

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

In the matter of an appeal under Section 331
of the Code of Criminal Procedure
Act No. 15 of 1979 as Amended.

CA Case No: CA -HCC- 218/ 24

HC of Balapitiya Case No: HC-CRI /2972/22

The Democratic Socialist Republic of Sri
Lanka

Complainant

Vs.

Duminda Dinesh Liyanage

(Presently at Welikada Prison)

Accused

AND NOW BETWEEN

Duminda Dinesh Liyanage

(Presently at Welikada Prison)

Accused-Appellant

Vs.

The Attorney General

Attorney General's Department

Colombo 12

Complainant-Respondent

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

Amal Ranaraja, J

Counsel : Geeth Karunaratne for the Accused- Appellant
Dishna Warnakula, DSG for the Respondent

Argued On : 12.11.2025

Judgment On: 03.12.2025

JUDGEMENT

B. Sasi Mahendran, J.

The Accused-Appellant (hereinafter referred to as ‘the Appellant’) was indicted before the High Court of Balapitiya on one count of abduction and two counts of rape committed on Sashani Chamarika Wijesiri Gunawardana, punishable under Section 354 and Section 364 (2)(e) of the Penal Code as amended by Act No. 22 of 1995.

It should be noted that when the matter was first taken up for trial, the Accused-Appellant was absent, and the court accordingly issued a warrant against him. Subsequently, on 21st September 2023, the Learned High Court Judge, acting under Section 241 of the Criminal Procedure Code, ordered that the trial proceed in absentia on 05th January 2024. On that date, however, the Appellant appeared and informed the court that he had been unaware of the case pending before the High Court. The Learned High Court Judge rejected this explanation, remanded the Appellant, and fixed the trial for 08th February 2024.

Thereafter, a pre-trial conference was conducted on 25th April 2024. On 2nd May 2024, when the trial commenced, the Appellant pleaded guilty to the 1st, 2nd, and 3rd counts of the indictment.

Following submissions by both parties, the Learned High Court Judge, by a sentencing order dated 02.05.2024, imposed the following sentences: one year of rigorous imprisonment together with a fine of Rs. 5,000 for the first count, with a default sentence of three months' simple imprisonment; ten years of rigorous imprisonment for each of the second and third counts; a further fine of Rs. 5,000, with a default sentence of three months' simple imprisonment. Further, the Learned High Court Judge directed that all three sentences run concurrently. Furthermore, payment of Rs. 200,000 compensation to the victim, in default, two years of simple imprisonment.

Being aggrieved by the afore-mentioned conviction and the sentence, the Appellant has preferred this appeal to this Court. However, on 12th November 2025, when the matter was taken up for argument, Geeth Karunaratne, AAL, for the Appellant, informed that the Appellant intends only to pursue the Appeal against the sentence and accordingly abandoned and withdrew the appeal against the conviction.

We note that generally, when sentencing, the Courts consider the aggravating and mitigating factors along with the gravity of the offence. At the inquiry before sentencing, the Counsel for the Appellant had pleaded for mitigation on the following grounds:

1. The Appellant has no previous criminal record.
2. At the time of the instance, the Appellant had pleaded guilty without going for a trial
3. The parties involved were in a consensual romantic relationship at the time of the incident.
4. Considering the case of SC 03/2008 based on similar facts, and accordingly, even if the legislature has prescribed a minimum sentence, the Supreme Court can act leniently towards the appellant.

Further, before sentencing, the Counsel for the Prosecution pleaded the following factors as aggravating:

1. The victim has stated that there was a relationship with the appellant, but she had no consent to engage in any sexual activities with him.

2. The victim was 14 years of age when the crime was committed.
3. And the age of the appellant was 28 when the crime was committed.

In the instant case, the said sentence or penalty prescribed by written law is found in Section 354 and Section 364 (2)(e) of the Penal Code;

Section 354 of the Penal Code reads as follows,

“Whoever kidnaps any person from Ceylon or from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine”

Section 364 (2)(e) of the Penal Code reads as follows,

(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;

Provided, however, that where the offence is committed in respect of a person under sixteen years of age, the court may, where the offender is a person under eighteen years of age and the intercourse has been with the consent of the person, impose a sentence of imprisonment for term less than ten years.

Our Courts have considered that when the Learned Trial Judge considers the mitigatory and aggravating factors, there is a duty cast on the Judge to give reasonable consideration to such factors. We are mindful that the starting point of the sentence for this rape is 10 years.

His Lordship S.N. Silva J (as he was then) in the case of Attorney General v. Ranasinghe and Others (1993) 2 SLR 81 had referred to the judgment of Kieth Billiam (1986) Volume 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 instant case, the starting point for sentencing in respect of the offence is ten years. Thereafter, it is incumbent upon the Learned Judge to exercise his discretion by striking a balance between the aggravating and mitigating factors relevant to the circumstances of the case. In the instant case, the Learned High Court Judge has considered the following factors,

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“මෙම නඩුවේ වූදිත මෙම වරද කරන අවස්ථාව වන විට වයස අවුරුදු 28 ක තැනැත්තෙකු වන අතර, පැ.සා. 01 එයින් හරියටම භාගයක වයසකින් යුත් එනම් වයස අවුරුදු 14 කටත් වඩා අඩු තැනැත්තියක් වේ. ඒ අනුව ව්‍යවස්ථාදායකය ඇත්ත වශයෙන්ම මෙම නීතිය මේ ආකාරයෙන් සකස් කර ඇත්තේ මෙවැනි වයසක සිටින දරුවෙකුට ලිංගික සංසරගයක් සඳහා කැමැත්ත ලබා දීමේ හැකියාවක් නොමැති බවට පූර්ව නිගමනය කරමින් වේ.

හුදෙක් ප්‍රේම සම්බන්ධතාවයක් තිබීම යන්න ලිංගික එක් විමක් සඳහා කැමැත්ත දීමක් නොවන අතර, ඇත්ත වශයෙන්ම ලිංගික එක විමක් සඳහා කැමැත්ත දීමේ දැනුමක් හෝ අවබෝධයක් එවැනි දරුවෙකුට තිබේද යන්න මෙහිදී සලකා බැලිය යුතුය. අනෙක් අතට වූදිත ඒ වන විට වයස අවුරුදු 28 ක වැඩිමල් ප්‍රද්‍රේශ්‍ය ගෘෂ්මයකු වන අතර, ඔහු විසින් කරන ලද ක්‍රියාව පිළිබඳව ඔහුට හොඳ දැනීමක් තිබූ ඇති බව පෙනී යයි. තවද දුරටත් අද දින මෙම නඩුවේ පැ.සා. 01 පැහැදිලිව අධිකරණයට ප්‍රකාශ කර සිටින්නේ ඇය සහ වූදිත අතර ප්‍රේම සම්භන්ධතාවය තිබුනාද වූදිත සමග ඇති වූ ලිංගික එක් විම සඳහා ඇයගේ කැමැත්තක් නොතිබූ බවයි.”

We are mindful that our courts have held that the Learned Trial Judge has a discretion to decide an appropriate sentence notwithstanding the minimum mandatory sentence prescribed by law (*vide SC/03/2008*). We note that, in addition to that Appellant was absent, and the court has issued a warrant.

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 10 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 02.05.2024.

The Sentence is backdated to the date of conviction, namely 02.05.2024. Furthermore, we make no change in the fine and the compensation imposed on the Appellant.

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

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL