sentence of 1 year R.I imposed on default of the payment of compensation.

In Jayant Patel, J. in the recent case of Jusabbhai V. State CR.MA/623/2012 9/9 stated that:-

“.....It is by now recognized principles that justice to one party should not result into injustice to the other side and it will be for the court to balance the right of both the sides and to up-hold the law.”

When determining the proper sentence as quoted by the Basnayake, A.C.J in Attorney General V. H.N.de Silva 57 N.L.R 121,

“A judge should look at both sides of picture. A judge should consider the points of view of the accused on the one hand and the interest of society on the other.”

The counsel for the Respondent too concede the fact that the parties have arrived at a settlement and the accused-appellant has already paid a sum of one million to the complainant party. But in the District Court case M 9335 a special condition was entered into the terms of settlement, that this settlement will not have any bearing on the High Court case or the Appeal Court matter. In the High Court the accused-appellant has been ordered to pay Rs.500,000/- as compensation to the aggrieved party. Therefore the accused-appellant has to comply with the said order or has to serve a term of imprisonment in lieu of the said amount.

After considering the submissions made by both parties we substitute a term of 5 years R.I. on the accused appellant. Considering the health conditions of the accused-appellant, acting under section 359 of the Criminal Procedure Code we direct that the sentence imposed on the accused-appellant be implemented from the date of conviction namely 08.03.2012. The fine and the compensation ordered by the learned High

Court Judge and the sentences imposed in lieu of the said fine and compensation should stand. Subject to the said variations in the sentence the appeal is dismissed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

K.K.WICKREMASINGHE, J

I agree.

JUDGE OF THE COURT OF APPEAL