

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

**In the matter of an Appeal in terms of
Section 320 of the Code of Criminal
Procedure Act No. 16 of 1979.**

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

Court of Appeal
Case No. CA HCC 212/2023

Complainant

Vs.

High Court of Mannar
Case No. HC/MN/50/2019

Joseph Marin Jeromi Mark

Accused

AND NOW BETWEEN

Joseph Marin Jeromi Mark

Accused-Appellant

Vs.

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

Complainant-Respondent

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

Counsel: U. R. De Silva, P.C. with Chathura Weeramantry, Thilini
 Atapattu, for the Accused-Appellant.

Azard Navavi, A.S.G. for the Respondent.

Argued on: 03.12.2025

Judgment on: 19.01.2026

JUDGMENT

AMAL RANARAJA, J.

1. The accused appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Mannar* in High Court case number HC/MN/50/19.

The charges in the indictment are as follows:

Charge 01

That on or about August 08, 2015, within the jurisdiction of this Court, the appellant entered the house of *Jesuraj Mary Anne Yalini Andrew* without her permission; and thereby committed the offence of house trespass punishable under section 434 of the Penal Code.

Charge 02

During the same course of transaction as above, the appellant caused injuries to one *Jesuraj Mary Anne Yalini Andrew* by hurting her with a knife and under such circumstance with such intention or knowledge

that the said act would cause death; and thereby committed the offence of attempted murder punishable under section 300 of the Penal Code.

Charge 03

During the same course of transaction as above, the appellant caused grave injury to one *Jesuraj Guna Dushyanthini Andrew* by attacking her with a knife; and thereby committed an offence punishable under section 317 of the Penal Code.

2. At the conclusion of the trial, the learned High Court Judge has convicted the appellant of the first, third together with the amended second charge and sentenced the appellant as follows:
 - i. Sentenced to one year rigorous imprisonment in respect of the first charge.
 - ii. Sentenced to four years rigorous imprisonment in respect of the amended second charge and also imposed a fine of Rs. 15000.00 with a term of three months simple imprisonment in default.
 - iii. Sentenced to two years rigorous imprisonment in respect of the third charge and imposed a fine of Rs. 15000.00 with a term of three months simple imprisonment in default.
 - iv. The appellant has been directed to pay a sum of Rs. 500000.00 and 100000.00 respectively as compensation to the injured named in the amended second charge and the third charge with a term of six months simple imprisonment each in default.
 - v. It has also been directed that the substantial terms of rigorous imprisonment shall run concurrently.
3. The appellant aggrieved by the conviction, disputed judgment together with the sentencing order has preferred the instant appeal to this Court.

4. When the matter was taken up for argument, the learned President's Counsel for the appellant informed this court that the appellant was not disputing the conviction but only the sentencing order.
5. In addressing the appellant's personal circumstances, the learned President's Counsel has emphasized that the appellant is a 46 year old first time offender. Crucially, the learned President's Counsel has also drawn the court's attention to the appellant's role as a father of two dependent children.
6. Should the appellant be incarcerated, it has been contended that these children would face significant and potentially irreparable challenges including financial hardships, emotional instability and critical absence of a parent to provide for their upbringing and well-being.
7. Furthermore, it has been argued that the appellant possesses specialized expertise as a teacher in a crucial subject and his incarceration would regrettably deprive the local student community of his unique and essential knowledge.
8. The learned Additional Solicitor General has highlighted to this Court the calculated cruelty of the offences, its meticulous planning and the appellant's vengeful motive that has driven him to commit those acts.
9. In such circumstances, it has also been argued by the learned Additional Solicitor General that it is imperative for the Court to consider these aspects when sentencing the appellant convicted of causing serious offences.
10. In *Asan Mohammed Rizwan v Attorney General*, MC Pelamadulla Case No. 33332, HC Ratnapura Case No. HC 25/2010, Court of Appeal

Revision No. CA [PHC] APN 141/2013 decided on March 25, 2015, Chitrasiri, J. has discussed a gamut of issues regarding sentencing, stating the following:

“Sentencing is an important aspect in the administration of criminal justice system. A sentence ranges from death penalty to the mere censure in the form of good behavior bond or probation. There are multiple considerations relevant to the determination of a sentence. The most important consideration is the seriousness of the crime. Jurisprudentially, this position is persuasive despite pragmatic difficulties associated with matching the harshness of the sanction to the severity of the crime.....”

“Therefore, it is necessary for the judges to keep in mind the objectives of sentencing and also the sentencing guidelines, in order to arrive at the correct and appropriate decision. Objectives of sentencing include the following:

- (i) To punish offenders to an extent and in a manner, which is just in all the circumstances;*
- (ii) To protect the community from offender;*
- (iii) To deter offenders or other persons from committing offences of the same or similar nature;*
- (iv) To establish conditions so that rehabilitation of offenders may be promoted or facilitated;*
- (v) To signify that the court and the community denounce the commission of such offences;*
- (vi) To maintain the required standards of societal expectations in making decisions;*

(vii) To prevent overcrowding prisons also could be considered as one such objective particularly when it comes to developing countries such as ours.”

“I will now advert to the other aspects that are necessary to consider before a sentence is determined. Those can be categorized as follows:

- (a) The maximum and the minimum (if any) penalty prescribed for the offence;*
- (b) The nature and gravity/ seriousness of the particular offence.*
- (c) The offender's culpability and degree of his/her responsibility for the offence;*
- (d) Mental state of the accused at the time the offence was committed;*
- (e) Evidence as to pre-arrangement for the commission of the offence;*
- (f) The impact of the offence on any victim and the injury, loss or damage caused as a result of the offence committed;*
- (g) Whether the offender pleaded guilty to the offence and if so, the stage in the proceedings at which the offender did so or the stage at which it was indicated;*
- (h) The conduct of the offender during the trial as an indication of remorse or the lack of remorse;*
- (i) Any action taken by the offender to make restitution of the injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider.*
- (j) The offender's previous character, good or bad;*
- (k) Imprisonment should be used when no other sentence is adequate;*
- (l) Proportionality between the crime and the sentence;*
- (m) Possibility of reforming the offender;*
- (n) To ensure consistency in deciding sentences;*

(o) Presence of any aggravating or mitigating factors concerning the offender or any other circumstance relevant to the commission of the offence.”

11. At the same time, there are statutory provisions that govern the sentencing of a convicted individual. One such provision is section 303 of the Criminal Procedure Code Act No. 15 of 1979 which allows for the possibility of suspending a custodial sentence.

Matters that are to be considered prior to suspending a custodial sentence are stipulated as follows:

- (a) The maximum penalty prescribed for the offence in respect of which the sentence is imposed*
- (b) The nature and gravity of the offence*
- (c) The offender's culpability and degree of responsibility for the offence*
- (d) The offender's previous character*
- (e) Any injury, loss or damage resulting directly from the commission of the offence*
- (f) The presence of any aggravating or mitigating factor concerning the offender*
- (g) The need to punish the offender to an extent in a manner, which is just in all circumstances*
- (h) The need to deter the offender or other persons from committing offences of the same or of a similar character*
- (i) The need to manifest the denunciation by the court of the type of conduct in which the offender was engaged in*
- (j) The need to protect the victim or the community from the offender*
- (k) The fact that the person accused of the offence pleaded guilty to the offence and such person is sincerely and truly repentant; or*

(l) A combination of two or more of the above

The instances where a custodial sentence cannot be suspended are also stipulated as follows,

- (a) A mandatory minimum sentence of imprisonment has been prescribed by law for the offence in respect of which the sentence is imposed; or*
- (b) The offender is serving, or is yet to serve, a term of imprisonment that has not been suspended; or*
- (c) The offence was committed when the offender was subject to a probation order or a conditional release or discharge; or*
- (d) The term of imprisonment imposed, or the aggregate terms of imprisonment where the offender is convicted for more than one offence in the same proceedings, exceeds two years.*

12. The offences for which the appellant has been convicted are profoundly serious. They have not been spontaneous acts but rather premeditated offences deliberately planned by the appellant. The grave nature of these offences is further underscored by the fact that they have resulted in serious injuries to two individuals.

13. Moreover, the appellant's actions have been driven by a clear motive of vengeance. These factors, the inherent gravity of the offences, their premeditated nature, the resulting severe injuries, and the vindictive motive collectively constitute significant aggravating circumstances. It is against this backdrop the learned High Court Judge has carefully considered the mitigating factors presented by the appellant prior to imposing the disputed sentencing order.

14. In those circumstances, I proceed to affirm the disputed sentencing order and dismiss the appeal.

Appeal dismissed.

I make no order regarding costs.

15. The Registrar of this Court is directed to send this judgment to the *High Court of Mannar* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree

Judge of the Court of Appeal