

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

*In the matter of a Special Leave to
Appeal application under Articles 127
(1) and 128 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.*

The Democratic Socialist Republic of Sri
Lanka

SC Appeal 134/2019

SC [Spl] LA No. 318/2018

Court of Appeal Case No. 241/2017

HC Colombo Case No. HC 7821/2015

Complainant

Vs.

Ranathunga Arachchilage Ranjith
Chandrathilake
No. 13, Wijaya Mawatha,
Veyangoda.

Accused

NOW BETWEEN

Ranathunga Arachchilage Ranjith
Chandrathilake
No. 13, Wijaya Mawatha,
Veyangoda.

Accused -Appellant

Vs.

The Attorney General

Attorney General's Department
Colombo 12

Complainant- Respondent

AND NOW BETWEEN

Ranathunga Arachchilage Ranjith
Chandrathilake
No. 13, Wijaya Mawatha,
Veyangoda.

Accused -Appellant- Petitioner

Vs.

The Attorney General
Attorney General's Department
Colombo 12

Complainant- Respondent- Respondent

BEFORE : **BUWANEKA ALUWIHARE PC, J.,
P PADMAN SURASENA, J. AND
S. THURAIRAJA, PC, J.**

COUNSEL : Nihara Randeniya for the Accused-Appellant-Petitioner
Riyaz Bary, SSC for the Complainant-Respondent-Respondent

ARGUED ON : 15th of November 2019

WRITTEN : Accused - Appellant- Petitioner - 4th September 2019

SUBMISSIONS Complainant- Respondent- Respondent - 13th November 2019

DECIDED ON : 18th December 2019.

S. THURAIRAJA, PC, J.

The Accused-Appellant, Ranathunga Arachchige Ranjith Chandrathilaka (hereinafter sometimes referred to as Appellant) was indicted at the High Court of Colombo on three counts namely, Section 367 of the Penal Code to be read with Section 3 of the Offences against Public Property Act and Section 395 of the Penal Code.

The indictment was read and explained to the Appellant and he pleaded not guilty. When the trial commenced, the prosecution led the evidence of Mayadunna Mudiyansele Chandrasiri Mayadunna, Walimuli Nishantha Amaranath, Hettiarachchige Sampath Sri Lal Harischandra, Sabhadevan Parameswaran, Inspector of Police Aththaragama, Sub-Inspector of Police Premanath and closed the case. Being convinced of a prima facie case being established, the trial court called the defence. The Appellant opted to make a statement from the dock.

Upon hearing the submissions of both counsel, the learned High Court Judge delivered the order and found the Appellant not guilty on the 1st and 2nd counts and found guilty on the 3rd count. Both the prosecuting and defence counsel were invited to make submissions before sentencing the Appellant and the learned trial judge, after giving reasons, imposed 5 years rigorous imprisonment and a fine of Rs. 50 000/- in default 4 year's rigorous imprisonment.

Being aggrieved with the said conviction and the sentence, the Appellant appealed to the Court of Appeal. The Court of Appeal dismissed the appeal after giving reasons.

Being dissatisfied with the said Judgment of the Court of Appeal, the appellant preferred an appeal to this Court. On the 24th of July 2019, after the learned Counsel made submissions in support of his appeal, this Court granted leave on the following question of law.

- (i) Whether the sentence imposed by the learned High Court Judge is excessive?

Heard the submissions of both counsel and considered the written submissions filed by both parties. The Counsel for the Appellant submitted the following factors to be considered in favour of the Appellant.

- a) The Appellant is a first offender
- b) Married and has school going children
- c) Sole breadwinner

The Appellant is not challenging the conviction and submissions were made regarding the quantum of the sentence only. The Senior State Counsel submitted to Court that the conviction is well-founded and that in the given circumstances, sentence is reasonable.

I carefully perused the proceedings before the original court – namely the High Court. Considering the evidence before the Court and the reasons stated by the learned judge, I find that the conviction is well-founded. Therefore I am not inclined to interfere with the said conviction.

Regarding the sentence, the learned trial judge before passing the sentence had invited both Counsel to make their submissions. The Appellant had submitted the same submissions before the learned trial judge. After considering their submissions, the learned High Court judge had imposed the sentence stated above.

Considering the submissions, I find that the Appellant was an employee attached to the Sri Lanka Rupavahini Corporation as a technical officer and he was found guilty on selling copper transmission cables that probably belonged to the said Corporation, to a scrap metal dealer. The said vendor gave evidence to the fact that he had dealt with the Appellant on several occasions with regard to similar cables.

I have observed that when those who work in government institutions are found guilty on criminal offences, they plead 'first offender' as a mitigating factor. It is obvious that a person in government service cannot be a convicted criminal.

Therefore, a plea of 'first offender' should not be acceptable. It is the duty of government employees to protect their institutions. Acts causing loss to state property especially at their institution cannot be pardoned or condoned.

In view of the fact that the offence of habitually dealing with stolen items punished under Article 395 of the Penal Code carries a maximum punishment of 20 years Rigorous Imprisonment, I find the imposition of 5 years Rigorous Imprisonment by the learned trial judge to be reasonable. The reasons of the learned trial judge were expressed after hearing the evidence of all witnesses before him. Further he is the best judge to evaluate the deposition and demeanour of all witnesses and the Accused. In this case, I have no reason to interfere with the sentence.

Considering all of the above, I answer the question of law in the negative.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

BUWANeka ALUWIHARE PC, J.,

I agree.

JUDGE OF THE SUPREME COURT

P PADMAN SURASENA, J.

I agree.

JUDGE OF THE SUPREME COURT