

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

In the matter of an application for under
Article 138 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

CA Case No: CA/HCC/138-22

Karangoda Gamaralalage Indika Sampath
Abeythissa

HC of Rathnapura Case No:

60/A, Thennahena, Meddekanda

HCR 269/19

Balangoda

Accused-Appellant

Vs.

Attorney General
Attorney General's Department
Colomo 12

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

Amal Ranaraja, J.

Counsels: Delan de Silva for the Accused-Appellant
Damithini de Silva, SSC for the Respondent

Written 30.01.2023(by the Appellant)

Submissions : 24.04.2023.(by the Accused-Respondent)

On

Argued On: 25.06.2025

Judgment On: 18.07.2025

JUDGMENT

B. Sasi Mahendran, J.

The Accused-Appellant (hereinafter referred to as 'the Accused') was indicted before the High Court of Ratnapura on the count of rape committed on Madampe Widanalage Nandani Wijelatha 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 04 witnesses Accused gave a dock statement.

At the conclusion of the trial, the Learned High Court Judge, by judgment dated, 04.05.2022, found the Accused guilty of the charge and imposed a sentence of 08 years of rigorous imprisonment.

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 25.06.2025 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 is married and has a young child.
2. He is the sole breadwinner supporting his family.
3. He has no previous criminal record.
4. At the time of the incident, he was a minor, under the age of 18.

5. The parties involved were in a consensual romantic relationship at the time of the incident.

In this context, this Court has to consider what is the punishment imposed by the legislature.

Section 13 of the Code of Criminal Procedure Act No. 15 of 1979 stipulates that;

“The High Court may impose any sentence or other penalty prescribed by written law”

In the instant case, the said sentence or penalty prescribed by written law is found in Section 364 (2)(e) of the Penal Code;

(2) “Whoever—

(e) commits rape on a woman under eighteen years of age;

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 term less than ten years.

Upon perusal of the proceedings dated 04.05.2022, it appears that the learned State Counsel has incorrectly cited the relevant legal provisions pertaining to the sentence. Furthermore, we observe that he has failed to address the Court regarding the aggravating circumstances that may influence the sentence. We are mindful that sentencing is contingent upon the facts and circumstances specific to each case.

Our courts have considered that when the court imposes the sentence, the views of the all the parties involved in the case must be considered in a balanced manner.

In this instant case, the learned High Court Judge has not indicated on what basis he has imposed 08 years rigorous imprisonment, where the maximum 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 maximum 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 08 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 08 years of rigorous imprisonment, it is our considered view that the above mitigatory factors warrant a reduction of the sentence of 05 years rigorous imprisonment. The substantial terms of rigorous imprisonment imposed on the Accused Appellant shall commence from the date of conviction on 04.05.2022.

Appeal partly allowed. Sentence varied.

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

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL