

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an appeal under and in terms of section 331(1) of the Code of Criminal Procedure Act No. 15 of 1979 as amended read with Article 138(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka

The Democratic Socialist Republic of Sri Lanka

Complainant

Vs

Sebastian Jude Silvester

Accused

Court of Appeal Case No:

CA/HCC/0013/25

High Court of Chilaw Case No:

HC/59/2019

AND NOW BETWEEN

Sebastian Jude Silvester

Accused-Appellant

Vs

Hon. Attorney General

Attorney General's Department

Colombo 12.

Respondent

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

Counsel : Rikaz Riffard for the Accused- Appellant
Akila Dalpathadu for the State

Argued on : 11.12.2025

Decided on : 20.02.2026

Pradeep Hettiarachchi, J

Judgment

1. This appeal arises from the judgment dated 18.11.2024 of the learned High Court Judge of Chilaw, by which the accused-appellant (hereinafter referred to as the appellant) was convicted and sentenced. For the first count of the indictment, the learned trial Judge imposed a sentence of 18 years rigorous imprisonment. In addition, the appellant was ordered to pay a fine of Rs. 70,000, with a default term of six months, and to pay Rs. 700,000 as compensation to the victim, with a default term of 24 months.
2. Aggrieved by the conviction and sentence, the appellant preferred the instant appeal. Although several grounds were initially raised in the petition of appeal, counsel for the appellant informed the Court at the hearing that he would challenge only the sentence, contending that it was excessive in the circumstances of the case. No written submissions have been filed by either party.
3. The appellant was indicted before the High Court of Chilaw for committing three acts of rape on his own daughter, who was under 16 years of age during the relevant period. These are offences punishable under Section 364(3) of the Penal Code, as amended by Act No. 22 of 1995. At the trial, five witnesses testified for the prosecution, and the

appellant made a dock statement. At the conclusion of the trial, the learned trial Judge found the appellant guilty of Count 1 but acquitted him of the remaining two charges.

4. Since the appellant argues that the sentence is excessive, I shall consider whether there exist any circumstances to reduce the sentence imposed by the learned High Court Judge. It is trite law that in sentencing an accused, the court shall pay attention to the existence of mitigating and aggravating circumstances in each case, and decide accordingly the most appropriate sentence proportionate to the gravity of the offence.
5. When determining the appropriateness of a sentence, the Court must consider various factors and then decide what is most suitable for the particular offence. Before addressing the proportionality of the sentence, it is appropriate to briefly outline the background of the case. The appellant is a father of four children, and the victim in this case is his second daughter. At the relevant time, the appellant's wife had gone abroad to seek employment, and the appellant was living with the children, including the victim.
6. It is in evidence that the victim had been sexually abused by the appellant on several occasions. On the day of the incident, the appellant returned home intoxicated and raped the victim. This act was witnessed by the victim's own brother, who lodged a complaint with the police on the same day.
7. There are occasions where courts adopt a lenient approach in sentencing an accused person, notwithstanding the seriousness of the offence, particularly where mitigating factors are present. In such circumstances, a reduced sentence may be imposed only if the court is satisfied that "substantial and compelling circumstances" exist to justify a departure from the prescribed norm. At the same time, courts must remain conscious of the broader message conveyed to society, bearing in mind the principle that offences of a heinous nature should neither be tolerated nor treated with undue leniency.
8. In determining whether any mitigating factors exist to justify a reduction of sentence, this Court must not lose sight of the aggravating circumstances of the case, nor of the legislative intent underlying the imposition of severe custodial penalties for sexual offences.

9. Sri Lankan courts, as well as courts in other jurisdictions, have consistently held in a long line of judicial authorities that offences of a sexual nature, particularly those involving child victims, must be dealt with firmly so as to ensure effective deterrence within society.
10. In ***Attorney General v Hewa Walimunige Gunasena*** CA/PHC/110/2012 (Decided on 12-02-2014) it was held by Sunil Rajapakshe J that;

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 ten 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.

11. In ***State of Andra Pradesh v. Bodem Sundara Rao, (1995) 6 SCC 230, AIR 1996 SC 530*** the Indian Supreme Court while dealing with a case of reduction of sentence from 10 years rigorous imprisonment to 4 years rigorous imprisonment by the High Court in the case of rape of a girl aged between 13 and 14 years, observed:

In recent years, we have noticed that crimes against woman are on the rise. 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. The heinous crime of committing rape on a helpless 13/14 year old girl shakes our judicial conciseness. The offence was inhumane.

12. The Courts are therefore, expected to deal with cases of sexual offenses committed against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. Dealing with the offence of rape and its traumatic effect on a rape victim, it was held in ***State of Punjab v. Gurmit Singh 1996 AIR 1393, 1996 SCC (2) 384*** that;

Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's right in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault- it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a greater responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity

13. 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.”

14. In considering the aggravating factors, the Court should not lose sight of the manner in which the appellant committed the offence, his conduct, and his relationship to the

victim. It is evident from the testimony of PW2 that the appellant had abused the victim on several occasions. Moreover, both the victim and her siblings had been subjected to assaults by the appellant on numerous occasions. It is also significant that the appellant had a prior conviction under Section 345 of the Penal Code and was serving a suspended sentence at the time; this offence was committed during the operative period of that suspended sentence.

15. Furthermore, the appellant, being the father of the victim, was under a duty to protect his children and, in no circumstances, was expected to behave in such a disgraceful manner. When his wife was away attempting to earn a livelihood for the family, it was incumbent upon the appellant to act responsibly and to care for his children in her absence. As the parent and guardian, he bore the paramount obligation to safeguard their welfare and ensure their well-being.
16. It is also apparent that the appellant abused the position of authority he held over the hapless victim, exploiting her vulnerability and tender age for his own purposes. In the absence of the mother, it was the appellant who provided for the children's basic needs, thereby placing the victim in a position where she had little or no meaningful opportunity to resist his advances.
17. The victim in the present case was under 16 years of age at the time she was subjected to this harrowing ordeal. More significantly, it was her own father, who was duty-bound to provide love, affection, care, and, above all, protection, who committed this heinous offence while her mother was away. Accordingly, this is not a case that warrants leniency; rather, it must be dealt with firmly so as to ensure deterrence within society and to convey a clear and unequivocal message that courts will not tolerate offences of this nature under any circumstances.
18. It is also appropriate to cite an observation made by the Lord Chief Justice in the Court of Appeal of England, with regard to the sentence to be imposed for an offence of rape. In the case of *Roberts (1982) Vol 74 Criminal Appeal Reports 242, at page 244*. It was observed as follows:

" Rape is always a serious crime. Other than in wholly exceptional circumstances, it calls for an immediate custodial sentence. This was certainly

so in the present case. A custodial sentence is necessary for a variety of reasons. First of all, to mark the gravity of the offence. Secondly to emphasize public disapproval. Thirdly to serve as a warning to others. Fourthly to punish the offender, and last but by no means least, to protect women. The length of the sentence will depend on all the circumstances. That is a trite observation, but these, in cases of rape vary widely from case to case. "

19. In the case of, **Keith Billam (1986) Vol 82 Criminal Appeal Reports 347**, the Lord Chief Justice reiterated the foregoing observations and stated that in a contested case of rape a figure of five years imprisonment should be taken as the starting point of the sentence, subject to any aggravating or mitigating features. He observed further as follows:

" The crime should in any event be treated as aggravated by any of the following factors : (1) violence is used over and above the force necessary, to commit the rape ; (2) a weapon is used to frighten or wound the victim ; (3) the rape is repeated ; (4) the rape has been carefully planned : (5) the defendant has a previous convictions for rape or other serious offences of a violent or sexual kind ; (6) the victim is subjected to further sexual indignities or perversions ; (7) the victim is either very old or very young ; (8) the effect upon the victim, whether physical or mental, is of special seriousness. Where any one or more of these aggravating features are present, the sentence should be substantially higher than the figure suggested as the starting point "

20. In this case, the appellant has not only violated the victim's privacy and personal integrity, but has also caused serious psychological as well as physical harm in the process. He has degraded the very soul of the helpless victim, who happened to be his own daughter. The learned trial Judge, prior to sentencing the appellant, paid due attention to several significant factors, including that the offence was committed while the victim's mother was away, that the perpetrator was her own father who had failed in his parental duties, that the victim's elder sister had also been subjected to a similar ordeal at the hands of the appellant, and the tender age of the victim at the time of the incident.

21. Therefore, in light of the circumstances under which the appellant committed this offence, and in the absence of any mitigating factors, I find no reason to interfere with the sentence imposed by the learned trial Judge. Consequently, I affirm the sentence imposed on the appellant on 18.11.2024. However, I direct that the sentence shall run from the date of conviction. Accordingly, the appeal is dismissed.

Judge of the Court of Appeal

P. Kumararatnam,J

I agree,

Judge of the Court of Appeal