

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

Court of Appeal case no : CA (PHC) APN /135/2013

Hewa Nekathige Saiman .
Wikramanayaka Mawatha,
Neherigahakoratuwa,
Kirinada,
Puhulwella.

Petitioner

Vs.

Hon Attorney General
Attorney General's Department
Colombo 12

Respondents

BEFORE : S. Devika de L. Tennekoon, J
S. Thurairaja P. C. J

COUNSEL : Upul Kumarapperuma for the Accused- Petitioners.
Haripriya Jayasundera, SDSG for A. G.

ARGUED AND
DECIDED ON : 25.10.2017

S. Thurairaja P. C. J

Heard submissions of Counsels;

The Counsel for the Accused Appellant, submits that he is not contesting the conviction but, he is challenging the sentence. He says, that the sentencing policy is not considered by the learned trial Judge and submits that sentencing theories and Policies were not taken into consideration. Further, he invites us to consider the sentencing policy pronounced by the Supreme Court in 3/2008. The Learned Deputy Solicitor General submits that she is supporting the conviction and submits that the sentence is appropriate and well deserved. The Learned Trial Judge had considered the entire case. The Victim was 9 years and few months old, School going child. She was taken away from the school on a false pretext in her school uniform by a 63 old person and involved in committing sexual activities as described in the indictment. After a full trial held in the High Court, the Accused was found guilty, it is our duty

was found guilty, it is our duty to see the evidence for the Prosecution and the accused, there we find that the accused had completely denied and said that the allegation was made to take revenge on him. We are mindful of facts and the defence taken in the trial. Section 365 was brought to Sri Lankan legal system by way of amendment to Penal Code 22 of 1995. Sri Lanka is a signatory to United Nation's Child Right's Charter. In the said Charter Article 3 states **"In all actions concerning children, whether undertaken by public or private social welfare institutions, Court of Law, administrative authorities or Legislative bodies, the best interest of the child shall be primary consideration "**

The question arisen whether the same concept is being used by the Learned Trial Judge. We are possessed of the Judgment and the reasoning for the Sentence of the Learned Trial Judge. He had given opportunity for both Counsel to make submissions and he was possessed of all the aggravating and mitigatory circumstances before he passed the sentence. The judicially trained minded judge has imposed the sentence after considering several factors including recognizing the said offence as an inhuman and hatred by the society. Further the child is a tender child and she had to abundant her education. This shows, for the few second pleasure of a person can destroy the life of a person. And we take note of the observations made by the High Court Judge very seriously. We take this opportunity to visit the reasons stated in Karunaratne's Case which is not directly applicable to this case but, we are mindful of the concerns of the Court. The Learned Counsel for the Accused Appellant invited us to follow the principle of SC determination in 3/2008. The circumstances declared there is not applicable to this

case. The counsel submits the age has to be considered favourable to the accused. Considering the age at the time of the incident the same submissions can go against the Accused. A person of 63 years of age in our country is virtually not only respected but, also venerated by the youngsters. Person of that calibre abusing a child of 9 years cannot be accepted by any means. We are in total agreement with the sentence passed by the Learned Trial Judge. In the same time we are mindful of the delay in the system. The trial and the appeal has delayed beyond the control of the accused appellant. Therefore, giving the concession to the Accused appellant we intent to operate the sentence from the date of conviction because the accused Appellant was incarcerated.

We dismiss the Appeal and direct the Prison Authority to implement the sentence from the date of conviction namely 28.06.2013. Registrar is hereby directed to forward the case record to the Registrar of High Court of Matara for the implementation of sentence.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

S. Devika de L. Tennekoon, J

I agree

JUDGE OF THE COURT OF APPEAL