

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

Court of Appeal Case No : CA HC/230/2016

M.R. Susil Hemantha,
Temple road,
Raddalagoda,
Kaleliya.

Petitioner

Vs.

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

Respondents

C.A. No.230/2016 - H.C. Gampaha Case No.37/97
BEFORE : S. DEVIKA DE L. TENNEKOON J AND
S. THURAIRAJA PC J
COUNSEL : Neranjan Jayasinghe for the Accused-Appellant
Anoopa de Silva SSC for the AG
ARGUED AND
DECIDED ON : 28.09.2017

S. THURAIRAJA PC J

Accused-appellant is present in Court produced by Prison Authorities.

Counsel for the accused-appellant Mr. Neranjan Jayasinghe makes his submissions and he says that the accused-appellant had pleaded guilty in the original Court namely, the High Court of Gampaha and he was sentenced to ten years rigorous imprisonment which is the maximum sentence stipulated in the Act. Further, he submits that the aggravating circumstances considered by the learned trial Judge is not an aggravating factor when considering the sentence on a person of his age, nature and other factors. The mitigatory circumstances are not considered by the learned High Court Judge. Therefore, he is appealing for a reasonable reduction in the sentence. The learned Senior State Counsel who is appearing for the Attorney General says that he is an escapee from the Prison. Therefore, that is a serious aggravating circumstances. Therefore, she is objecting for any reduction in the sentence.

Court considers the submissions of both Counsel and the brief before us. It appears that the accused-appellant had pleaded guilty of possessing a hand grenade which is punishable under Section 2(1)(b) of the Offensive Weapons Act No.18 of 1966. The offence was committed on 03.08.1994 and considering the period he has been incarcerated and now he is 52 years of age who wishes to settle in his life and considering the fact that the maximum sentence in the said Law is ten years rigorous imprisonment and the learned High Court Judge has considered that he has escaped from the Prison as an aggravating factor. After considering all circumstances, this court is of the view that the sentence imposed is excessive. Considering all the factors we set aside the sentence of 10 years rigorous imprisonment and impose five years rigorous imprisonment and the same to be implemented from the date of conviction.

The Prison Authorities are hereby directed to implement the sentence from the date of conviction, namely 05.09.2016.

The fine and the default sentence will remain as it is.

Registrar is directed to forward the case record to the Registrar, High Court of Gampaha for the implementation of the sentence.

S. DEVIKA DE L. TENNEKOON J

JUDGE OF THE COURT OF APPEAL

I agree.

JUDGE OF THE COURT OF APPEAL

TW