

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

In the matter of an Appeal made under
Section 331 of the Code of Criminal
Procedure Act No.15 of 1979.

**Court of Appeal Case No.
CA/HCC/ 0183/2025
High Court of Embilipitiya
Case No. HC/72/2021**

Amarakoon Arachchige Chandana
Amarasinghe alias Beruwala
Chandana

ACCUSED-APPELLANT

Vs.

The Hon. Attorney General
Attorney General's Department
Colombo-12

COMPLAINANT-RESPONDENT

**BEFORE : P. Kumararatnam, J.
R. P. Hettiarachchi, J.**

**COUNSEL : Dilini Rajapaksha for the Appellant.
Dishna Warnakula, DSG for the
Respondent.**

ARGUED ON : **03/03/2026**

DECIDED ON : **11/06/2026**

JUDGMENT

P. Kumararatnam, J.

The above-named Appellant was indicted by the Attorney General in the High Court of Embilipitiya for committing one count of statutory rape punishable under Section 364(2) of the Penal Code as amended on Rathnayake Don Indrani on 08.12.2015.

The victim who is a mentally impaired person, had passed away before the commencement of the trial. Therefore, the prosecution had called six witnesses and marked productions P1 to P9A. After the closure of the prosecution case, the Court had called for the defence. The Appellant made a dock statement and closed his case.

After the aggravating and mitigating submissions, the Learned High Court Judge had imposed 20 years rigorous imprisonment and a fine of Rs.10,000/- with a default sentence of 12 months simple imprisonment.

In rape cases where the victim's testimony will not be available, the criminal case can still continue on the basis of other strong, cogent and corroborative evidence which is available and would be sufficient to prove the accused's

guilt beyond a reasonable doubt. Although the victim's testimony is of importance, it need not necessarily be the sole basis for conviction, especially where the prosecution can establish the crime by other evidence.

In the case of Patan Jamal Vali v. The State of Andhra Pradesh, (2021) 5 SCC 790 it was held that:

“This kind of a judicial attitude stems from and perpetuates the underlying bias and stereotypes against persons with disabilities. We are of the view that the testimony of a prosecutrix with a disability, or of a disabled witness for that matter, cannot be considered weak or inferior, only because such an individual interacts with the world in a different manner, vis-a-vis their able-bodied counterparts. As long as the testimony of such a witness otherwise meets the criteria for inspiring judicial confidence, it is entitled to full legal weight. It goes without saying that the court appreciating such testimony needs to be attentive to the fact that the witness' disability can have the consequence of the testimony being rendered in a different form, relative to that of an able-bodied witness.”

In this case, the Learned Counsel for the Appellant only contested that the Learned High Court Judge erred in law by failing to give proper reasons to impose the maximum sentence and considering the probability of non-occurred event which was probable to happen because of the offence committed when giving such conviction and the sentence.

The Learned Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence. During the argument he was connected via the Zoom platform from prison.

At the very outset of the argument, the Learned Counsel for the Appellant informed this Court that the Appellant is only contesting the sentence.

The Facts of this case *albeit* briefly are as follows.

The prosecutrix was a mentally impaired woman who was living with her mother, who is PW1 in this case. As the Appellant is a relation of PW1 by marriage, using this opportunity, the Appellant had raped the victim. When he was indulging in sex with the victim forcibly, PW1 had come there and had seen the incident. Seeing the arrival of PW1, the Appellant had run away from the scene. PW1 had immediately informed the incident to her sister who is living close by and when both had inquired about this from the Appellant, the Appellant threatened them with death. Due to fear, she had not divulged this incident to anybody, but someone had called the Police Emergency Unit (119) and the police had commenced investigations thereafter.

The JMO who examined the victim opined that she was subjected to rape. He further opined after obtaining psychiatric opinion, that the victim was a mentally retarded woman.

The victim was 35 years old when she was raped by the Appellant. The Appellant was 43 years old when he committed this offence.

The judge takes several factors into account when deciding on a sentence, including the circumstances surrounding the crime and the situation of the person who committed the crime.

The sentence must be in proportion to the seriousness of the crime. The law establishes how serious a crime is by providing different sentences for different types of crimes. This means lighter sentences for less serious crimes and heavier sentences for more serious crimes. According to the principle of fairness in sentencing, the sentence must be just.

As in other countries, no sentencing guidelines have been formulated in our jurisdiction. Therefore, sentencing falls within the prerogative of the court in our jurisdiction.

In this case the Learned High Court Judge had passed 20 years rigorous imprisonment on the count of rape. The Learned Counsel for the Appellant submits that this is not a case to impose the maximum sentence.

When sentencing in individual cases, the court must strike a balance between the seriousness of the offence as reflected in the maximum sentence available under the law and the seriousness of the actual acts of the person.

In the case of **Attorney General v H.N.Silva 57 NLR 121** the Court held that:

" 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 incidence 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. "

In the case of **The Attorney General v Mendis** [1995] 1 Sri L.R 138 it was held:

“In assessing punishment, the judge should consider the matter of sentence both from the point of view of the public and the offender. The judge should 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. The incidence 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. Two further considerations are the nature of the loss to the victim and the profit that may accrue to the accused in the event of non-detection. For some offences generally speaking longer sentences of imprisonment are appropriate such as for example most robberies, most offences involving serious violence, use of a weapon to wound, burglary of private dwelling houses, planned crime for wholesale profit, active large-scale trafficking in dangerous drugs and the like.”

The maximum sentence for charge of rape is 20 years. Imposing 20 years is not appropriate in this case.

Now the Appellant is 53 years old and a married person with two children.

Considering all the factors available in this case, I think this is an appropriate case to vary the sentence. Accordingly, I set aside the 20 years rigorous imprisonment and substitute it with 12 years rigorous imprisonment against the Appellant.

Fines, and default sentence imposed on the Appellant shall remain same.

Considering the fact that the Appellant is in remand from the date of conviction, I, order the sentence imposed on the Appellant be operative from the date of sentence namely, 25.03.2025.

Therefore, the conviction is affirmed and the sentence is varied up to that extent. The Appeal is partly allowed.

The Registrar of this Court is directed to send this judgment to the High Court of Embilipitiya along with the original case record.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

JUDGE OF THE COURT OF APPEAL