

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA**

An Appeal filed in terms of Section 331 of the Code of Criminal Procedure Act No. 15 of 1979 read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Democratic Socialist Republic of Sri Lanka

**Complainant**

**Vs**

Court of Appeal Case No:  
**CA/HCC/223-24**

Lelkada Lokuge Jayathilaka

**Accused**

High Court of Embilipitiya  
Case No: **HCE-56-2021**

**AND NOW BETWEEN**

Lelkada Lokuge Jayathilaka

**Accused – Appellant**

**Vs**

Hon. Attorney General,  
Attorney General’s Department,  
Colombo 12.

**Complainant - Respondent**

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

**Pradeep Hettiarachchi, J.**

**Counsel** : Sandeepani Wijesooriya for the Accused – Appellant  
Shanil Kularathne P.C. ASG for the Respondent.

Argued on : 26.11.2025

Decided on : 20.02.2026

**Pradeep Hettiarachchi, J**

**Judgment**

1. This is an appeal against the conviction and sentence dated 24.07.2024 delivered by the learned High Court Judge of Embilipitiya. The accused-appellant (hereinafter referred to as ‘the appellant’) was indicted before the High Court of Embilipitiya on three counts, namely:
  - a. For kidnapping a girl of under 16 years of age from the lawful custody of her lawful guardian which is an offence punishable under section 354 of the Penal Code:
  - b. For committing grave sexual abuse on her which is an offence punishable under Section 365B(2)(b) of the Penal Code as amended by the Act No 22 of 1995, No 29 of 1998 and No 16 of 2006; and,
  - c. For committing sexual harassment on her which is an offence punishable under Section 345 of the penal Code as amended by the Act No 22 of 1995 and No 16 of 2006.
2. At the conclusion of the trial, the learned Judge found the appellant guilty on counts 2 and 3 of the indictment and convicted him accordingly. For the second count, the appellant was sentenced to 10 years’ rigorous imprisonment and fined a sum of Rs. 10,000.00, with a default sentence of 12 months’ simple imprisonment.
3. For the third count, the appellant was likewise sentenced to 10 years’ rigorous imprisonment and fined a sum of Rs. 10,000.00, with a default sentence of 12 months’ simple imprisonment. Further, the appellant was ordered to pay a sum of Rs. 250,000.00

to the victim as compensation, with a default sentence of 12 months' simple imprisonment. The learned Judge also directed that the sentences of imprisonment imposed on the appellant shall run concurrently

4. Although the appellant initially raised several grounds challenging both the conviction and the sentence, counsel informed the court during oral arguments that they would only be contesting the sentence. The main argument for mitigation is the appellant's age; at 72, he faces the prospect of spending the rest of his life incarcerated unless the sentence is reduced.
5. As the appellant has placed great emphasis on his age, I will first briefly summarize the facts of the case. At the time of these offenses, the victim was 10 years old, while the appellant was 66. Having initially visited the victim's home with her father, the appellant, who claimed to be a soothsayer, subsequently visited alone on several occasions. On the day of the incident, the appellant arrived at the house under the pretext of asking for a coconut. The victim was then washing her clothes at a nearby tap after returning from school. It was at this moment that the appellant touched her chest and led her to a nearby house; this property was formerly occupied by the victim's family but had been vacated after they moved into a newly built home. The offense occurred inside the house, where the appellant lowered the victim's undergarments and licked her genitals.
6. Initially, the victim did not report the incident due to a fear of the appellant, who claimed to possess spiritual powers. However, after a subsequent occurrence, the victim informed her grandmother. Ultimately, the appellant was caught red-handed by the victim's relatives while attempting to repeat the act.
7. The offense is of an exceptionally serious nature, as the appellant took undue advantage of a minor who lacked the maturity to resist his advances. The appellant instilled fear in the victim by feigning spiritual powers. Furthermore, the evidence suggests that the appellant also attempted to abuse the victim's sister. Most significantly, the appellant was caught red-handed by the victim's relatives while attempting to repeat the offense.

8. Thus, the question that arises for determination is whether the advanced age of the appellant can be considered a mitigating factor warranting a reduction of the sentence imposed on him by the learned High Court Judge.
9. It must be emphasized that advanced age does not excuse criminal conduct, but it remains a relevant factor in determining the appropriate nature and duration of the sentence.
10. However, old age alone cannot be considered the sole criterion for extending clemency to an accused convicted of an offence of sexual abuse. The Court must also take into account several other factors, including the age of the victim, the modus operandi adopted by the offender, whether the victim suffered any bodily harm, whether the victim was subjected to physical violence at the hands of the appellant, the message conveyed to society, and the likelihood of recidivism.
11. In *R v Kien (2000) 116 A Crim R 339 par [17]*, it was held that:

*“advanced age may be significant to, but not determinative of, the quantum of a sentence”.*
12. It is generally recognized that older offenders may present a lower risk of recidivism and, consequently, may pose less risk to the public than younger offenders. Moreover, a term of imprisonment may have a more severe impact on an older offender than on a younger offender, which may suggest that a comparable degree of retribution could, in certain circumstances, be achieved with a shorter sentence for the former category.
13. Nevertheless, it must be emphasized that offences of this nature require sentences that reflect not only the gravity of the crime but also the societal interest in protecting vulnerable victims. Therefore, sentencing must strike a careful balance between individual mitigating circumstances and the broader interests of justice.
14. As stated earlier, the appellant was 66 years old at the time of the commission of the offence. The victim, on the other hand, was merely 10 years old and had not even attained puberty when she was subjected to this ordeal. Owing to her tender age, she was in no position to resist the offender. Further, there was overwhelming evidence against the

appellant, as he was apprehended red-handed while attempting to repeat the same act on the helpless victim.

15. In these circumstances, the aggravating factors clearly outweigh the mitigating factors. More importantly, the appellant had not confined himself to a single act, but had attempted to repeat the conduct when the opportunity arose, thereby demonstrating a disturbing degree of persistence in his criminal behaviour.
16. Offences of this nature call for sentences that reflect not only the gravity of the wrongdoing but also the need for denunciation, deterrence, and the protection of vulnerable members of society. Accordingly, the advanced age of the appellant cannot be afforded determinative weight so as to warrant a reduction of the sentence imposed.
17. The minimum mandatory sentence prescribed by law for the offence of grave sexual abuse is seven years' imprisonment, which may extend up to 20 years. The learned trial Judge has carefully analyzed the factual context of the case, in particular the tender age of the victim, the psychological trauma she would have experienced, and the likelihood of long-lasting psychological consequences in her life. Having regard to these factors, the sentence imposed falls well within the permissible statutory range. The only factors that appear to have escaped the attention of the learned trial Judge at the time of imposing the sentence are the appellant's age and the fact that he is a person with no previous convictions.
18. Therefore, having regard to the fact that the appellant is now 72 years old, has no previous convictions and that there are no pending cases against him, a slight reduction of the sentence imposed would not, in my view, occasion any injustice to the victim. I also take into account that the victim had not suffered any physical injury in the course of the incident. Furthermore, given the appellant's advanced age, the likelihood of reoffending appears to be minimal.
19. In these circumstances, the sentence imposed by the learned trial Judge warrants some alteration, particularly in view of the absence of physical injury to the victim and the fact that no violence was used by the appellant against her. Accordingly, it is my considered view that the aforesaid factors justify the substitution of the sentence already imposed on the appellant on counts 2 and 3 with a term of seven years rigorous imprisonment, and I

direct that the said sentences shall run concurrently. Furthermore, I reduce the amount of compensation payable by the appellant to a sum of Rs. 50,000.00, with a default sentence of six months' simple imprisonment. I make no changes to the fine and the default term imposed on the appellant.

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

**Judge of the Court of Appeal**

**P. Kumararatnam,J**

I agree,

**Judge of the Court of Appeal**