

**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.**

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

Complainant

CA HCC 0194 /2023

High Court of Colombo
HC 392/2017

Vs.

Mailappuge Ananda Karunaratna.

Accused

AND NOW BETWEEN

Mailappuge Ananda Karunaratna.

Accused-Appellant

Vs.

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

Complainant-Respondent

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

Counsel: Sarath Jayamanne P.C, with Vineshka Mendis, Prashan Wickramaratne, Sajeewa Meegahawaththa, Dakshin Abeykoon and Chathushi Vidushika for the Accused-Appellant.

Dileepa Pieris, A.S.G. for the State.

Argued on: 14.05.2025

Judgment on: 13.06.2025

JUDGMENT

AMAL RANARAJA, J.

1. The Accused-Appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Colombo* in case no. HC 392/2017.

2. The charges in the indictment are as follows;

Charge 01

Between the time period 25.06.2010 and 31.07.2010, by placing the penis of the appellant between the thighs of *Dinuka Kiriella* (PW 01) who was under the age of 16 years at the time, committed an act of grave sexual abuse on PW 01,

an offence punishable under section 365 B (2) (b) of the Penal Code (as amended).

Charge 02

Between the above mentioned time period, on a different occasion other than the occasion mentioned in Charge 01, by inserting the penis of the appellant into the anus of PW 01 who was under the age of 16 years at the time, committed an act of grave sexual abuse on PW 01, an offence punishable under Section 365 B (2) (b) of the Penal Code (as amended).

3. At the conclusion of the trial the appellant has been convicted of both charges referred to above and the appellant sentenced as follows;

Charge 1	Term of 07 years simple imprisonment and a fine of Rs. 10,000.00 with a term of 01 year simple imprisonment in default of payment of the fine.
Charge 2	Term of 07 years simple imprisonment and a fine of Rs. 10,000.00 with a term of 01 year simple imprisonment in default of payment of the fine.

And a sum of Rs. 100,000.00 as compensation to be paid to PW01 with a term of 12 months simple imprisonment in default of the payment of compensation.

4. Being aggrieved by the conviction and the sentencing order the appellant has preferred the instant appeal to this Court.

5. When the matter was taken up for argument the Learned President's Counsel for the appellant informed Court that he intended to limit the ground of appeal to the following;
 - i. That the sentence is excessive, therefore, could the Learned High Court Judge have applied the principles laid down in *SC Reference 3/2008*?

6. The Learned President's Counsel for the appellant has contended that the sentences imposed on the appellant were extreme, and the sentences of 07 years simple imprisonment each imposed in respect of the 1st and 2nd charges are mandatory sentences imposed by statute. Additionally, the Learned President's Counsel for the appellant has contended that the following mitigatory circumstances be taken into consideration and variation of the sentences be made in favour of the appellant.

7. The following occurrences have been set out by the Learned President's Counsel for the appellant in support of his contention;

That the appellant is currently facing stage four kidney disease, a critical condition that significantly impairs the kidneys ability to filter out toxic substances from the blood stream. Should the illness progress to stage five, it could prove fatal.

Managing such a debilitating condition necessitates strict dietary and lifestyle modifications, including a substantial reduction in salt intake, limitation of protein consumption and careful regulation of water intake. Additionally, controlling hypertension is crucial to the health of the appellant.

8. However, if the appellant was to be incarcerated adhering to these essential health guidelines would become exceedingly difficult, if not impossible. The prison system may not provide the necessary accommodation for a special diet tailored to meet the appellant's medical needs.

9. Unlike an average inmate the appellant would face unique challenges in maintaining his illness within the constraints of a correctional facility. Consequently, the circumstances of the appellant's incarceration would not only impede the maintenance of his health but would also place him at a disproportionate disadvantage compared to other inmates, who do not suffer from

similar medical issues. This disparity raises significant concerns regarding the treatment and care of the appellant with a chronic health condition.

10. The Learned Additional Solicitor General has argued that the matters presented before this Court by the learned President's Counsel for the appellant were not brought to the attention of the Learned High Court Judge during the mitigation of sentence. Consequently, the Learned High Court Judge was not aware of the arguments now being raised when issuing the disputed sentencing order. That it is important to note that the Learned High Court Judge has imposed the mandatory sentence prescribed by statute, therefore the sentences handed down are not excessive in nature, should this Court consider intervening in the disputed sentencing order based solely on facts that were only introduced at this stage there is a risk of unfair consequences for the Learned High Court Judge. This could undermine the integrity of the judicial process and set a concerning precedent, suggesting that Appellate Courts might be compelled to reconsider a sentencing order based on information not previously available to the original sentencing court.

11. At the time of the incidents referenced in the charges, PW 01 has been a 15-year-old boy. The appellant, an adult male, has lived in an "*old walawuwa type house*" located adjacent to the hardware store frequented by PW 01.

The appellant has formed an acquaintance with PW 01 and on one occasion, volunteered to take PW 01 to his house, as PW 01 was interested in seeing the aesthetics of the property. When PW 01 taken to the appellant's house, the appellant has offered PW 01 a drink. After consuming the drink, PW 01 has begun to feel dizzy. Seizing the opportunity, the appellant has then engaged in intercrural sex with PW 01. Subsequently on another occasion the appellant has engaged in sexual activity involving penetration of the anus of PW 01.

12. The appellant has kept silent when he was called upon for his defence.

To begin with, it is reasonable to consider the sentences prescribed by law for the offences stated in the charges set out in the indictment.

Section 365 B (1) and (2) of the Penal Code is as follows;

- (1) Grave sexual abuse is committed any person who, for sexual gratification, does any act, by the use of his genitals or any other part of the human body or any Instrument on any orifice or part of the body of any other person, being an act which does not amount to rape under section 363, in circumstances falling under any of the following descriptions, that is to say-

- (a) without the consent of the other person;
 - (aa) with or without the consent of the other person when the other person is under sixteen years of age;
- (b) with the consent of the other person while such other person was in lawful or unlawful detention or where that consent has been obtained, by use of force, or intimidation or threat of detention or by putting such other person in fear or death or hurt;
- (c) with the consent of the other person where such consent has been obtained at a time the other person was of unsound mind or was in a state of intoxication induced by alcohol or drugs.

(2) Whoever –

- (a) commits grave sexual abuse shall be punished with rigorous imprisonment for a term not less than five years and not exceeding twenty years and with fine and shall also 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;
- (b) commits grave sexual abuse on any person under eighteen years of age shall be punished with rigorous imprisonment for a term not less than seven years and not exceeding twenty years and with fine and shall also 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.”

13. Accordingly, mandatory sentence has been prescribed in respect of those convicted of committing the offences set out in charges 1 and 2 in the indictment.

14. Mandatory sentences represent a significant shift in the criminal justice system, establishing fixed penalties for certain offences regardless of the individual circumstances, whereby Judges are bound to impose predetermined sentences regardless of the specifics of the case.

15. The Supreme Court of Sri Lanka in SC Reference No. 03/2008 has determined that a trial Judge's discretion to reach to a conclusion as regards to a sentence is not inhibited or controlled by a mandatory sentence imposed by a statute.

16. In SC Reference No.03/2008, the Supreme Court has held,

"In the above circumstances we hold that the minimum mandatory sentence in Section 364(2)(e) is in conflict with Article 4(c), 11 and 12(1) of the Constitution and that the High Court is not inhibited from imposing a sentence that it

deems appropriate in the exercise of its judicial discretion notwithstanding the minimum mandatory sentence.”

17. In **Warnakulasooriya Mudiyanseelage Jayanth Warnasuriya vs. Attorney General CA/HCC/169/2022** decided on 09.12.2024, *Kulathunga, J*, discussing the connotations of the judgment in SC Reference 03/2008 has stated as follows;

"Certainly, in view of SC Reference 3/2008 though a trial Judge is neither shackled nor inhibited by the said minimum mandatory sentence, is required to have regard to the fact that a minimum mandatory sentence is so fixed. A court now has the discretion to impose a sentence of imprisonment less than the prescribed minimum. However, I am of the view that the Judge should have and there should be some adequate reason/s to go below the said minimum sentence. The court should mention such reasons in the Judgment when awarding a sentence less than the prescribed minimum. In order to exercise the discretion to impose a sentence less than the minimum prescribed there should be and the court has to record such reason/s which is adequate. This to my mind should necessarily be some tangible and good reason which is not fanciful. Thus, to my mind it is necessary and prudent to assign and give the reason if and when a Judge decides to

impose a sentence below the minimum mandatory fixed by law."

18. Grave sexual abuse is a horrific offence that not only violates an individual's physical anatomy but also inflicts profound psychological trauma leaving lasting scars on victims. The seriousness of the offence necessitates a robust legal response that serves not only to punish the offender but also to deter potential future offences. Deterrent punishment aims to convey a strong societal message that such behavior will not be tolerated, thereby, fostering a sense of safety and justice.

19. In determining the appropriate punishment, the Court is required to consider the same from the point of view of the convict as well as the public.

In ***Attorney General vs. H. N. de Silva 57 NLR 121***, *Basnayake, ACJ*, explaining the matters that should be taken into consideration in determining a sentence that should be passed on a convict has stated as follows;

"In assessing the punishment that should be passed on an offender, a Judge should consider the matter of sentence both from the point of view of the public and the offender, Judges are too often prone to look at the question only from

the angle of the offender. A Judge should, in determining the proper sentence, first consider the gravity of the offence as it appears from the nature of the act itself and should have regard to the punishment provided in the Penal Code or other statute under which the offender is charged. He should also regard the effect of the punishment as a deterrent and consider to what extent it will be effective. If the offender held a position of trust or belonged to a service which enjoys the public confidence that must be taken into account in assessing the punishment. The incident of crimes of the nature of which the offender has been found to be guilty and the difficulty of detection are also matters which should receive due consideration. The reformation of the criminal, though no doubt an important consideration is subordinate to the others I have mentioned. Where the public interest or the welfare of the State (which are synonymous) outweighs the previous good character, antecedents and age of the offender, public interest must prevail."

20. Convictions for grave sexual abuse carries significant implications not just for the victim but for the society as a whole. Ensuring that individuals convicted of serious offences are dealt with appropriately is crucial for justice and further deterrence of future offences. The legal consequences imposed on individuals convicted of grave sexual abuse are designed to reflect the seriousness of the crime.

21. It is seen that several aggravating circumstances are present in the instant case. The fact that PW1 was of a very young age, the degree

of pre-planning by the appellant and the repeated commission of the offence, are some of those aggravating circumstances. Further, the attention of Court is drawn to the fact that matters enumerate in this Court have not been presented as mitigating factors before the High Court. Public interest demands that a custodial sentence be imposed on the appellant in this case.

22. Accordingly, I am not inclined to interfere with the conviction and the disputed judgment, together with the sentencing order.

However, the term of 7 years simple imprisonment each imposed in respect of the 1st and 2nd charges shall run concurrently beginning March 10,2023, the date of conviction.

Subject to the above variation, the *appeal stands dismissed*.

I make no order with regard to costs.

23. The Registrar of this Court is directed to communicate this judgment to the *High Court of Colombo* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree,

Judge of the Court of Appeal