

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

An appeal against the conviction and sentence dated 09.10.2020 by the Learned High Court Judge of the Northern Province Holder in Vavuniya.

Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No:
CA/HCC/0077/2023

High Court Vavuniya Case No:
HCV/2615/15

Complainant

Vs

Rathnapalake Hemashiri Subasinghe

Accused

AND NOW BETWEEN

Rathnapalake Hemashiri Subasinghe

Accused – Appellant

Vs

Honorable Attorney General,
Attorney General Department.
Colombo 13.

Complainant – Respondent.

Before : **Hon. P Kumararathnam, J.**

Hon. Pradeep Hettiarachchi, J.

Counsel : Indika Mallwarachchi for the Accused- Appellant.
Azard Navavi SDSG for the Respondents.

Argued on : 07.07.2025

Decided on : 28.08.2025

Pradeep Hettiarachchi, J

Judgment

1. The accused-appellant (hereinafter referred to as the appellant) has filed the instant appeal against the judgment dated 09.10.2020 delivered by the learned High Court Judge of Vavuniya. Although several grounds of appeal were initially urged, learned Counsel for the appellant, at the hearing, confined her submissions solely to the question of the sentence imposed by the learned High Court Judge.
2. The relief is sought in terms of section 333 of the Code of Criminal Procedure Act No 15 of 1979 as amended by the Act No 25 of 2024. The appellant further prays that this Court be pleased to order that the prison sentence take effect from the date of conviction
3. By the said amendment, a proviso to section 333(5) was added, which reads:

Provided that, the Court of Appeal may, in appropriate cases, order that the time spent by an appellant in custody pending the determination of his appeal and any time spent in custody prior to the conviction, such time not having been considered as part of his sentence passed at the time of his conviction by the court of first instance, be considered as part of his sentence ordered at the conclusion of his appeal.

4. This Act empowers the Court of Appeal to treat the period an accused person has spent in custody before their conviction as part of the sentence ultimately imposed. In practice, this means that if a person has been held on remand for a significant length of time while awaiting trial or judgment, that period will be credited towards their final sentence.
5. The principle underlying this provision is that pre-conviction detention is not a neutral period of time; it is, in effect, a curtailment of liberty that carries the same hardships and stigma as imprisonment after conviction. To ignore such a period would be to disregard a real and tangible deprivation experienced by the accused.
6. The amendment to the Act seeks to ensure that no individual is punished twice over: first through lengthy detention while awaiting trial, and then again through the full imposition of a custodial sentence without credit for that prior confinement. In many

instances, delays in investigation, prosecution, or court proceedings lie beyond the control of the accused. To compel such an individual to serve a sentence calculated without regard to this time would risk producing sentences that are manifestly excessive and unjust.

7. In the present case, the appellant was indicted in 2015 for committing rape on a female under the age of 18 an offence punishable under section 364(2) e of the Penal Code as amended by the Act No 22 of 1995. The trial had been conducted on 30.11.2016, the judgment delivered convicting the appellant.
8. Subsequently, he made an appeal against the judgment, and the Court of Appeal set aside the judgment and ordered trial de novo. The re-trial commenced on 19.07.2019 and on 09.10.2009 the learned High Court Judge of Vavunia convicted the appellant and imposed a 12 years rigorous imprisonment. The appellant was also imposed a fine of Rs 10000.00 with a default sentence of 3 months simple imprisonment. Furthermore, the appellant was ordered to pay the prosecutrix a sum of Rs 300000.00 as compensation carrying a default sentence of 18 months simple imprisonment.
9. The judgment after trial de novo was delivered on 09.10.2020 and the learned High Court Judge straight away imposed the aforementioned sentence on the appellant. It could be observed, that the appellant was not accorded an opportunity to make submissions in mitigation. Hence, the appellant was denied his right to submit mitigatory facts for the consideration of the Judge when imposing the sentence.
10. On a perusal of the case record of the High Court, it could be observed that the appellant had spent a considerable period in remand before he was sentenced. The learned High Court Judge was not able to consider the remand period as no submission for mitigation was made.
11. As can be seen from the journal entries of the High Court Case Record, the appellant was in remand from 23.11.2016 to 02.04.2020, where he was released on bail. Thereafter, on 09.10.2020 the appellant was found guilty after the trial de novo and sentenced. Since then, the appellant has been in remand. Approximately, the appellant has spent 8 years in remand custody by now.

12. The sentence imposed on the appellant is 12 years. Having considered the period he had already spent in remand, I consider it is appropriate to deduct that period from the sentence as it meet the ends of justice. Furthermore, it appears that the appellant has no previous convictions. Hence, it is my considered view that it does not cause any injustice to anyone if the sentence is ordered to take effect from the date of the conviction.
13. Accordingly, I direct that the period of eight (08) years which the appellant has already spent in remand custody be deducted from the sentence imposed. The appellant's term of imprisonment is therefore reduced to four (04) years, which shall take effect from the date of conviction. The order as to fine, compensation, and the default sentence shall remain unaltered. Subject to the aforesaid variation, the appeal is partly allowed.

Judge of the Court of Appeal

P. Kumararatnam,J

I agree,

Judge of the Court of Appeal