

**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/ 0066/2023  
High Court of Hambantota  
Case No. HC/36/2013**

Vidana Thuppahige Nilantha  
Pradeep Kumara

**ACCUSED-APPELLANT**

**vs.**

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

**COMPLAINANT-RESPONDENT**

**BEFORE** : **Sampath B. Abayakoon, J.  
P. Kumararatnam, J.**

**COUNSEL** : **Neranjana Jayasinghe with Randunu  
Heellage and Imangsi Senarath for the  
Appellant.  
Lakmini Giritagama, DSC for the  
Respondent.**

**ARGUED ON** : **30/01/2024**

**DECIDED ON** : **28/05/2024**

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**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 Wanniarachchige Sakuntala Sewwandi between 01/08/2009 and 31/10/2009.

The trial was commenced on 04.07.2018 and the evidence in chief of the victim was lead and concluded on the same day. During 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 18.01.2023 and the Learned High Court Judge had passed the following sentence on the Appellant.

The Appellant was sentenced to 13 years rigorous imprisonment for each count to run consecutively. Accordingly, the Appellant was sentenced to 39 years rigorous imprisonment in total.

In addition, a fine of Rs.10000/- was imposed on each count with default sentence of 01 year each. Further, a compensation of Rs.250,000/-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 due to the Covid 19 pandemic. 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 consequently 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 father and brother. According to the prosecutrix, the incident happened in the year 2009. Her sister was married to the Appellant and was blessed with a child. Though her sister lived separately after marriage, but came to her father's house and lived there. Appellant was worked as a mason. During the time relevant to this incident, the victim's sister was admitted to hospital due to some ailment in her stomach. Using this opportunity the Appellant had raped her several times.

As the appellant threatened her that he would kill her brother and her father, she remained silence until she was found pregnant.

The victim was 12 years old when she was raped by the Appellant. She has given evidence very clearly in her examination-in-chief. As it was a painful trauma that she had undergone at a tender age, nobody can be expected to disclose all the facts accurately. As this was a direct indictment case, the victim had given evidence after 9 years since the date of 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 13 years rigorous imprisonment on each count of rape and for the three counts the Appellant was sentence to 39 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.

The maximum sentence for charge of statutory rape is 20 years. Imposing 13 years for each charge and ordering them to run consecutively to a period of 36 years for three statutory rape charge is not appropriate in this case.

The Appellant pleaded guilty to the indictment thus saved valuable time of the court. Further, the Appellant is a married person with two children.

Considering all the factors into consideration, I think this is an appropriate case to order the sentence impose to run concurrently. Therefore, we order the 13 years of rigorous imprisonment for each count to run concurrently.

Fines, and default sentence imposed on the Appellant are to remain same.

Further, the Learned Counsel on the instructions of the Appellant has agreed to enhance the compensation imposed by the Learned High Court Judge. Accordingly, the compensation Rs.250,000/- is increased to Rs.500,000/- with a default sentence of 02-years rigorous imprisonment.

Considering the fact that the Appellant is in remand from the date of conviction, We, order the sentence imposed on the Appellant be operative from the date of sentence namely, 18.01.2023.

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**

**SAMPATH B. ABAYAKOON, J.**

**JUDGE OF THE COURT OF APPEAL**