

**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(1) of the Code of Criminal Procedure Act No. 15 of 1979 as amended read with Article 138(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka

The Democratic Socialist Republic of Sri Lanka

**Complainant**

**Vs**

Court of Appeal Case No:

**CA/HCC/0027/24**

High Court of Badulla Case No:

**HC/191/2018**

Weerasingha Appuhamilage Sujeewa  
Sampath Weerasingha,  
Presently at Remand Prison Badulla

**Accused**

**AND NOW BETWEEN**

Weerasingha Appuhamilage Sujeewa  
Sampath Weerasingha,

**Accused-Appellant**

**Vs**

Hon. Attorney General  
Attorney General's Department  
Colombo 12

Before : **P. Kumararatnam, J.**  
**Pradeep Hettiarachchi, J.**

Counsel : Sahan Weerasingha for the Accused- Appellant  
Hiranjan Peiris ASG for the State

Argued on : 17.09.2025

Decided on : 05.12.2025

**Pradeep Hettiarachchi, J**

### **Judgment**

1. The accused-appellant (hereinafter referred to as the appellant) has filed the instant appeal against the judgment dated 27.11.2023 delivered by the learned High Court Judge of Badulla. Although several grounds of appeal were initially urged, learned Counsel for the appellant, at the hearing, confined his submissions solely to the question of the sentence imposed by the learned High Court Judge.
2. In the present case, the appellant was indicted in 2018 for committing rape on a female under the age of 16 an offence punishable under section 364(2) e of the Penal Code as amended by the Act No 22 of 1995.
3. The trial commenced before the Judge of the High Court, and at the conclusion of the trial, the learned High Court Judge found the appellant guilty of the charge and accordingly convicted the appellant and sentenced him for 18 years rigorous imprisonment. The appellant was also imposed a fine of Rs. 10,000.00 carrying a default sentence of 12 months simple imprisonment. Furthermore, the appellant was ordered to pay Rs 750,000.00 compensation to the victim carrying a default sentence of 24 months simple imprisonment.

4. It is against that conviction and sentence the appellant has preferred the present appeal.

**Facts of the case as briefly as follows:**

5. Admittedly, the victim was under 16 years of age at the time of the incident, and was studying in grade 6. According to her evidence, on the day of the incident, she was at home watching the TV while her grandmother was sleeping. Her parents had gone to a nearby house.
6. The appellant came to her house and inquired about the whereabouts of her parents and later asked for a glass of water. When the victim gave the appellant the glass of water, he drank part of it and returned the glass. When the victim was about to go to the kitchen the appellant grabbed her from behind, covered her mouth with his hand led her to a room and then raped her. When she tried to shout, he threatened her with a knife.
7. The victim thereafter informed the incident to her parents, following which she was taken to the Uraniya Hospital. The doctor who examined her there directed that she be transferred to the Mahiyanganaya Hospital. Meanwhile, the appellant was apprehended by the neighbours and handed over to the police. Subsequently, the victim was taken from Mahiyanganaya Hospital to the Kandy Hospital, where she later underwent surgery.
8. Although several grounds of appeal were initially urged, learned Counsel for the appellant, at the hearing, confined his submissions solely to the question of the sentence imposed by the learned High Court Judge. Accordingly, the sole question for determination in this appeal is whether the sentence imposed on the appellant by the learned High Court Judge of Badulla is excessive in the circumstances of the case.
9. The counsel submitted that the sentence is excessive given the minimum mandatory sentence is 10 years. In the case before the High Court, it was submitted that the Appellant is 36 years old, married, and has one child who studies at grade 6; and the Appellant is the sole breadwinner upon whom the entire family is financially dependent. Additionally, Counsel for the Appellant submitted that the Appellant repents on what he had done and therefore, expects clemency from the court.

10. Accordingly, the principal ground urged by the defense in mitigation is the hardship likely to befall the Appellant's family consequent to his incarceration.
11. There are instances where courts exercise leniency in sentencing an accused despite the nature of the offence, particularly where mitigating circumstances are present. To elaborate further, a lesser sentence may be imposed only if the Court is satisfied that "substantial and compelling circumstances" exist which would justify such a departure. However, courts must also remain mindful of the message conveyed to society, especially the principle that offences of a heinous nature will not be tolerated or treated lightly.
12. In deciding whether the mitigatory grounds advanced by the Appellant warrant a reduction of sentence, this Court must not lose sight of the aggravating circumstances surrounding the case, nor of the legislative intent in prescribing severe custodial sentences for sexual offences.
13. Sri Lankan Courts, in a long line of judicial authorities have held that cases involving sexual offences, especially where the victims are children, have to be severely dealt with so as to create deterrence on the society.
14. In ***Attorney General v Hewa Walimunige Gunasena*** CA/PHC/110/2012 (Decided on 12-02-2014) it was held by Sunil Rajapakshe J that;

*After analyzing the submissions made by the Petitioner and the Accused-Respondent I am of the opinion that the facts relating to this case warrants that the accused should be severely dealt with. Therefore, a sentence of two years rigorous imprisonment suspended for ten years on the accused for a grave child abuse is a very lenient sentence considering the beastliness of the crime. When an offence of child abuse is proved victims of tender age and innocent behavior the sentence of imprisonment should be imposed severely. Further I hold two years R.I suspended for tend years is not adequate for the purpose of preventing the commission of further offences by the accused. Cases of indecent touching, threats by an older man on a small girl seem to attract custodial sentence.*

15. Furthermore, in ***State of Andhra Pradesh v. Bodem Sundara Rao***, (1995) 6 SCC 230, AIR 1996 SC 530 the Indian Supreme Court while dealing with a case of reduction of sentence from 10 years rigorous imprisonment to 4 years rigorous imprisonment by the High Court in the case of rape of a girl aged between 13 and 14 years, observed:

*In recent years, we have noticed that crimes against woman are on the rise. These crimes are an affront to the human dignity of the society. Imposition of grossly inadequate sentence and particularly against the mandate of the Legislature not only is an injustice to the victim of the crime in particular and the society as a whole in general but also at times encourages a criminal. The Courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society's cry for justice against such criminals. Public abhorrence of the crime needs a reflection through the Courts verdict in the measure of punishment. The Courts must not only keep in view the right of the criminal but also the rights of the victim of crime and the society at large while considering imposition of the appropriate punishment. The heinous crime of committing rape on a helpless 13/14 year old girl shakes our judicial conciseness. The offence was inhumane.*

16. The Courts are therefore, expected to deal with cases of sexual offenses committed against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. Dealing with the offence of rape and its traumatic effect on a rape victim, it was held in ***State of Punjab v. Gurmit Singh*** 1996 AIR 1393, 1996 SCC (2) 384 that;

*Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's right in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault- it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a greater*

*responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity*

17. 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.”*

18. In considering the aggravating factors, Court should not lose sight of the manner in which the appellant committed the offence, his subsequent conduct, and the age of the victim. It is apparent that the appellant initially inquired from the victim regarding the whereabouts of her parents and ensured that, apart from her ailing grandmother, no other person was at home. Evidently, the appellant had been observing the victim for some time prior to approaching her.

19. The brutality and inhuman conduct of the appellant is further manifested by his subsequent actions. After committing rape upon the victim, he ensured that she was bleeding. In her testimony, the victim stated as follows:

ප්‍ර : කළාට පස්සේ දිගමට නිවසේ රැඳිලා හිටිය ද නැත්තම් ගියාද ?

උ : නැහැ ස්වාමීනී මගේ යට ඇඳුම අරගෙන මට බලන්න කිව්වා ලේ එනවද කියලා. ඊට පස්සේ මම බලන කොට ලේ ඇවිල්ලා තිබුනා.

ප්‍ර : ඔබ බලන කොට ලේ ඇවිල්ලා තිබුනා ?

උ : ඔව්. ඊට පස්සේ එහෙනම් වැඩේ හරි කිව්වා. . ඊට පස්සේ අතේ මට දැන් තියෙන මතකයේ හැටියට ගෝල්ඩ් පාට වළලු දෙකක් තිබුනා. ඒ දෙක මට දිලා කිව්වා තියා ගන්න කියලා.

Vide page 81/82

20. The above evidence was not challenged during cross-examination and therefore stands unshaken. Moreover, it is evident that the appellant had threatened the victim with a knife when she attempted to shout. Further, the evidence in this case demonstrates that this offence was committed by taking undue advantage of a helpless girl under 16 years of age, who, as confirmed by the Judicial Medical Officer, had not even reached puberty at the time of the incident. Needless to elaborate on the physical and psychological trauma endured by the victim as a consequence of the offence committed by the appellant, particularly in light of the evidence indicating that she was in a distressed and confused state of mind as to what had actually happened to her.
21. The appellant, being himself a father of a girl, nevertheless showed no mercy to the victim when he found the opportunity. Thus, the deliberate preparation of the appellant, the manner in which the crime was committed, and particularly his subsequent conduct would certainly not persuade this Court to show any clemency towards him.
22. To elaborate, the aggravating factors clearly outweigh the mitigating factors, and accordingly, the sentence imposed on the Appellant by the learned High Court Judge does not warrant any reduction.
23. 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 (1982) Vol 74 Criminal Appeal Reports 242, 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 emphasize 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. "*

24. In the case of, ***Keith Billam (1986) Vol 82 Criminal Appeal Reports 347***, the Lord Chief Justice reiterated 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 a 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 "*.

25. It can be observed that several of these aggravating circumstances are present in the case in hand. The appellant's request for a glass of water, by which he deceptively created an opportunity to forcibly remove the prosecutrix to a room; the fact that her grandmother was asleep after taking medication; the appellant's prior confirmation that the parents were absent from the house; the tender age of the victim, who was below the legal age of consent; the evident degree of pre-planning by the appellant; and his act of threatening her with a knife, are all aggravating circumstances that weigh heavily against him.

26. Furthermore, it is desirable to emphasize that sexual violence victims often experience a profound sense of shame, stigma and violation. Given the fact that sexual violence is a degrading, humiliating and brutal invasion of the security of the person, a rape victim is most often left with psychological injuries that are far more serious and difficult to detect than physical injuries.



27. It is also significant to note that while on bail, the appellant had committed two further offences of housebreaking, which were brought to the attention of the High Court by the learned State Counsel during submissions on sentencing.
28. Therefore, it is difficult, if not impossible, to find any justifiable ground to act with leniency in sentencing the appellant. The learned High Court Judge has duly considered the aforementioned aggravating factors prior to imposing sentence. Accordingly, I find no basis upon which this Court should interfere with or vary the sentence imposed by the learned High Court Judge.
29. Accordingly, the appeal is hereby dismissed. Nevertheless, I order that the sentence of imprisonment shall take effect from the date of conviction.

**Judge of the Court of Appeal**

**P. Kumararatnam,J**

I agree,

**Judge of the Court of Appeal**