

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

In the matter of an appeal under and in
terms of section 331(1) 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.

Democratic Socialist Republic of Sri Lanka

Complainant

Court of Appeal Case No.:

CA HCC 184/20

Vs.

High Court of Galle

Case No. **HC 3003/07**

Udageiyalage Sarath Kumar

Accused

AND NOW BETWEEN

Udageiyalage Sarath Kumar

Accused-Appellant

Vs.

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

Complainant-Respondent

Before: **B. Sasi Mahendran, J.**
 Amal Ranaraja, J.

Counsel: Selvaraja Dushyanthan with Dhanushka Thilini instructed by
 Rohitha Deshapriya for the Accused-Appellant.

 Maheshika Silva, D.S.G. for the Respondent.

Argued on: 04.08.2025

Decided on: 28.08.2025

JUDGMENT

AMAL RANARAJA, J.

1. The Accused-Appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Galle* in case no. HCC 3003/07.
2. The charge in the indictment is as follows;

That on or about, April 08, 2006, the appellant has committed the offence of rape on a minor, who was under the age of 16 years, an offence punishable under section 364(2)(e) of the Penal Code as amended by Penal Code (Amendment) Act No.22 of 1995.

3. At the conclusion of the trial, the appellant has been convicted of the offence in the charge and sentenced as follows;

A term of 20 years rigorous imprisonment and a fine of Rs.25,000 with a term of 01 year simple imprisonment in default.

Further, has ordered the appellant to pay a sum of Rs.500,000 as compensation to PW01 with a term of 02 year simple imprisonment in default.

Also that the terms of imprisonment shall run consecutively.

4. Being aggrieved by the conviction, the disputed judgment, and the sentencing order, the appellant has preferred the instant appeal to this Court.
5. When the matter was taken up for argument, the learned counsel for the appellant informed Court that he intended to limit the ground of appeal to the following;
 - i. The sentence imposed by the learned High Court Judge is disproportionate and excessive, therefore the sentence is contrary to sentencing policy.
6. The learned counsel for the appellant has contended that the sentence imposed on the appellant was extreme, and the sentence of 20 years rigorous imprisonment imposed in respect of the charge is the maximum sentence imposed by statute. Additionally, the learned counsel for the accused has contended that the following circumstances be taken into consideration and a variation of the sentence be made in favour of the appellant.
7. The learned counsel for the appellant has set out the following occurrences in mitigation;
 - i. The appellant was 21 years old at the time of the occurrence and 33 years old at the time of the conviction.
 - ii. That according to the medico-legal report there were no external injuries on the victim; i.e. PW01.
 - iii. The appellant had no previous convictions or pending cases.
 - iv. That the appellant was a first offender.
 - v. That the appellant was married and a father of two children.
 - vi. That the sentence was imposed 14 years after the incident.

8. The learned deputy solicitor general has asserted that PW01 had been held in temporary custody by the appellant at the time of the alleged incident referred to in the charge occurred. That such a situation involves a significant breach of trust placed on the appellant, which is a serious matter. Furthermore, the Court's attention had been brought to the fact that the appellant had attempted to communicate with PW01 while she was in the custody of the probation officers following the incident in question. Such action by the appellant is argued to demonstrate a persistent intention to reoffend.
9. At the time of the incident referenced in the charge, PW01 has been an 8 year old girl. The appellant, an adult male, and a relative of PW01.
10. To begin with, it is reasonable to consider the sentences prescribed by law for the offence stated in the charge set out in the indictment.
11. Section 364(2) of the Penal Code is as follows;

Whoever-

- (a) being a public officer or person in a position of authority, takes advantage of his official position, and commits rape on a woman in his official custody or wrongfully restraints and commits rape on a woman;*
- (b) being on the management, or on the staff of a remand home or other place of custody, established by or under law, or of a women's or children's institution, takes advantage of his position and commits rape on any woman in mate of such remand home, place of custody or institution;*
- (c) being on the management or staff of a hospital, takes advantage of his position and commits rape on a woman in that hospital;*
- (d) commits rape on a woman knowing her to be pregnant;*
- (e) commits rape on a woman under eighteen years of age;*
- (f) commits rape on a woman who is mentally or physically disabled;*
- (g) commits gang rape;*

shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shall in addition be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person;

Provided however, that where the offence is committed in respect of a person under sixteen years of age, the court may, where the offender is a person under eighteen years of age and the intercourse has been with the consent of the person, impose a sentence of imprisonment for a term less than ten years.

12. The best interest of the younger generation, is in peril with the rampant sex offenders which does not augur well for the future generations. The rich Sri Lankan culture is at risk. Also broken or disturbed young lives with their educational prospects impeded, their lives steered off course and potential psychological considerations ought to be of paramount importance.
13. Further, in determining the appropriate punishment, the Court is required to consider the same from the point of view of the convict as well as the public.
14. In ***Attorney General vs. H. N. de Silva*** 57 NLR 121, Basnayake, ACJ, explaining the matters that should be taken into consideration in determining a sentence has stated as follows;

“In assessing the punishment that should be passed on an offender, a Judge should consider the matter of sentence both from the point of view of the public and the offender, Judges are too often prone to look at the question only from the angle of the offender. A Judge should, in determining the proper sentence, first consider the gravity of the offence as it appears from the nature of the act itself

and should have regard to the punishment provided in the Penal Code or other statute under which the offender is charged. He should also regard the effect of the punishment as a deterrent and consider to what extent it will be effective. If the offender held a position of trust or belonged to a service which enjoys the public confidence that must be taken into account in assessing the punishment. The incident of crimes of the nature of which the offender has been found to be guilty and the difficulty of detection are also matters which should receive due consideration. The reformation of the criminal, though no doubt an important consideration is subordinate to the others I have mentioned. Where the public interest or the welfare of the State (which are synonymous) outweighs the previous good character, antecedents and age of the offender, public interest must prevail.”

15. Convictions for rape carry significant implications not just for the victim but for the society as a whole ensuring that individuals convicted of serious offences are dealt with appropriately is crucial for justice and further deterrence of future offences. The legal consequences imposed on individuals convicted of rape are designed to reflect the seriousness of the crime.

16. S. N. Silva, J, as he was then, in assessing the aggravating circumstances as regards to the offence of rape has stated as follows in ***Attorney General vs. Ranasinghe [1993] 2 SLR 81,***

“It is also appropriate to cite an observation made by the Lord Chief Justice in the Court of Appeal of England, with regard to the sentence to be imposed for an offence of rape. In the case of Roberts ⁽⁴⁾ at page 244. It was observed as follows;

“Rape is always a serious crime. Other than in wholly exceptional circumstances, it calls for an immediate custodial sentence. This was certainly so in the present case. A custodial sentence is necessary for a variety of reasons. First of all to mark the gravity of the offence. Secondly to emphasise public disapproval. Thirdly to serve as a warning to others. Fourthly to punish the offender, and last but by no means least, to protect women. The length of the sentence will depend on all the circumstances. That is a trite observation, but these, in cases of rape vary widely from case to case.

In the case of, Keith Billiam ^[5] the Lord Chief Justice repeated the foregoing observations and stated that in a contested case of rape a figure of five years imprisonment should be taken as the starting point of the sentence, subject to any aggravating or mitigating features. He observed further as follows:-

The crime should in any event be treated as aggravated by any of the following factors : (1) violence is used over and above the force necessary to commit the rape; (2) a weapon is used to frighten or wound the victim; (3) the rape is repeated; (4) the rape has been carefully planned ; (5) the defendant has previous convictions for rape or other serious offences of a violent or sexual kind; (6) the victim is subjected to further sexual indignities or perversions; (7) the victim is either very old or very young ; (8) the effect upon the victim, whether physical or mental, is of special seriousness. Where any one or more of these aggravating features are present, the sentence should be substantially higher than the figure suggested as the starting point.”

17. It is seen that the appellant has been 21 years old at the time he committed the offence referred to in the charge on PW01, an 8 year old girl at that time. However, this Court also takes into consideration the fact that the rape has not been repeated on the victim and also the fact that the appellant does not have previous convictions or pending cases.

18. Accordingly, I have taken the above matter into consideration and is of the view that ends of justice would be satisfied if a lesser sentence be imposed.

19. Therefore, I set aside the sentence of 20 years rigorous imprisonment imposed in respect of the offence stated in the charge and, sentence the appellant to 15 years rigorous imprisonment in respect of such offence.

The fine imposed in respect of the offence and the sum ordered to be paid as compensation together with the terms of simple imprisonment imposed in default of the payment of the same, shall remain unchanged. The substantive term of rigorous imprisonment shall commence from the date of conviction i.e. September 25,2020.

20. Subject to the above variation, the appeal stands dismissed.

Appeal dismissed.

I make no order regarding costs.

21. The Registrar of this Court is directed to communicate this judgment to the *High Court of Galle* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree

Judge of the Court of Appeal