

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

CA 158/2005

Puwakgolle Basnayake Mudiyansele Dhanapala
Egodakanda
Walapone.

1st Accused -Appellant

Vs.

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

Plaintiff - Respondent

C.A.No.158/2005**H.C.Kandy No.732/92**

Before : Vijith K. Malalgoda P.C. J. (P/CA) &
S. Devika de L. Tennekoon, J.

Counsel : Chula Bandara for the Accused-Appellant.
Rohantha Abeysooriya D.S.G. for the A,G.

Argued and
Decided on : 09.12.2015

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

In this case the Learned Counsel for the accused- appellant at the out set informs that he will not be challenging the conviction but will only be making submissions with regard to the sentence already imposed. In the present case the accused-appellant who was an employee of the Ragala Multi Purpose Co-operative Society was indicted along with one Tilakaratne who was his assistant under Section 386 and 467 of the Penal Code. At the conclusion of the High Court trial the learned High Court Judge Kandy has convicted the accused-appellant on counts 01, 03, 04 and 05 and acquitted the 2nd accused-appellant from all the charges against him. After conviction the learned High Court Judge has imposed the following sentence on the accused-appellant.

On count 01 Court has imposed a jail term of 18 months Rigorous Imprisonment.

On count 02 Court has imposed a fine of Rs.2500/=

On count 03 Court has imposed a fine of Rs. 5000/=

On count 05 Court has imposed a fine of Rs. 10000/=

In default on each of the above fines imposed, six months R.I. was imposed by Court.

The position taken up by the Learned Counsel before this Court was that the said offense had committed in the years 1984,32 years ago and the accused-appellant is presently 77 years old. Counsel further submits that considering the time taken to conclude the case and the other factors such as old age and health condition , he has instruction from his client to conclude this case without going for arguments. The learned Deputy Solicitor General at this stage submits that he too agrees with the submissions of the counsel that the offence had committed 32 years back and it is unfair to punish a person at this stage for offence committed 32 years ago. In the case of K.R.Karunawathi Vs. The State 78 New law Report 413 the delay of 10 years to conclude a case had been considered as long delay. However in the present context this Court is not inclined to declare a period of 10 years as long delay but, when considering the

facts and circumstances of the present case we are of the view that it not fair to impose a custodial sentence after 32 years. Therefore we decide to suspend the above sentence of 1 ½ years for a period of 5 years with effect from today. We are not going to change the other sentences imposed by the learned High Court Judge. Subject to the above variation the appeal stand dismissed.

Registrar is directed to forward this case record back to the High Court of Kandy for the implementation of the said sentence.

The appeal is dismissed.

PRESIDENT OF THE COURT OF APPEAL

S.Devika de L. Tennekoon,J.

I agree.

JUDGE OF THE CORUT OF APPEAL

WC/-