

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

In the matter of an Appeal made under
Section 331 of the Code of Criminal
Procedure Act No.15 of 1979.

**Court of Appeal Case No.
CA/HCC/ 0101/2023
High Court of Hambantota
Case No. HC/12/2017**

Herath Mudiyanseelage Weerasekara

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

BEFORE : **P. Kumararatnam, J.
R.P.Hettiarachchi, J.**

COUNSEL : **Harshana Ananda for the Appellant.
Sudharshana De Silva, SDSG for the
Respondent.**

ARGUED ON : **22/05/2025**

DECIDED ON : **20/06/2025**

JUDGMENT**P. Kumararatnam, J.**

The above-named Appellant was indicted by the Attorney General in the High Court of Hambantota for committing three counts of statutory rape punishable under Section 364(2) of the Penal Code as amended on Hanguranketha Lekam Mudiyansele Nisanka Madhusani between 01/02/2008 and 19/03/2008.

The trial could not be started as the victim had sworn an affidavit to effect that she is not willing to come to court and give evidence in this case. The reason she has averred that as she is having a good family life, giving evidence in court would certainly disturb her family life.

During the pendency of the trial, it transpired that the victim had given birth to a child due to this incident. As such, the Learned State Counsel with the concurrence of the defence made an application to the court to call for a DNA Report of the victim, the Appellant, and the child. Accordingly, the report was called and it revealed that the Appellant is the biological father of the child born out of this statutory rape incident.

Considering the DNA Report the Appellant through his Counsel expressed his willingness to plead guilty to the charges unconditionally. Accordingly, the plea of guilt was recorded on 16.02.2023 and the Learned High Court Judge had passed the following sentence on the Appellant.

The Appellant was sentenced to 12 years rigorous imprisonment for each count to run consecutively. Accordingly, the Appellant was sentenced to 36 years rigorous imprisonment in total.

In addition, a fine of Rs.5000/- was imposed on each count with default sentence of 06 month each. Further, a compensation of Rs.600,000/- was ordered to pay to the victim by the Appellant with a default sentence of 02 years rigorous imprisonment.

Being aggrieved by the aforesaid conviction and sentence the Appellant preferred this appeal to this court.

The Learned Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence. During the argument he was connected via Zoom from prison.

At the very outset of the argument the Learned Counsel for the Appellant informed this Court that the Appellant is only contesting the sentence imposed to run consecutively in relation to the three counts where the Appellant had pleaded guilty.

The Facts of this case *albeit* briefly are as follows.

The prosecutrix in this case was living with her sister as her mother had employed in Colombo. Using this opportunity the Appellant had raped her several times. As the appellant threatened her that he would harm her family members, she remained silent until she was found pregnant.

The victim was 15 years old when she was raped by the Appellant. The Appellant was 47 years old when he committed this offence.

When a person accused of a crime pleads guilty or has been found guilty, the judge orders a sentence. The judge takes several factors into account when deciding on a sentence, including the circumstances surrounding the crime and the situation of the person who committed the crime.

The sentence must be in proportion to the seriousness of the crime. The law establishes how serious a crime is by providing different sentences for different types of crimes. This means lighter sentences for less serious crimes and heavier sentences for more serious crimes. According to the principle of fairness in sentencing, the sentence must be just.

As in other countries, no sentencing guidelines have been formulated in our jurisdiction. Therefore, sentencing is the prerogative of the court in our jurisdiction.

In this case the Learned High Court Judge had passed 12 years rigorous imprisonment on each count of rape and for the three counts the Appellant was sentence to 36 years rigorous imprisonment. As the Appellant pleaded guilty to the indictment, the Counsel argues that the sentence imposed against him was excessive.

When sentencing in individual cases, the court must strike a balance between the seriousness of the offence as reflected in the maximum sentence available under the law and the seriousness of the actual acts of the person.

In the case of **Attorney General v H.N.Silva 57 NLR 121** the Court held that:

" 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 incidence 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. "

The maximum sentence for charge of statutory rape is 20 years. Imposing 12 years for each charge and ordering them to run consecutively to a period of 36 years for three statutory rape charges is not appropriate in this case.

The Appellant pleaded guilty to the indictment, thus saved valuable time of the court. Further, now the Appellant is 58 years old and a married person with two children. The victim also settled and having a good family life.

Considering all the factors into consideration, I think this is an appropriate case to order the sentence imposed to run concurrently. Therefore, I order the 12 years of rigorous imprisonment for each count to run concurrently.

Fines, compensation and default sentence imposed on the Appellant shall remain same.

Considering the fact that the Appellant is in remand from the date of conviction, I, order the sentence imposed on the Appellant be operative from the date of sentence namely, 16.02.2023.

Therefore, the conviction is affirmed and the sentence is varied up to that extent. The Appeal is partly allowed.

The Registrar of this Court is directed to send this judgment to the High Court of Hambantota along with the original case record.

JUDGE OF THE COURT OF APPEAL

R.P.Hettiarachchi, J.

JUDGE OF THE COURT OF APPEAL