

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

C.A. HCC No. 18/2016

H.C. Badulla Case No. 52/1996

In the matter of an appeal against
conviction/sentence of the High
Court of Badulla.

Martin Thalawaththa alias

Athula Kumarasiri

Accused-Appellant.

Vs.

The Hon. Attorney-General

Respondent

C.A. HCC No. 18/2016

H.C. Badulla Case No. 52/1996

Before : K.K. Wickremasinghe, J &

K. Priyantha Fernando, J

Counsel : Dr. Ranjit Fernando for the Accused-Appellant.

Anoopa de Silva, SSC for A.G.

Argued &

Decided on : 02.12.2019.

K. K. Wickremasinghe, J.

Counsel for the Accused-Appellant informs Court that he is withdrawing the appeal against the conviction and therefore the conviction against the accused-appellant is affirmed. Both parties make submissions with regard to the sentence. Counsel for the Appellant informs Court that he has filed documents with regard to the health condition of the Appellant. Further he informs Court that he depends on the written submissions filed by the Counsel as marked 'Y' where he states that the Accused-Appellant had been charged for criminal breach of trust, where the bank he was working during the year 1989 and according to the indictment he had committed criminal breach of

trust for sum of Rs. 302,900/= (Rupees three lacks two thousand nine hundred). The offence was committed thirty years ago and indictment was filed in April 1996 which was six years after the date of offence and after trial he was convicted on 29.01.2016. Sentence and the conviction was on the same date.

It is being noted that both Counsel for the defence and the prosecution had obtained so many dates and the case was postponed for so many occasions. Further the Counsel for the Appellant informs that the accused-appellant is now bed ridden and suffering from renal failure. He has submitted medical evidence with regard to the current situation in 'X3'.

The Counsel for the Respondent *Ms. Anooa De Silva, Senior State Counsel* while submitting the case *King Vs. Rankira* (42 N.L.R. page 145) informs Court, that "the Court of Criminal Appeal will not interfere with the judicial discretion of a Judge in passing sentence unless that discretion has been exercised on a wrong principle. I respectfully submit that the sentencing order of the learned High Court Judge not been imposed on a wrong principle. He has taking into consideration the verbal

submissions made and no documents had been submitted to the learned High Court Judge at the time in which the submissions in mitigation were made and therefore, on the verbal submissions the learned High Court Judge imposed 5 years Rigorous Imprisonment and I submit to Hon. Court that in the case of M Jude all_Vs. State of Rajasthan.

The Rajasthan High Court held My Lord a question of sentence is a matter of discretion and it is well settled law when discretion has been properly exercised on a accepted judicial line and appellate Court should not interfere with sentencing an accused person. It is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch. And my Lord and in the case of the Attorney General Vs. Mendis it was held by H/L Justice Goonesekera for some offences generally speaking longer sentences of imprisonment are appropriate such as for example most robberies, most offences involving serious violence use of weapon to wound burglary of private dwelling houses planned crime for wholesale profit. So this is a case of planned crime for wholesale profit My lord. And My Lord the accused in this case

functioned as the Manager of the Haldummulla branch of the Bank of Ceylon and the due administration of the entirety of the Bank was carried out by the accused, the Haldummulla branch of the Bank of Ceylon comprised of two clerks, Cashier and a Security Guard. He manipulated the entire system My Lord. The auditors investigation reveal that the Manager the accused had misappropriated mishandled and manipulated the entire system. And also My Lord the fact that white collar crimes attack the fibre of the countries economic structure and there cases are not got private gain. His crimes being imbalanced of the economy of the country and therefore My Lord serious approach should be taken with regard to offences of this nature and he was lucky to have five years R.I. It is not illegal My Lord suspend the sentence for the other case and therefore no ground for the sentence to be reduced and therefore those are my submissions.

Counsel heard and submits that this is a serious type case where the accused-appellant had preplanned and misappropriated is money being a manager of the bank.


Considering the date of offence and we consider the date of offence and the date of conviction and also the submissions made by learned Counsel for the Appellant with regard to health condition at the date of sentence we consider the bring down sentence imposed on the appellant. Further we are mindful of the fact that the appellant has committed a grave crime which affects the economy of the country and particular crime was a plan one. Further we considered the case submitted by Counsel for the accused-appellant *Karunarathne Vs. State* 78 NLR 413 where it was held that "When a deserving Conviction and Sentence have to be confirmed by 10 years after the Proved Offence the Judge can't disregard the serious consequences and disorganization that it can cause to the Accused's family. Therefore the delay of 10 years to finally conclude the Case is a very relevant circumstance to be taken in to consideration and in the circumstances of the Case a Suspended Sentence was considered appropriate"

We consider the judgments cited by both parties and accordingly considering above facts we are not inclined to suspend the

sentence and we affirm the conviction and bring down the sentence of 5 years rigorous imprisonment to one year rigorous imprisonment and affirm the fine. Rest of the sentence (fine of Rs. 736,350/=) and the default sentence will remain unchanged. Considering above facts we are not inclined to suspend the sentence.

Subject to the above mentioned variation the appeal is hereby dismissed.

Registrar is directed to send copies of the order to the relevant High Court of Badulla.



JUDGE OF THE COURT OF APPEAL

K. Priyantha Fernando, J.

I agree.



JUDGE OF THE COURT OF APPEAL

AKN