

**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 No. 15 of 1979 and in terms of Article 139 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA HCC /170/2025

HC of Colombo case No: HC 2554/2021

Democratic Socialist Republic of Sri Lanka

Complainant

Vs.

Mohammed Halaldeen Fausul Kabeer

Accused

AND NOW BETWEEN

Mohammed Halaldeen Fausul Kabeer

Accused-Appellant

The Attorney General

Attorney General's Department

Colombo 12

Respondent

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

Counsel: Erandi Abeynayaka for the Accused- Appellant
Maheshika Silva, DSG for the Respondent

Written 24.10.2025 (by the Accused-Appellant)

Submissions: 27.01.2026 (by the Respondent)

On

Argued On: 28.01.2026

Judgment On: 25.02.2026

JUDGEMENT

B. Sasi Mahendran, J.

The Accused-Appellant (hereinafter referred to as 'the Appellant'), a relative of the victim was indicted before the High Court of Colombo on three counts of statutory rape committed on Fathima Isthul Rahima, punishable under Section 364 (2)(e) of the Penal Code as amended by Act No. 22 of 1995.

It should be noted that, in the midst of the trial, dated 24.10.2024 after the conclusion of the evidence of PW1, PW3, and PW5, the Appellant pleaded guilty to all three charges in the indictment. The victim, who was 14 years old at the time, subsequently gave birth to a child. The DNA report confirmed that the Appellant is the biological father of the baby.

Following submissions by both parties, the Learned High Court Judge, by a sentencing order dated 24.10.2024, imposed the following sentences: 15 years of rigorous imprisonment together with a fine of Rs. 10,000 for all three counts for each. Further, the Learned High Court Judge directed that all three sentences run concurrently. Furthermore, payment of Rs. 500,000 compensations to the victim, in default, one year of simple imprisonment.

Being aggrieved by the aforementioned sentence, stating that the 15 years of Rigourous Imprisonment on all three counts are excessive the Appellant has preferred this appeal to this Court.

I note that, in general, when imposing a sentence, the Courts consider both aggravating and mitigating factors together with the gravity of the offence. At the inquiry held prior to sentencing, the Counsel for the Prosecution pleaded the following factors as aggravating:

1. The victim was 14 years old at the time the offence was committed.
2. The Appellant is a relative of the witness.

Further, before sentencing, the Counsel for the Appellant pleaded for mitigation on several grounds.

1. It's been 15 years from the date the offence happed
2. PW 1, the victim of this case is now married and has 4 children including the appellant's child
3. The appellant is 55 years old and earning daily salary
4. He has 2 children and they are still schooling
5. Respecting the time of the court, the appellant has pleaded guilty.
6. The Appellant has no previous criminal record.

In the instant case, the sentence or penalty prescribed by written law is contained 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 test 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 consistently held that, when a Learned Trial Judge considers the mitigating and aggravating factors, there is a duty upon the Judge to give reasonable consideration to such factors. I am mindful that, in the present case, the starting point of the sentence for the offence of rape is ten 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 present case, the starting point for sentencing in respect of the offence is ten years. Thereafter, it is incumbent upon the Learned Judge to exercise judicial discretion by weighing the aggravating and mitigating factors relevant to the circumstances. In this matter, the Learned High Court Judge has taken into consideration the following factors:

“වත්මන් මෙම නඩුව ගත්විට මෙම නඩුවේ වින්දිත තැනැත්තිය සහ වූදින අතර පවතින සම්බන්ධතාවය යම් ඥාතිත්වයක් මත වූදිනයාට මෙම වින්දිත පාර්ශවයට මෙම අපරාධය කිරීම සඳහා ප්‍රවේශය ලැබීම එම ඥාති සම්බන්ධතාවය මත සිදුවිය යුතු අතරම එය සුක්ෂම ලෙස වූදින පාවිච්චි කොට ඇති ආකාරය නඩුව තුළදීම අනාවරණය වේ.

ඒ අනුව මෙම නඩුවේ වූදින වරද පිලිගැනීම, වූදිනට අදාළ ඉහතින් සාකච්ඡා කරන ලද කරුණු වල අදාලත්වය සැලකිල්ලට ගැනීමේදී වින්දිත පාර්ශවය අපරාධ අවස්ථාවේ වයස අවුරුදු 14ක තැනැත්තියක් ලෙස කරුණු අනාවරණය වන අතර ඒ අනුව දඩුවම් නියම කිරීමේදී අධිකරණයක් විසින් සලකා බලන්නේ අපරාධය කරන ලද අවස්ථාවේ කරුණුය. එයට හේතුව යම්කිසි හෙයකින් මේ ආකාරයේ අපරාධයක් කරනු ලබන වූදිනයෙකුගේ වයස අවුරුදු 18 ට අඩු වුවහොත් සිර දඩුවම් නියම කිරීමකින් තොරව වෙනත් ආකාරයේ ආඥා කිරීමේ ක්‍රමවේදයක් අපරාධ නඩු විධාන සංග්‍රහය තුළ පවතින අතර එහි වාසිය ගැනීමට නම් එවැනි පුද්ගලයෙකු ඒ ආකාරයේ තත්වයක සිටිය යුතුය. ඒ අනුව වත්මන් මෙම නඩුවේ වූදිනගේ වයස ගත් විට අපරාධය කරන ලද අවස්ථාව වන විට වූදිනගේ වයස අවුරුදු 39 ක පුද්ගලයෙක් ලෙස සිටි තැනැත්තෙක් වේ. ඒ අනුව එම අවස්ථාව වන විට ඔහු විවාහක තැනැත්තෙකුද වී ඇති අතර හොඳාකාරවම වූදින වින්දිත පාර්ශවයට ඇති ඥාති සම්බන්ධතාවය දැන සිටි පුද්ගලයෙකි.”

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, after careful and meticulous consideration of all mitigating and aggravating circumstances, deemed it appropriate to impose a sentence of 15 years' rigorous imprisonment upon the Appellant. This determination is not merely a reflection of the gravity of the offence committed, but also a recognition of the broader societal concern that such injustices. The sentence thus serves a dual purpose: it operates as a deterrent to potential offenders while simultaneously reinforcing the principle that the rule of law must prevail to safeguard social order and prevent the escalation of child crime where they find the vulnerable.

Moreover, the Appellant's position as a relative of the victim aggravates the seriousness of the offence. By betraying the trust inherent in familial relationships, the Appellant has not only violated the victim's dignity but also undermined the very fabric of social trust

upon which communities depend. Such conduct instills fear among women in society, creating an atmosphere of insecurity and apprehension.

In these circumstances, I am of the considered view that the disputed sentencing order is proportionate to the gravity of the Appellant's actions. Taking all relevant factors into account, I find no basis to interfere with the sentence imposed by the Learned High Court Judge on 24.10.2024.

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

Appeal dismissed.

I make no order regarding costs.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL