

**The Court of Appeal of the Democratic Socialist**  
**Republic of Sri Lanka**

CA Appeal Case No: **CA 272/2014**

High Court of Polonnaruwa Case No: **HC 61/2009**

Democratic Socialist Republic of Sri Lanka

**Complainant**

**Vs.**

Herath Mudiyanseelage Chandana Kumara

**Accused**

**And Now**

Herath Mudiyanseelage Chandana Kumara

**Accused -Appellant**

**Vs.**

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

**Respondent**

C.A. 272/2014

H.C. Polonnaruwa Case No: 61/2009

Before : S. Devika de L. Tennekoon, J.  
S. Thurairaja, PC. J.

Counsel : Amila Palliyage for the Accused-Appellant.  
H.I. Pieris DSG. for the Respondent.

Argued &

Decided on : 31.08.2017

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**S. Thurairaja, PC. J.**

Counsel for the Accused-Appellant Submits as follows:

As per instructions, that I received from my client (Accused-Appellant) I will be confining myself only to the question of sentence. I conceive the facts and the circumstances of this case on which that incident had occurred, I beg Your Lordship to consider the minimum sentence that could be imposed in this matter in terms of Section 364(2) of the Penal Code and also making an application under Section 359 of the Criminal Procedure Code and humbly move Your Lordships to make an order to implement the sentence from the date of conviction, namely 03.12.2014.

Learned DSG. for the respondent submits as follows:

Considering all available evidence I have no objection of this application.

Considering submissions of both counsels and the facts of the case, we find that the Accused-Appellant and the prosecutrix both are married at the time of the incident. Further, considering the available material the Court finds it is appropriate to impose the minimum sentence as stipulated in Section 364(1) of the Penal Code. Accordingly we revise the sentence of 12 years Rigorous Imprisonment to 7 years Rigorous Imprisonment. The fine and the compensation will stand as it is.

Subject to this variation withdrawal of the appeal is permitted. Considering the period of incarceration namely 03.12.2014 as Court orders the Prison Authorities to implement the sentence from 03.12.2014. Subject to this variation, the appeal is dismissed.

Registrar is hereby directed to send back the Court record to the Registrar of the High Court of Polonnaruwa for implementation of the sentence as well as the fine and compensation.

JUDGE OF THE COURT OF APPEAL

S. Devika de L. Tennekoon,J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/-