

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

In the matter of an Appeal in terms of Section
331 of the Code of Criminal Procedure Act No.
15 of 1979, and in terms of Article 138 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka

CA-HCC-40/22

HC of Hambantota Case No:

HC 110/2007

The Democratic Socialist Republic of Sri Lanka

Complainant

Vs.

Samarasingha Hewage Nishantha alias Sudda

Accused

And Now

Samarasingha Hewage Nishantha alias Sudda

Accused-Appellant

Vs.

The Hon. Attorney General

Attorney General's department

Colombo 12.

Complainant-Respondent

Before : B. Sasi Mahendran, J.

Amal Ranaraja, J.

Counsel: Thanuka Nandasiri for the Accused-Appellant

Wasantha Perera DSG for the Respondents

Argued On: 30.05.2025

Written

Submissions: 28.10.2022 (by the Accused-Appellant)

On 14.06.2023 (by the Complainant-Respondent)

Judgment On: 30.06.2025

JUDGMENT

B. Sasi Mahendran, J.

The Accused-Appellant (hereinafter referred to as 'the Accused') was indicted before the High Court of Hambantota on the count of rape committed on Niroshika Sansamalee Muthumala punishable under Section 364 (2)(e) of the Penal Code as amended by Act. No. 22 of 1995.

At the trial, the prosecution led evidence from 6 witnesses Accused gave a dock statement.

At the conclusion of the trial, the Learned High Court Judge by judgment dated 14.12.2021 found the Accused guilty of the charge and imposed a sentence of 12 years of rigorous imprisonment and a fine of Rs. 50,000/- and 1 month of rigorous imprisonment in default. Further, a compensation of Rs. 500,000/- was ordered to be paid to the victim; in default, a term of 24 months of simple imprisonment is imposed.

Being aggrieved by the afore-mentioned conviction and the sentence, the Accused has preferred this appeal to this Court.

When the matter was supported on 30.03.2025, the Learned Counsel called the Accused to move to withdraw the Appeal against the conviction and canvass only the sentence on the basis that the Learned High Court Judge had failed to consider the mitigatory factors when imposing the sentence.

At the inquiry before sentencing, the Accused tendered the following in mitigation.

1. The accused was married and has two children aged 4 years and 12 years, and one is schooling.
2. The Accused is the only breadwinner of the family
3. The accused has no prior convictions
4. The Accused regrets the act he has done to this victim.

The prescribed sentence for the offence of rape in terms of Section 364 (2)(e) of the Penal Code as amended by Act. No 22 of 1995 is rigorous imprisonment for not less than 10 years and not exceeding 20 years and with a fine, and also compensation of an amount determined by the Court.

In this instant case, the learned High Court Judge has not indicated on what basis he has imposed 12 years rigorous imprisonment, where the minimum sentence that could be imposed is 10 years. On the other hand, the learned State Counsel has not indicated what the aggravating factors are that have to be considered when imposing a sentence on the Accused.

Our Courts have considered that when the Learned Trial Judge considers the mitigatory and aggravating factors, there is a duty cast on the Judge to give reasonable consideration to such factors. We are mindful that the starting point of the sentence for this offence is 10 years.

In *Archbold: Sentencing Guidelines* (2019), Thomson Reuters, on page 274, under the heading of applicability of guidelines on sexual offences, it is stated that:

“Starting points define the position within a category range from which to start calculating the provisional sentence.

.....

Once the starting point is established, the court should consider further aggravating and mitigating factors and previous convictions so as to adjust the sentence within the range. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial.”

His Lordship S.N. Silva J (as he was then) in the case of Attorney General Vs. Ranasinghe and Others (1993) 2 SLR 81 had referred to the judgment of Kieth Billiam (1986) Volume

82 Criminal Appeal Report 347, where the Court had identified the following instances as aggravating features.

1. Violence is used to commit the rape.
2. A weapon is used to frighten the victim.
3. Rape is repeated.
4. The Defendant had a previous conviction of rape or other serious offences.
5. The victim is either very old or very young.

Further held that “where any one or more aggravating factors are present, the sentence should be substantially higher than the figure suggested as the starting point.”

In the instant case, the starting point of the sentencing for the offence is 10 years. Then, the Learned Judge has a duty cast on him to strike a balance between the aggravating and mitigating factors, exercising his discretion. In the instant case, there are no reasons given by the Learned Judge for imposing such a sentence. In other words, the Learned Judge has failed to give reasons for imposing the sentence of 12 years of rigorous imprisonment on the Accused.

When we consider the above-mentioned mitigatory factors as against the aggravating factors which were not considered by the Learned High Court Judge when imposing the 12 years of rigorous imprisonment, it is our considered view that the above mitigatory factors warrant a reduction of the sentence of 10 years rigorous imprisonment. The substantial terms of rigorous imprisonment imposed on the Accused Appellant shall commence from the date of conviction, i.e 14.12.2021.

Furthermore, we make no change in the fine and the compensation imposed on the Accused. Appeal partly allowed. Sentence varies.

The Registrar of this Court is directed to send this Judgment to the High Court of Hambantota for compliance.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL