

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

In the matter of an Appeal made under
Section 331 of the Code of Criminal
Procedure Act No.15 of 1979.

**Court of Appeal No.
CA/HCC 0254/2023
High Court of Colombo
Case No. HC/ 5776/2011**

Dehiwalage Joseph Rathnasiri Perera

ACCUSED-APPELLANT

vs.

The Hon. Attorney General
Attorney General's Department
Colombo-12

COMPLAINANT-RESPONDENT

BEFORE : **Sampath B. Abayakoon,J.
P. Kumararatnam,J.**

COUNSEL : **Ershan Ariaratnam for the Appellant.**
Shanil Kularatna, ASG for the Respondent.

ARGUED ON : **29/08/2024**

DECIDED ON : **13/12/2024**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General with three charges in the High Court of Colombo.

The first charge was Cheating Jayasighe Arachchige Septiman Sunil Baratha Perera to hand over gems worth about Rs.1,255,000/- to the Appellant for sale on 07.04.2008.

The second and third charges are also for cheating Jayasighe Arachchige Septiman Sunil Baratha Perera on two occasions to hand over gems worth

about Rs.2,0175,500/- and Rs.2,930,000/- respectively for sale. The relevant dates for second and third charges are 05.04.2008 and 24.04.2008 respectively.

The learned High Court Judge after closure of the prosecution case, called for the defence as he had found sufficient evidence to answer a case by the Appellant. The Appellant informed Court that he was going to give evidence and to call three witnesses on his behalf. Accordingly, the Appellant gave evidence and concluded his evidence on 02.08.2019. On that day the defence Counsel informed the Court of the Appellant's willingness to tender a guilty plea and conclude the matter. Accordingly, the Appellant pleaded guilty to all the charges on 07.07.2023.

After considering all the aggravating and mitigating circumstances of the case, the learned High Court Judge imposed the following sentence to the Appellant on 10.08.2023.

- **For the 1st Count** the Appellant was sentenced to 08 months rigorous imprisonment and suspended the same for 15 years. A fine of Rs.20,000/- was imposed subject to 03 months default sentence. Acting under Section 17(4) of the Code of Criminal Procedure Act No.15 of 1979, a compensation of Rs.1,000,000/- was ordered to pay the widow of PW1, Jayasinghe Arachchige Septiman Sunil Baratha Perera with a default sentence of 02 years.
- **For the 2nd Count** the Appellant was sentenced to 08 months rigorous imprisonment and suspended the same for 15 years. A fine of Rs.20,000/- was imposed subject to 03 months default sentence. Acting under Section 17(4) of the Code of Criminal Procedure Act No.15 of 1979, a compensation of Rs.1,500,000/- was ordered to pay to the widow of PW1, Jayasinghe Arachchige Septiman Sunil Baratha Perera with a default sentence of 02 years.
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- **For the 3rd Count** the Appellant was sentenced to 08 months rigorous imprisonment and suspended the same for 15 years. A fine of Rs.20,000/- was imposed subject to 03 months default sentence. Acting under Section 17(4) of the Code of Criminal Procedure Act No.15 of 1979, a compensation of Rs.2,500,000/- was ordered to pay to the widow of PW1, Jayasinghe Arachchige Septiman Sunil Baratha Perera with a default sentence of 02 years.

Being aggrieved by the aforesaid sentence only, the Appellant preferred this appeal to this court.

The Learned Counsel for the Appellant informed this court that the Appellant is on bail and has given consent to argue this matter in his absence.

Back ground of the case

In this case the Appellant had involved in gem business during the period mentioned in the indictment. PW1 was also involved in gem business and had handed over the gems worth about Rs.6,192,500/- to the Appellant on the promise that he would pay back the Appellant the sale money. Although the Appellant had given 08 cheques, all had been bounced upon tendering to the bank.

As the Appellant pleaded guilty to the indictment, it is not necessary to consider the evidence led in the trial.

The learned Counsel for the Appellant mainly argued that the compensation imposed on the Appellant is excessive considering the old age of the Appellant. It is pertinent to mention that the Appellant did not challenge the conviction.

In **Dhananjay Chatterjee v State of W.B.** (1994) 2 SCC 220 the Court held that:

“ The imposition of appropriate punishment is the manner in which the Court respond to the society’s cry for justice against the criminal. Justice demand that Court should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime.”

In **Sevaka Perumal etc v State of Tamil Nadu** (1991) AIR SC 1463 the Court held that:

“Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is therefore the duty of every Court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc”.

When the learned High Court Judge passed the sentence, he had considered all the submissions made by both parties. The learned High Court Judge had considered the age of the Appellant and the other cases filed against him. Further, the learned High Court Judge had very correctly considered the sorry plight of the wife of PW1. PW1 had passed away after giving evidence in the High Court.

In this case the Learned High Court Judge has considered the submissions made by both parties very correctly before passing the sentence. He had given plausible reasons as to why he passed this sentence.

Hence it is wrong to say that the Learned High Court Judge was predetermined and passed an excessive sentence.

Considering all the evidence presented during the trial, and the submissions made I conclude that this not an appropriate case in which to interfere with the decision of Learned High Court Judge of Colombo dated 10/08/2023. Hence, I dismiss this appeal.

The Registrar is directed to send this judgment to the High Court of Colombo along with the original case record.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree

JUDGE OF THE COURT OF APPEAL