

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

Court of Appeal No : CA/MC/ RV 07/2015
SCFR 34/2015

Loku Vitange Ratnapala.
Prisnor No. P 7834,
Mahara Prison,
Ragama

Petitioner

Vs.

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

2. The Commissioner General of Prisons
Prison Headquarters,
Baseline Road,
Colombo 9.

3. The Superintendent
Mahara Prison,
Ragama

4. Hon. Wijedasa Rajapakse. P.C
Ministry of Justice,
Ministry of Justice, Hultsforf,
Colombo 12.

Respondents

CA/MC/RV/07/2015

SC/FR 34/2015

BEFORE : Vijith K. Malalgoda, PC, J (P/CA) &

S. Thurairaja, PC, J

COUNSEL : Varunika Hettige, DSG for the State.

DATE : 27.02.2017

Vijith K. Malalgoda, PC, J (P/CA)

Learned Counsel for the petitioner Mr. Thiranyagama is not present before this Court today. Learned Deputy Solicitor General Mrs. Varunika Hettige represents the Hon. Attorney General. As observed by this Court the accused Loku Vithanage Rathnapala had faced three charges before the Magistrate Court of Morawaka in the year 1988, but that the said case records are not before Court and what is before Court is only the comitials with regard to the said cases maintained at the Matara Prison. Out of the three cases the first case 31554 refers to four charges but it is not clear the 3rd and 4th charges to us. However, we observed that the Magistrate had imposed a jail term of 12 years for the 4th charge but considering the Provisions of Criminal Procedure Code we observe that the maximum the Magistrate could impose is two years if the charges are under the Penal Code.

When going through the column three of the comital we observe that it refers to charges of causing simple hurt and robbery of a repeater gun. In the said circumstances we observe that the maximum period Magistrate can impose even for a charge of robbery under Penal Code would be 2 years. In the said circumstances we impose a sentence of one year each to the first three counts and for a period of two years to 4th count and a total period of five years rigorous imprisonment to operative from August 1988.

With regard to the 2nd case MC Morawaka Case No. 28798, we observe that the Magistrate had imposed total term of 34 years and 6 months. As observed by us the accused had been charged on two counts for unlawful assembly and another two counts of criminal trespass and robbery and two counts of retention of stolen property. As observed by us charges of retention of stolen property can only be maintained as an alternative charge. Therefore no sentence can be imposed for the said two counts. We therefore make order imposing a sentence of 6^{months} rigorous imprisonment on the 1st two counts and two years each for the 3rd and 4th counts total into a jail term of five years rigorous imprisonment. The said sentence also will have to be operative from the 2nd September 1988.

In the 3rd charge sheet refers to case No. 28069. The accused had faced five charges for unlawful assembly, robbery and retention of stolen property. As observed by us the Magistrate had imposed a jail term of 18 years for the 3rd count 5 years rigorous imprisonment on count two and 8 years rigorous imprisonment for count 4, 3 years rigorous imprisonment for 5th count, which

appears to be illegal sentences imposed by the Magistrate. Considering the above sentences we make the following order. On the 1st charge period of 6 months rigorous imprisonment, 2nd, 3rd, 4th charges period of two years rigorous imprisonment for each. 5th being a charge of retention of stolen property we are not going to impose any sentence since that should be an alternative count. Therefore the total period of sentence imposed on this charge sheet will be six years and six months to operate from September 1988.

We direct the Registrar to communicate the sentence imposed on the accused Loku Vithanage Rathnapala Prisoner No. P 7834- Mahara Prison forthwith.

Revision application is allowed.

PRESIDENT OF THE COURT OF APPEAL.

S. Thuraiaraja, PC, J

I agree.

JUDGE OF THE COURT OF APPEAL.

NR/-