

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

**In the matter of an appeal in terms of
section 331(3) of the Code of Criminal
Procedure Act No.15 of 1979 read with
Article 139 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.**

Democratic Socialist Republic of Sri
Lanka

Complainant

Court of Appeal

Case No. **CA/HCC/150/2024**

Vs.

High Court of Kandy

Case No. **HC 158/2018**

Kalugamuwe Uyanwatta Gedra Roshan
alias Rosa

Accused

AND NOW BETWEEN

Kalugamuwe Uyanwatta Gedra Roshan
alias Rosa

Accused-Appellant

Vs.

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

Complainant-Respondent

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

Counsel: Amila Palliyage, AAL, with Sandeepani Wijessoriya, AAL, Savani Udugampola, AAL, Lakitha Wakishtaarachchi, AAL, Subaj De Silva, AAL, Gayathrika De Silva, AAL, and Senuri Gunerathna, AAL, for the Accused-Appellant.

Shamil Kularatne, A.S.G. for the Respondent.

Argued on: 18.12.2025

Judgment on: 26.01.2026

JUDGMENT

AMAL RANARAJA, J.

1. The Accused-Appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Kandy* in High Court case number HC 158/2018.
2. The charge in the indictment is as follows;

That on or about, July 26, 2014, the appellant did commit the offence of rape on a woman, an offence punishable under section 364(1) of the Penal Code (Amendment Act, No.22 of 1995).

3. At the conclusion of the trial, the appellant has been convicted of the offence in the charge and sentenced as followed;

A term of 20 years rigorous imprisonment along with a fine of Rs.15,000. A term of 6 months’ simple imprisonment has been imposed in default of the payment of the fine.

Further, the appellant has been ordered to pay a sum of Rs. 1,000,000 as compensation to PW01 with a term of 24 months' rigorous imprisonment imposed in default.

4. Being aggrieved by the conviction, the disputed judgment and sentencing order, the appellant has preferred the instant appeal to this Court. When the matter was taken up for argument the learned Counsel for the appellant informed Court that he intended to limit the ground of appeal to the following;
 - i. *The sentence imposed by the learned High Court Judge is disproportionate and excessive. Therefore, the sentence is contrary to sentencing policy.*
5. The learned Counsel for the appellant has contended the sentence imposed on the appellant was extreme and the sentence of 20 years' rigorous imprisonment imposed in respect of the charge is the maximum sentence imposed by statute.

Additionally, the learned Counsel for the appellant has contended that the following circumstances be taken into consideration and a variation of the sentence be made in favour of the appellant. The learned Counsel for the appellant has set out the following occurrences in mitigation;

 - i. The appellant was thirty-five years old at the time of the occurrence.
 - ii. That the appellant had no previous convictions or pending cases.
 - iii. That the appellant was a first-time offender.
 - iv. That the appellant was married and a father of two children.
 - v. That the second child was very young and attending preschool.

- vi. That the trial has concluded nine years after its commencement.
 - vii. That the appellant has demonstrated remorse while refraining from challenging the conviction and instead limiting the appeal to the sentencing order.
6. The learned Additional Solicitor General has contended that the appellant has deceived PW01 and her parents by falsely presenting himself as capable of performing acts connected with black magic, when in fact he served as a labourer at a government institution and had no such ability.

It is argued that by making these representations the appellant has induced PW01 and her family to place trust in him, and then betrayed that trust.

Further, the learned Additional Solicitor General has submitted that the incident was not accidental or spontaneous, but was pre-planned. According to the prosecution, the appellant has deliberately exploited the vulnerable circumstances of PW01 and her family; taking advantage of their beliefs, fears and dependence on his supposed “powers” to further his own ends.

In doing so, he is said to have manipulated the situation to create an opportunity to commit the offence. The learned Additional Solicitor General has also emphasised the seriousness of the offence, submitting the offence for which the appellant stands convicted is grave in nature.

7. To begin with, it is reasonable to consider the sentence described by law for the offence stated in the charge set out in the indictment.

Section 364(1) of the Penal Code (Amendment Act, No.22 of 1995) is as follows;

(1) Whoever commits rape shall, except, in the cases provided for in sub-sections (2) and (3), be punished with rigorous imprisonment for a term not less than seven 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.

8. PW01 has been twenty years old when the appellant committed the offence on her. The best interests of women are in jeopardy due to the rise in sexual offences, a trend that does not bode well for future generations.

Sri Lankan cultural values are also at risk as communities lose their sense of safety and trust. Beyond the immediate harm, many young lives are broken or deeply disturbed, with their future diverted off course. Therefore, the psychological consequences for victims and the long-term effects on families and society must be treated as a paramount concern in this instance.

9. Further, 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.

10. In *Attorney General vs. H. N. de Silva* 57 NLR 121, Basnayake, ACJ, explaining the matters that should be taken into consideration in determining the 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."

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

12. 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 Billiam^[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.”

13. It is seen that the appellant has been thirty-five years old at the time he committed the offence in the charge and the rape pre-planned.

However, I also take into consideration the fact that the rape has not been repeated on the victim and also that the appellant does not have previous convictions or pending cases.

14. Accordingly, taking the above matters into consideration, I am of the view that the ends of justice would be satisfied if a lesser sentence be imposed.

15. Therefore, I set aside the sentence of 20 years rigorous imprisonment imposed in respect of the offence stated in the charge and, sentence the appellant to a term of 15 years rigorous imprisonment in respect of such offence.

The fine imposed in respect of the offence and the sum ordered to be paid as compensation together with the terms of imprisonment imposed in default of the payment of the same, shall remain unchanged. The substantive term of 15 years rigorous imprisonment shall commence from the date of conviction i.e. *December 11, 2023*.

16. Subject to the above variation, the appeal is partly allowed.

Appeal partly allowed.

I make no order regarding costs.

17. The Registrar of this Court is directed to communicate this judgment to the *High Court of Kandy* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree,

Judge of the Court of Appeal