

ATTORNEY-GENERAL
v.
GUNARATHNA AND OTHERS

COURT OF APPEAL.
S. N. SILVA, J. (P/C.A.),
DR. RANARAJA, J.
C.A. APPEAL 89/93.
H.C. AVISSAWELLA 56/93.
JANUARY 11, 1995.

Criminal Law – Robbery – Public Property, Section 4 – Offences against Public Property Act 12 of 1982 – Plea of guilt – Non-custodial sentence – Enhancement – Deterrent punishment.

The accused were indicted on a charge of robbery of a sum of Rs. 58,400/- being public property. They pleaded guilty to the charge. Each accused was sentenced to a term of 2 years' Rigorous Imprisonment suspended for a period of five years, and ordered to pay a sum of Rs. 2,500/- each as State costs.

The Attorney-General appealed against this Order in respect of the sentence imposed on 1, 2, 3 Accused on the basis that the facts and circumstances disclose the commission of a serious offence, and the Accused deserve deterrent punishment.

Held:

(1) The facts present the commission of daring robbery in broad day light, on a high road. The offence has been committed in respect of public property, being money to be used to pay salaries of Government teachers and to meet the expenses in connection with the supply of the free mid day meal to school children. Two of the accused were Police Officers, whose function it was to uphold the law and to preserve order.

The Learned High Court Judge has not given any reasons for imposing only a suspended term of imprisonment. On the basis of the facts relevant, the offence calls for the imposition of a custodial sentence.

(2) Section 4 of the Offences against Public Property Act provides for a mandatory fine to be imposed; the Learned High Court Judge had failed to impose that fine.

(3) Although the Petition of Appeal has not prayed for the imposition of a fine, the Court of Appeal has the jurisdiction to impose a sentence which is commensurate with the offence.

AN APPEAL from the Provincial High Court of Avissawella.

R. Arasakularatne, S.S.C. for Attorney-General.

Ranjith Abey Suriya, P.C., with *Miss Dilanthika Nawaratna* for 1st and fourth Respondents.

Kalinga Indatissa for 2nd and 3rd Respondents.

Cur. adv. vult.

February 04, 1995.

S. N. SILVA, J. P/CA

This matter comes up on an appeal filed by the Honourable Attorney-General from the sentences imposed on the four accused-respondents by the Provincial High Court, Avissawella. At the outset Learned Senior State Counsel submitted that he is not pursuing the appeal against the 4th accused-respondent. In the circumstances, the appeal is being considered only in respect of the sentences imposed on the 1st, 2nd and 3rd accused-respondents.

The accused were indicted before the High Court on a charge that on 20.06.90 at Mattamagoda, they committed robbery of a sum of Rs. 58,400/- being public property, from the possession of V. A. Dharmadasa and thereby committed an offence punishable under section 4 of the Offences against Public Property Act No. 12 of 1982. On 22.09.93 upon the charge being read to the accused, each of the accused pleaded guilty to the charge. Learned State Counsel made a comprehensive address as to the facts and circumstances, relevant to the offence that was committed. Thereafter, Learned counsel for the defence made a plea in mitigation. At the conclusion of these submissions Learned High Court Judge sentenced each accused to a term of 2 years' R.I. suspended for a period of 5 years. They were also ordered to pay a sum of Rs. 2,500/- each, as state costs. In default they were sentenced to a term of 6 months' imprisonment.

The appeal has been filed by the Honourable Attorney-General on the basis that the facts and circumstances disclose the commission of a serious offence in broad day light. That, the accused were armed

at the time of committing the robbery of public property being the money withdrawn from the Bank by the Principal of the Haloluwa Vidyalaya for payment of the teachers' salaries and for expenses in connection with the supply of the mid-day meal to school children. That, two accused were functioning as police officers and deserve deterrent punishment for the serious offence committed by them.

Learned President's Counsel appearing for the accused-respondents submitted that the accused pleaded guilty in the belief that they will be imposed a non-custodial sentence. He also submitted that in the event of the case proceeding to trial, some of the accused may not have been convicted. That, all four accused pleaded guilty so that they may collectively get the benefit of a lenient sentence. In particular, it was submitted that the State had acted irresponsibly in indicting the 4th accused against whom there was no evidence whatsoever. Learned Counsel also submitted that this Court will interfere with a sentence that has been imposed only where it is manifestly inadequate. That, since the accused are relatively young persons, who have suffered loss of employment consequent to the conviction, they should not be imposed a custodial sentence at this stage.

The facts relevant to the offence are as follows:

The sum of Rs. 58,400/- referred in the charge was withdrawn from the Peoples' Bank and Bank of Ceylon, Ruwanwella by H. T. Gunaratne being the Principal of the Haloluwa Vidyalaya for the purpose of paying the teachers' salaries and for meeting the expenses in connection with the supply of the mid-day meal to the school children. He was accompanied by another senior teacher of the school, V. A. Dharmadasa, who is referred to in the charge. After cashing the money it was enclosed in an envelope and kept inside a bag which was carried by Dharmadasa. The Principal was riding the motor cycle and Dharmadasa was on the pillion and he carried the bag containing the money. At about 12.30 p.m. whilst on the main road, the three accused came on another motor cycle overtook them and ordered them to stop. Two of the accused were armed with revolvers. They were threatened by the accused. The bag containing

the money was grabbed by one of the accused. Thereafter the accused went away on their motor cycle having fired a shot in the air.

As noted above, two of the accused were police officers. They were assigned to provide security to the then State Minister of Power & Energy. The 3rd accused was engaged as a driver of that Minister's vehicle. They were arrested by the police in the course of the investigation and the money stolen was recovered from their possession and on information given by them.

The facts stated above present the commission of a daring robbery, in broad day light, on a high road. The offence has been committed in respect of public property being money to be used to pay salaries of Government teachers and to meet the expenses in connection with the supply of the free mid-day meal to school children. The accused have obviously planned the commission of the offence, in detail. Two of the accused were police officers whose function it was to uphold the law and to preserve order. It is their function to investigate offences and to ensure that perpetrators of offences are duly brought to book. In this instance, the very guardians of the law have committed a most serious offence.

Learned High Court Judge has not given any reasons for imposing only a suspended term of imprisonment on the accused. The gravity of the offence committed is fully set out in the address of Learned State Counsel. In the circumstances, if the Learned High court Judge took a lenient view of the matter, he should have stated the reasons on which such a view was taken. On the basis of the facts relevant to the commission of the offence as stated above, we are of the view that the sentences imposed are manifestly inadequate. The offence calls for the imposition of a custodial sentence. The circumstances relevant to the commission of the offence and the fact that two accused are police officers clearly militate against the imposition of a suspended term of imprisonment. We also note that the penal provision namely, section 4 of the Offences Against Public Property Act provides for a mandatory fine to be imposed of "of one thousand rupees or three times the value of the property of which such offence was committed, whichever amount is higher." Learned High Court

Judge has failed to impose this fine and has merely ordered the accused to pay state costs in a sum of Rs. 2,500/-. Learned President's Counsel submitted that a fine cannot be imposed by this Court since the petition of appeal has not prayed for the imposition of a fine. We are of the view that when an appeal is filed from a sentence and the sentence that has been imposed is found to be inadequate and not according to law, this Court has the jurisdiction to impose a sentence which is commensurate with the offence that has been committed and which is in accordance with the law. The jurisdiction of this Court, in this respect is not restricted by the prayer contained in the petition of appeal. In any event, the petition of appeal specifically states that the sentence is "manifestly inadequate" having regard to the offence that has been committed. In the circumstances we are of the view that the fine as provided for by Section 4 would have to be imposed by this Court.

As regards the sentence of imprisonment to be imposed we note that the circumstances of the offence that was committed, the fact that it was committed in respect of public property and by police officers whose function it is to uphold law and order, warrant the imposition of a deterrent punishment. However, we have to take into account the fact that the accused pleaded at a very early stage and that by virtue of the conviction they will lose their employment. It has also been submitted that they are young persons. Furthermore, they have been imposed a suspended term of imprisonment and have been free from the date of conviction. Taking into account all these circumstances, we set aside the sentence imposed by the learned High Court Judge on 22.09.93 and impose on each of the 1st, 2nd and 3rd accused-respondents a sentence of 2 years R.I. Section 4 of the Offences Against public Property Act requires imposition of a fine of three times the value of the property in respect of which the offence was committed. Accordingly, we impose on each of the accused-respondent a fine of Rs.175,200/-. In default, we sentence each of the accused-respondent to a term of 2 years' R.I.

DR. RANARAJA, J. – I agree.

Custodial Sentence and Fine Imposed.