

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

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

CA/HCC/188/24

HC Puttalam Case No: HC/11/2021

The Democratic Socialist Republic of Sri
Lanka

Complainant

V.

Wijjapathi Muththalage Ariyadasa

Accused

And Now between

Wijjapathi Muththalage Ariyadasa

Accused-appellant

Vs.

The Attorney General

Attorney General's Department

Colombo 12.

Complainant -Respondent

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

Counsel: Darshana Kuruppu with Tharushi Gamage and Anjana Adhikaramge
 for the Accused- Appellant
 Wasantha Perera, DSG for the Respondent

Written

Submissions: 20.12.2024 (by the Accused-Appellant)

On 20.06.2025 (by the Respondent)

Argued On: 28.07.2025

Judgment On: 28.08.2025

JUDGEMENT

B. Sasi Mahendran, J.

The Accused-Appellant (hereinafter referred to as ‘the Accused’) was indicted before the High Court of Puttalam on the count of rape committed on Rajapakshe Arachchilage Nirmala Manel Kumari, punishable under Section 364 (2)(e) of the Penal Code as amended by Act No.22 of 1995.

At the trial, the prosecution led the evidence through 8 witnesses, and marked productions from P1 to P3 and thereafter closed its case. After the conclusion of the prosecution case, the Accused, in his defence, made a dock statement.

At the conclusion of the trial, the Learned High Court Judge, by judgment dated 16.07.2024, found the Accused guilty of the charge and imposed a sentence of 12 years of rigorous imprisonment and a fine of Rs. 20,000/- and 3 months of simple imprisonment in default. Further, a compensation of Rs. 200,000/- was ordered to be paid to the victim; in default, a term of 1 year of simple imprisonment is imposed.

Being aggrieved by the afore-mentioned conviction and the sentence, the Accused has preferred this appeal to this Court. The following are the grounds of appeal as pleaded by the Accused.

1. The Learned High Court Judge has failed to consider the inherent improbable and contradictory nature of the Prosecution's case;
2. The Learned High Court Judge has failed to consider the glaring contradictions and the omissions in the evidence of the alleged eyewitness, PW 03, Wijjapathi Muththalage Sarath Chandradasa, which raises serious concerns about the authenticity of the Prosecution's case;
3. The Learned High Court Judge has failed to consider the *Inter se* and *per se* contradictions between the material Prosecution witnesses;
4. The Learned High Court Judge has failed to consider that the evidence of PW 01 is not corroborated from any independent source, and her evidence does not inspire confidence;

When the matter was supported on 28.07.2025, the Counsel for the Accused Appellant informed the Court that he only challenged the sentence imposed and sought a mitigation in the sentence.

At the inquiry before sentencing, the Accused tendered the following in mitigation.

1. The Accused has no prior convictions
2. At this time, the Accused is approximately 60 years old.
3. The Accused's wife is in poor health, and he takes her to medical clinics.
4. The Accused actively attended court proceedings related to this case both in the Magistrate and High Courts, for over nine years.
5. The Accused is also responsible for the care and upbringing of his daughter's two children, who are currently living under his custody.

Further, the following aggravating factors were indicated by the learned State Counsel:

1. The offence was committed by the Accused when the victim was around 14 years old and the Accused was 51 years old.
2. The Accused, being a close relative to the victim, is a person with a social responsibility to provide care to the victim.

3. As a result of the incident, PW 01 was unable to return to school and continue her education as usual due to the trauma she experienced.

The Learned High Court took into account the Supreme Court's judgement in *Badde Liyanage Wasantha Kumara v. Attorney General*, SC Appeal 70/2018 emphasizing that sentencing should serve as a deterrent, conveying a clear message to society and, in particular, to potential perpetrators of sexual assault. The Court further asserted that individuals who commit such offences against innocent children must be subjected to appropriate punishment, underscoring the paramount importance of safeguarding children from such offenders.

The prescribed sentence or penalty written in law for the offence of rape is found in Section 364 (2)(e) of the Penal Code.

(2) “Whoever—

(e) commits rape on a woman under eighteen years of age; 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;”

Our courts have considered that the Learned High Court Judge should indicate on what basis he has imposed 12 years of rigorous imprisonment, where the minimum sentence that could be imposed is 10 years. It is well established in our courts that when a trial judge evaluates both mitigating and aggravating circumstances, they are obligated to provide a balanced and reasoned assessment. Furthermore, it is recognized that the base sentence for this offence is 10 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 Page 4 of 6 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 present case, the Accused was convicted of an offence carrying a statutory penalty of imprisonment ranging from 10 to 20 years. The Learned High Court has imposed a sentence of 12 years’ rigorous imprisonment. It is evident that the Learned High Court Judge has given careful consideration to both mitigating and aggravating factors relevant to the case. The sentencing decision clearly reflects a measured and balanced evaluation, with appropriate weight given to the mitigating circumstances.

The Learned High Court Judge carefully weighed all mitigating and aggravating factors before imposing a sentence of 12 years’ rigorous imprisonment. This decision reflects the broader concern about the risk of such injustices recurring, and underscores society’s dependence on the justice system to uphold a deterrent effect, preserving social order and preventing the escalation of crime.

Considering all these aspects, we find no justification to interfere with the sentence handed down by the Learned High Court Judge on 16.07.2024.

The Sentence is backdated to the date of conviction, namely 16.07.2014.

Furthermore, we make no change in the fine and the compensation imposed on the Accused.

The Registrar of this court is directed to send this judgment to the High Court of Puttalam for compliance.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL