

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

In the matter of an Appeal in terms of Section
331 (3) of the Code of Criminal Procedure Act
No. 15 of 1979 read with Article 139 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

COURT OF APPEAL CASE NO:

CA/HCC/128/2024

HC Puttalam CASE NO:

100/21

The Democratic Socialist Republic of Sri Lanka

Complainant

Vs.

Kurugamage Lalith Priyadarshana alias
Chaminda

Accused

AND NOW BETWEEN

Kurugamage Lalith Priyadarshana alias
Chaminda

Accused-Appellant

Vs.

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

Complainant-Respondent

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

Counsel: Amila Palliyage with Sandeepani Wijesooriya, Savani Udugampola, Lakitha
 Wakishta and Subaj de Silva Accused-Appellant
 Hiranjan Peiris, SDSG SC. for the Respondent

Written

Submissions: 27.08.2024 and 06.02.2025 (by the Accused-Appellant)

On

Argued On: 05.02.2025

Judgment On: 28.02.2025

JUDGMENT

B. Sasi Mahendran, J.

The Accused-Appellant (hereinafter referred to as the Accused) was indicted before the High Court of Puttalam on the charge of rape committed on one Asurana Pathiranage Sumanawathi punishable under Section 364 (1) of the Penal Code as amended by Act No. 22 of 1995.

The Prosecution led the evidence through six witnesses and marking documents P1 to P7 and thereafter closed its case. The Accused in his defence made a dock statement along with one witness in defence.

At the conclusion of the trial, the Learned High Court Judge by judgment dated 30.04.2024 found the Accused guilty of the charge and sentenced 18 years rigorous imprisonment and Rs. 15,000/- fine in default 3 months imprisonment. Further, Rs. 200,000/- compensation was ordered to be paid to the Victim in default for 1 year of simple imprisonment.

Being aggrieved by the afore-mentioned conviction, the sentence of fine, and the compensation, the Accused has preferred this application to this Court.

At the hearing of the appeal, the Learned Counsel for the Accused moved to withdraw the appeal against the conviction and canvassed only the sentence on the basis that the Learned High Court Judge had failed to consider the mitigatory factors when imposing the sentence.

The prescribed sentence for the offence of rape in terms of Section 364 (1) of the Penal Code as amended is rigorous imprisonment for not less than 7 years and not exceeding 20 years and with a fine and also compensation of an amount determined by the Court.

Generally, when sentencing, the Courts consider the aggravating and mitigatory factors along with the gravity of the offence.

It should be noted that about the sentencing, the Counsel for the Prosecution pleaded the following factors as aggravating:

1. The victim was 72 years of age when the crime was committed.
2. The accused was 42 years of age at the said time.
3. The Accused had raped a person who is of the age of his parents.
4. Being a neighbour of the victim and knowing the fact the victim lives alone the Accused had taken advantage of such.

The Counsel for the Accused had pleaded for mitigation on the following grounds:

1. The Accused is married and has a child who is schooling.
2. The Accused has no previous convictions.

After the submissions, the Learned High Court Judge delivered the order on sentencing, considering the aggravating circumstances such as the age of the victim and the Accused calling the victim ‘ဘုမ္မာ’.

Further, the Learned Judge has considered the mitigatory circumstances such as no previous convictions, age of the Accused, the Accused is married and having a child, and that he is the only breadwinner of the family.

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 7 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 7 years. Then, the Learned Judge has a duty cast on him to strike a balance between the aggravating and mitigatory 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 18 years of rigorous imprisonment on the Accused.

We are mindful that there is discretion given by the legislature when imposing a sentence on an offender.

In King v. Rankira 42 NLR 145 it was held:

“The Court of Appeal will not interfere with the judicial discretion of a Judge in passing sentence unless that discretion has been exercised on a wrong principle.”

His Lordship Gunasekara J in The Attorney General v. Mendis 1995 1 SLR 138 held that:

“The Trial Judge who has the sole discretion in imposing a sentence which is appropriate having regard to the criteria set out above should in our view not to surrender this sacred right and duty to any other person, be it counsel or accused or any other person. Whilst plea bargaining is permissible in our view, sentence bargaining should not be encouraged at all and must be frowned upon.”

In Illakotulena Gamaralalage Thilakerathna v. Officer in Charge, Motor Traffic Division and The Attorney General SC Appeal No. 173/2017 decided on 22/10/2024, His Lordship A.L. Shiran Gooneratne J. held that;

“In *Bed Raj vs. State of Uttar Pradesh* it was held that, “a question of a sentence is a matter of discretion and it is well settled that when discretion has been properly exercised along accepted judicial lines, an appellate court should not interfere to the detriment of an accused person except for very strong reasons which must be disclosed in the face of the judgement.
(emphasis added)

If adequate reasons are given for imposing a more lenient or a more stringent sentence, this Court may not interfere with the judicial discretion exercised by the High Court.”

In the instant case, the Learned High Court Judge has not indicated on what basis, she has imposed 18 years of rigorous imprisonment where the maximum sentence that could be imposed is 20 years.

We are of the view that where a Trial Judge has not indicated what are the aggravating factors that were taken into consideration when imposing a sentence on the Accused, this Court can interfere with such a sentence.

When we consider the above-mentioned mitigatory factors as against the aggravating factors which were considered by the Learned High Court Judge when imposing the 18 years of rigorous imprisonment, it is our considered view that the above mitigatory factors warrant a reduction of the sentence already imposed to 10 years of rigorous imprisonment.

We make no change in the fine and the compensation imposed on the Accused.

Appeal partly allowed. Sentence varied.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL