

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

**In the matter of an Appeal under and in
terms of Section 331 of the Code of
Criminal Procedure Act No. 15 of 1979 as
amended.**

Democratic Socialist Republic of
Sri Lanka

Complainant

Court of Appeal
Case No. **CA HCC 162/2024**

Vs.

High Court of Chilaw
Case No. **HC 04/2020**

Elibichchiya Raalalaage Manuka
Sampath Gnanasiri,
No. A11/A,
Enola City,
Nalla,
Diwuldeniya.

Accused

AND NOW BETWEEN

Elibichchiya Raalalaage Manuka
Sampath Gnanasiri,
No. A11/A,
Enola City,
Nalla,
Diwuldeniya.

Accused-Appellant

Vs.

Hon. Attorney General,

Attorney General's Department,
Colombo 12.

Complainant-Respondent

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

Counsel: Darshana Kuruppu with Sahan Weerasinghe for the Accused-Appellant.

Disna Warnakula, D.S.G for the Respondent.

Argued on: 21.02.2025

Decided on: 20.03.2025

JUDGMENT

AMAL RANARAJA, J.

1. The Accused-Appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Chilaw* in case no. HC 04/2020. The charges in the indictment are as follows;

Charge 1

That during the period 21.08.2010 to 28.08.2010, at *Yogiyana*, in the district of *Puttalam*, within the jurisdiction of this Court, the accused-petitioner has committed the offence of kidnapping, of a minor who was less than sixteen (16) years of age at the time, from her legal guardianship of one *Ranasinghe Arachchige Seneviratne*, an offense punishable under section 354 of the Penal Code.

Charge 2

That in the course of the same transaction, during the period 22.08.2010 to 28.08.2010, at *Polonnaruwa*, the accused-petitioner committed the offence of rape on the said victim, who is under sixteen (16) years of age, and have thereby committed an offense punishable under section 364(2)(e) of the Penal Code as amended by Act No.22 of 1995.

Charge 3

That in the course of the same transaction, during the period 23.08.2010 to 28.08.2010, at *Polonnaruwa*, the accused-petitioner committed rape on the said victim, who is under sixteen (16) years of age, and have thereby committed an offense punishable under section 364(2)(e) of the Penal Code as amended by Act No.22 of 1995.

2. At the conclusion of the trial the appellant has been convicted of all the charges referred to above and the Learned High Court Judge has thereafter sentenced the appellant as follows;

Charge 1	Term of 11 years rigorous imprisonment and a fine of Rs. 20,000.00 with a term of 2 months simple imprisonment in default of payment of the fine.
Charge 2	Term of 11 years rigorous imprisonment and a fine of Rs. 20,000.00 with a term of 2 months simple imprisonment in default of payment of the fine.
Charge 3	Term of 11 years rigorous imprisonment and a fine of Rs. 20,000.00 with a term of 2 months simple imprisonment in default of payment of the fine.
And a sum of Rs. 200,000.00 as compensation to pay to PW1 with a term of 12 months simple imprisonment in default of the payment of compensation so ordered.	

3. Being aggrieved by the conviction and the sentencing order the appellant has preferred the instant appeal to this Court.
4. The Learned Counsel for the appellant informed Court that he intended to limit the ground of appeal to the following;
 - i. That the sentence is excessive, therefore, could the Learned High Court Judge have applied the principles laid down in *SC Reference 3/2008*?
5. The Learned Counsel for the appellant has contended that the sentences imposed on the appellant were extreme, and the sentence of 11 years each imposed in respect of the 2nd and 3rd charges are above the minimum mandatory sentence imposed by statute. Additionally, the Learned Counsel for the appellant contended that the following mitigatory circumstances to be taken into consideration and a variation of the sentences be made in favour of the appellant.
6. The following occurrences have been set out by the Learned Counsel for the appellant in support of his contention;
 - i. That PW1 has eloped with the appellant and had known that the appellant was a 26-year-old married man when PW1 did so.
 - ii. That the evidence of PW1 has been contradicted by medical evidence, thereby impairing the credibility of PW1.

PW1 has claimed that sexual intercourse occurred for the first time. However, the medical results of the examination conducted by PW6

i.e. *Dr. D. K. Wijewardhene* have revealed findings that contradicted her narrative. PW1's assertion that the encounter with the appellant was her first experience of sexual intercourse raises significant questions particularly in light of the medical evidence. It is vital to consider how these inconsistencies affect the perception of the case and it is important for the judicial process to rely on reliable evidence to discern the facts of the situation. While personal accounts are significant, they must be evaluated alongside medical evidence to uncover the truth.

7. Thereafter, the Learned Deputy Solicitor General objecting to a variance in the sentences imposed on the appellant has contended that upon a careful analysis of the judgment in *SC Reference 03/2008*, the legal implications of the enactment of the proviso to Article 13 (6) of the Constitution are not referred to in the last concluding paragraph of such judgement. Further, the nature and extent of the application of the proviso to Article 13(6) in light of the conclusion of such judgment is not elaborated. Whether the said judgement is applicable to an offence of any serious nature and if so, the guidelines and the rules relating to the discretion are unknown, though, there should be uniformity, consistency, and reliability in sentencing procedures to sustain public trust and respect for the legal system and remedies. Whether Articles 4(c), 11 and 12(1) are not in conflict with the relevant proviso to Article 13(6) is not adverted to. Therefore, the concluding paragraph of the judgment in *SC Reference 03/2008* does not determine the status quo of Article 13 within the context of Article 4 (c), 11 and 12(1) read with section 364(2)(i). Further, it is also contended that the intention of the legislature in enacting a minimum mandatory sentence should be considered vis a vis the best interest of children and women victims of rape. Principles relating to sentencing and potential adverse consequences and impact of the leniency on statistics relating to sexual crimes should be

considered, as sexual offences are the rampant and most commonly prevalent in society to an extent of endemic proportions, sentencing implications for the society at large should be considered.

8. The long term impact on the society and the best interest of the younger generation, is in peril with the rampant sex offenders which does not augur well for the future generations. The rich Sri Lankan culture is at risk. Also broken or disturbed young lives with their educational prospects impeded, their lives steered off course and potential psychological considerations ought to be of paramount importance.

The case of the prosecution

9. PW1 had been a 15-year-old girl when the incidents referred to in the offences had taken place in August 2010. The appellant being a 26-year-old married man at that time had engaged in witchcraft and provided his services to the family of PW1 as well as her relatives. The appellant while providing his services has struck up an acquaintance with PW1. The appellant has requested PW1 to meet him at the *Dankotuwa Town* on the date referred to in the 1st charge. Thereafter, has taken PW1 to *Polonnaruwa*, kept her at the appellant's sisters house for three days and engaged in sexual intercourse with the latter at the same time.

The case of the accused

10. The appellant had denied associating PW1 or engaging in sexual intercourse with her.

11. To begin with, it is reasonable to consider the sentences prescribed by law for the offences stated in the charges set out in the indictment.

12. Section 354 of the Penal Code is as follows;

“Whoever kidnaps any person from Sri Lanka or from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

13. Section 364(2) of the Penal Code is as follows;

Whoever-

- (a) being a public officer or person in a position of authority, takes advantage of his official position, and commits rape on a woman in his official custody or wrongfully restraints and commits rape on a woman;*
- (b) being on the management, or on the staff of a remand home or other place of custody, established by or under law, or of a women’s or children’s institution, takes advantage of his position and commits rape on any woman in mate of such remand home, place of custody or institution;*
- (c) being on the management or staff of a hospital, takes advantage of his position and commits rape on a woman in that hospital;*
- (d) commits rape on a woman knowing her to be pregnant;*
- (e) commits rape on a woman under eighteen years of age;*
- (f) commits rape on a woman who is mentally or physically disabled;*
- (g) commits gang rape;*

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 a term less than ten years.

14. Accordingly, a minimum mandatory sentence has been prescribed in respect of those convicted of committing the offences set out in charges 2 and 3 in the indictment.
15. Minimum mandatory sentences represent a significant shift in the criminal justice system, establishing fixed penalties for certain offences regardless of the individual circumstances, whereby Judges are bound to impose pre-determining sentences regardless of the specifics of the case.
16. The *Supreme Court of Sri Lanka* in **SC Reference No. 03/2008** has determined that a trial Judge's discretion to reach to a conclusion as regards to a sentence is not inhibited or controlled by a minimum mandatory sentence imposed by a statute.

In **SC Reference No.03/2008**, the Supreme Court has held,

“In the above circumstances we hold that the minimum mandatory sentence in Section 364(2)(e) is in conflict with

Article 4(c), 11 and 12(1) of the Constitution and that the High Court is not inhibited from imposing a sentence that it deems appropriate in the exercise of its judicial discretion notwithstanding the minimum mandatory sentence.”

17. In **Warnakulasooriya Mudiyanselage Jayanth Warnasuriya vs. Attorney General CA/HCC/169/2022** decided on 09.12.2024, Kulathunga, J, discussing the connotations of the judgment in SC Reference 03/2008 has stated as follows;

“Certainly, in view of SC Reference 3/2008 though a trial Judge is neither shackled nor inhibited by the said minimum mandatory sentence, is required to have regard to the fact that a minimum mandatory sentence is so fixed. A court now certainly has the discretion to impose a sentence of imprisonment less than the prescribed minimum. However, I am of the view that the Judge should have and there should be some adequate reason/s to go below the said minimum sentence. The court should mention such reasons in the Judgment when awarding a sentence less than the prescribed minimum. In order to exercise the discretion to impose a sentence less than the minimum prescribed there should be and the court has to record such reason/s which is adequate. This to my mind should necessarily be some tangible and good reason which is not fanciful. Thus, to my mind it is necessary and prudent to assign and give the reason if and when a Judge decides to impose a sentence below the minimum mandatory fixed by law”

18. Rape is a horrific offence that not only violates an individual's physical anatomy but also inflicts profound psychological trauma

leaving lasting scars on victims. The seriousness of the offence necessitates a robust legal response that serves not only to punish the offender but also to deter potential future offences. Deterrent punishment aims to convey a strong societal message that such behavior will not be tolerated, thereby, fostering a sense of safety and justice.

19. In determining the appropriate punishment, the Court is required to consider the same from the point of view of the convict as well as the public.

20. In ***Attorney General vs. H. N. de Silva*** 57 NLR 121, Basnayake, ACJ, explaining the matters that should be taken into consideration in determining a sentence has stated as follows;

“In assessing the punishment that should be passed on an offender, a Judge should consider the matter of sentence both from the point of view of the public and the offender, Judges are too often prone to look at the question only from the angle of the offender. 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 incident 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.”

21. Convictions for rape carry significant implications not just for the victim but for the society as a whole ensuring that individuals convicted of serious offences are dealt with appropriately is crucial for justice and further deterrence of future offences. The legal consequences imposed on individuals convicted of rape are designed to reflect the seriousness of the crime.

22. S. N. Silva, J, as he was then, in assessing the aggravating circumstances as regards to the offence of rape has stated as follows in ***Attorney General vs. Ranasinghe [1993] 2 SLR 81***,

“It is also appropriate to cite an observation made by the Lord Chief Justice in the Court of Appeal of England, with regard to the sentence to be imposed for an offence of rape. In the case of Roberts ⁽⁴⁾ at page 244. It was observed as follows;

“Rape is always a serious crime. Other than in wholly exceptional circumstances, it calls for an immediate custodial sentence. This was certainly so in the present case. A custodial sentence is necessary for a variety of reasons. First of all to mark the gravity of the offence. Secondly to emphasise public disapproval. Thirdly to serve as a warning to others. Fourthly to punish the offender, and last but by no means least, to

protect women. The length of the sentence will depend on all the circumstances. That is a trite observation, but these, in cases of rape vary widely from case to case.”

In the case of, Keith Billam ⁽⁵⁾ the Lord Chief Justice repeated the foregoing observations and stated that in a contested case of rape a figure of five years imprisonment should be taken as the starting point of the sentence, subject to any aggravating or mitigating features. He observed further as follows:-

“The crime should in any event be treated as aggravated by any of the following factors : (1) violence is used over and above the force necessary to commit the rape; (2) a weapon is used to frighten or wound the victim; (3) the rape is repeated ; (4) the rape has been carefully planned ; (5) the defendant has previous convictions for rape or other serious offences of a violent or sexual kind ; (6) the victim is subjected to further sexual indignities or perversions ; (7) the victim is either very old or very young ; (8) the effect upon the victim, whether physical or mental, is of special seriousness. Where any one or more of these aggravating features are present, the sentence should be substantially higher than the figure suggested as the starting point.””

23. It is seen that several of these aggravating circumstances are present in the instant case. The fact that PW1 was very young below the age where she may have consented to sexual intercourse, the degree of pre-planning by the appellant and the repeated commission of the

offence, are some of those aggravating circumstances. Public interest demands that a custodial sentence be imposed on the appellant in this case.

24. Accordingly, I set aside the sentence of 11 years rigorous imprisonment imposed in respect of the offence stated in charge 1 and sentence the appellant to 5 years' rigorous imprisonment in respect of such offence. Further, I refrain from interfering in the terms of rigorous imprisonment imposed in respect of the offences set out in the 2nd and 3rd charges. The fines imposed in respect of the offences set out in the 1st, 2nd and 3rd charges and the sum ordered to be paid as compensation to PW1 together with the terms of imprisonment imposed in default of the payment of the same shall remain unchanged. The substantive terms of rigorous imprisonment shall run concurrently.

25. Subject to the above variation, the appeal stands dismissed.

I make no order with regard to costs.

26. The Registrar of this Court is requested to communicate this judgment to the *High Court of Chilaw* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree.

Judge of the Court of Appeal