

**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.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

Vs

Madduma Patabendige Pasindu
Bandduma

Court of Appeal Case No:

CA/HCC/0217/24

High Court of Tangalle Case No:
HC 28/2022

Accused

AND NOW BETWEEN

Madduma Patabendige Pasindu
Bandduma

Accused-Appellant

Vs

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

Complainant - Respondent

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

Pradeep Hettiarachchi, J.

Counsel : Punarji Karunasekara for the Accused - Appellant.

Maheshika De Silva DSG for the Respondents.

Argued on : 07.10.2025

Decided on : 12.12.2025

Pradeep Hettiarachchi, J

Judgment

1. The accused-appellant (hereinafter referred to as “the appellant”) has preferred the instant appeal against the sentence imposed on him by the learned High Court Judge of Tangalle. The appellant was indicted before the High Court of Tangalle on two counts of grave sexual abuse.

2. As the appellant initially pleaded not guilty to the charges, the trial commenced on 27.05.2024. However, during the pendency of the trial, the appellant withdrew his earlier plea and pleaded guilty to both counts. Accordingly, the learned High Court Judge convicted the appellant on both counts and sentenced him as follows:
 - a) For the first count: Ten years’ rigorous imprisonment and a fine of Rs. 5,000/-, carrying a default sentence of three months’ rigorous imprisonment.
 - b) For the second count: Twelve years’ rigorous imprisonment and a fine of Rs. 5,000/-, carrying a default sentence of three months’ rigorous imprisonment.
 - c) Furthermore, the learned Trial Judge ordered the appellant to pay Rs. 400,000/- as compensation to the victim, carrying a default sentence of six months’ simple imprisonment. These sentences were ordered to run consecutively.

3. The 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 Tangalle is excessive in the circumstances of the case.

Background to the appeal:

4. The victim was 16 years old at the time of the offence. On the day of the incident, he was waiting at an isolated spot near a canal, having avoided a tuition class scheduled for that day. It was at this point that the appellant approached him and assaulted him.
5. Thereafter, the appellant asked the victim to remove his clothes and proceeded to sexually assault him by inserting his penis into the victim's anus. The appellant also compelled the victim to perform oral sex on him, which the victim did out of fear.
6. Subsequently, the appellant took Rs. 2,500 from the victim's purse and threatened to hand him over to the police. The appellant falsely represented himself as a police officer. After the incident, the victim walked toward the town. On his way, a person in a vehicle stopped and asked him why he was wet and why his clothes were muddy. The victim then began to cry. This person took the victim to a nearby boutique and, ultimately, he was handed over to his parents.
7. It can be observed that, following the conviction, both the prosecution and the defence made submissions regarding the appropriate sentence. The learned High Court Judge carefully considered the submissions made by both parties before imposing the sentence.
8. In this case, the victim was a boy of 16 years of age, while the appellant was 22 years old at the time of the offence. In determining the appropriateness of the sentence for offences of this nature, the Court must consider several factors, including the age of the victim, the age of the appellant, the extent of the injuries sustained by the victim, the degree of violence used, the need for deterrence in society, and the past conduct of the appellant.

9. Usually, courts regard the young age of an offender as a mitigating factor in the sentencing process. However, the young age of the victim cannot, by itself, be treated as a mitigating consideration when dealing with an offence of this nature. If an offender, due to youthfulness, is genuinely unable to comprehend the gravity or consequences of the act, such immaturity may be considered in mitigation, provided that no aggravating circumstances exist.
10. In the present case, after five witnesses had testified for the prosecution, the appellant withdrew his earlier plea and pleaded guilty to both charges. Apart from the young age of the appellant, no other mitigating factor was advanced by learned counsel during submissions before the High Court. It must also be noted that the victim was himself a young boy, and the offence was committed after the appellant instilled fear in him by threatening to hand him over to the police. The victim was alone and in an isolated location at the time the offence was committed.
11. Culpability will be increased where an offender deliberately targets a victim due to an actual or perceived vulnerability. Likewise, culpability is further aggravated where the victim's vulnerability is created or exacerbated by the offender's own actions.
12. In the instant case, the Medico-Legal Report reveals the gravity of the offence, particularly the extent of the injuries sustained by the victim as a result of the acts committed by the appellant. There is clear evidence of both anal and oral intercourse, in addition to other physical injuries. In the Medico Legal Report, the JMO has unequivocally stated that he observed anal tears and fresh bleeding on the victim. Additionally, the victim had suffered a traumatic perforation of the eardrum, probably as a result of the assault by the appellant. All these injuries undoubtedly constitute aggravating factors warranting a lengthy and rigorous custodial sentence.
13. The manner in which the appellant exploited the vulnerability and tender age of the victim, his threatening conduct, the assault on the victim, and the fact that he also took the money in the victim's possession, all dissuade this Court from extending any clemency to the appellant. Furthermore, there is nothing to suggest that the appellant suffered from any emotional or mental imbalance or disturbance or was under any external provocation while committing this offence.

14. The learned trial Judge has adequately and comprehensively analyzed the facts of the case and has also taken into account the relevant case law in determining the appropriate sentence. In this regard, the following authorities are also of considerable relevance.
15. In **Attorney General v Hewa Walimunige Gunasena CA/PHC/110/2012** (Decided on 12-02-2014) it was held:

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.

16. In **State of Andra Pradesh v. Bodem Sundara Rao, (1995) 6 SCC 230, AIR 1996 SC 530** it was held that:

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.

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. Furthermore, it is necessary to accentuate that sexual violence victims often experience a deep 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 victim is most often left with psychological injuries that are far more serious and difficult to detect than physical injuries.

19. Furthermore, it is worthy to note that crimes of this nature are on the rise, and the Legislature, in its wisdom, has prescribed stringent sentences in order to ensure deterrence, particularly with a view to protecting children. Harsh sentences aim to deter potential offenders and also prevent the convicted offender from reoffending. Hence, society's interest in preventing harm to children justifies adopting a deterrence-based sentence approach.

20. In assessing the severity of the sentence imposed by the learned High Court Judge, it is necessary to consider the gravity of the offences committed. In the present case, the appellant not only subjected the victim to repeated acts of grave sexual abuse but also inflicted physical violence upon him. As set out in the Medico-Legal Report, the victim sustained a ruptured eardrum, demonstrating the degree of force used during the commission of the offences. Moreover, the presence of bleeding and tears in the anal region further illustrates the brutality and inhumanity of the appellant's conduct.

21. These factors undoubtedly constitute significant aggravating circumstances, warranting the imposition of a deterrent and proportionate custodial sentence. The learned High Court Judge, in my view, has correctly taken these circumstances into account in determining an appropriate sentence. Thus, on balancing the mitigating and

aggravating circumstances, it is apparent that aggravating circumstances far outweighs the mitigating circumstance.

22. This Court is also mindful of the sentence stipulated in the Penal Code for this offence. Section 365B (2)(b) of the Penal Code reads:

Whoever Commits grave sexual abuse on any person under eighteen years of age, shall be punished with rigorous imprisonment for a term not less than seven years and not exceeding twenty years and with fine and shall also 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;

23. For the reasons comprehensively set out above, I see no basis upon which this Court should extend any clemency to the appellant. The sentences imposed by the learned High Court Judge are, in my view, lawful, proportionate, and amply justified by the gravity of the offences and the aggravating circumstances surrounding their commission.

24. Accordingly, the appeal is dismissed, and the sentences imposed by the learned High Court Judge are hereby affirmed. The sentence shall run from the date of conviction.

Judge of the Court of Appeal

P. Kumararatnam,J

I agree,

Judge of the Court of Appeal

