

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

*In the matter of an appeal against a judgment of the Provincial High Court of the Western Province holden at Panadura in terms of Section 9(a) of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 read together with Article 128(4) of the Constitution.*

**SC. Appeal. No. 21/2023**

High Court of Panadura

Case No. HCA 42/2019

Panadura Magistrate's Court

Case No: 98258

Officer - in - Charge

Police Station,

Panadura.

**COMPLAINANT**

**-Vs-**

1. Mahaarachchige Janaka Pushpa Kumara  
36/2, Kiripola, Hanwella.
2. Hanadura Prasanga Sanjeeva Silva  
98/1, Pinwala, Panadura.
3. Gamage Shashi Parabath  
552, Siyambalakote, Barawakumbuka.

**ACCUSED**

**AND THEN BETWEEN**

1. Mahaarachchige Janaka Pushpa Kumara  
36/2, Kiripola, Hanwella.

**ACCUSED-APPELLANT**

**-Vs-**

1. Officer - in - charge  
Police Station,  
Panadura.

**COMPLAINANT-RESPONDENT**

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

**RESPONDENT**

**AND NOW BETWEEN**

1. Mahaarachchige Janaka Pushpa Kumara  
36/2, Kiripola, Hanwella.

**ACCUSED-APPELLANT-**  
**APPELLANT**

**-Vs-**

Officer - in - charge  
Police Station,  
Panadura.

**COMPLAINANT-**  
**RESPONDENT-RESPONDENT**

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

**RESPONDENT-RESPONDENT**

**BEFORE** : **P. PADMAN SURASENA, J**  
**JANAK DE SILVA, J**  
**MAHINDA SAMAYAWARDHENA, J**

**COUNSEL** : Jeffry Zainudeen for the Accused - Appellant -  
Appellant.  
Induni Punchihewa, SC for the Hon. Attorney General.

**ARGUED &** : 19-03-2024  
**DECIDED ON**

**P. PADMAN SURASENA, J.**

Court heard the submissions of the learned Counsel for the Accused-Appellant-Appellant and also the submissions of the learned State Counsel and concluded the argument of this case.

The Accused-Appellant-Appellant along with two other persons stood charged in the Magistrate's Court of Panadura under three counts. The Accused-Appellant-Appellant was the 1<sup>st</sup> Accused in the case. These three counts are as follows:

- (1) Committing the offence of House-trespass on the property of Malalage Leelawathi Pieris, an offence punishable under Section 434 of the Penal Code.
- (2) Causing hurt to said Malalage Leelawathi Pieris, an offence punishable under Section 314 read with Section 32 of the Penal Code.
- (3) Committing robbery of cash amounting to Rs. 200,000.00 from the possession of said Malalage Leelawathi Pieris, an offence punishable under Section 382 read with Section 32 of the Penal Code.

After the trial, the learned Magistrate by his judgment dated 12-11-2018 has convicted the Accused-Appellant-Appellant for all three counts and acquitted and discharged the 2<sup>nd</sup> & 3<sup>rd</sup> Accused from all the counts.

Being aggrieved by the said conviction, the Accused-Appellant-Appellant has appealed to the Provincial High Court.

The Provincial High Court after the argument of the said appeal, by its Judgment dated 15-12-2020, has decided to affirm the said conviction and the sentence imposed on the Accused-Appellant-Appellant.

Being aggrieved by the said Judgment dated 15-12-2020 pronounced by the Provincial High Court, the Accused-Appellant-Appellant has filed the instant Appeal.

When the Leave to Appeal Petition relevant to the instant Appeal was supported, this Court, by its order dated 09-02-2023, has granted Special Leave to Appeal in respect of the following question.

*"Is the sentence imposed by the learned Magistrate on count 1 of the Charge sheet excessive?"*

It is clear from the perusal of Section 434 of the Penal Code that the said section has imposed a maximum sentence of one year Rigorous Imprisonment to a person who is convicted for committing that offence.

Therefore, the learned Magistrate could not have lawfully imposed a sentence of two years Rigorous Imprisonment for the Accused-Appellant-Appellant who has been convicted for committing an offence punishable under Section 434 of the Penal Code.

Learned State Counsel concedes this position and submitted that the learned Magistrate has made an error.

We therefore set aside the sentence of two years imposed on the Accused-Appellant-Appellant by the learned Magistrate on 30-05-2019 in respect of the first count in the Charge Sheet.

We proceed to substitute a sentence of one year in place of that sentence.

The order made by the learned Magistrate on 30-05-2019 and the Judgment of the Provincial High Court dated 15-12-2020 must stand altered to that extent.

The learned Magistrate of Panadura is directed to take necessary steps to enforce the altered sentence.

**JUDGE OF THE SUPREME COURT**

**JANAK DE SILVA, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**MAHINDA SAMAYAWARDHENA, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

Hsm