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/0081/25**

High Court of Trincomalee Case No: **HCT/1285/2024**

Chitravel Lineshkaran *alias* Vijithan

Accused

AND NOW BETWEEN

Chitravel Lineshkaran *alias* Vijithan

Accused – Appellant

Vs

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

Complainant - Respondent

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

Pradeep Hettiarachchi, J.

Counsel : Anuradhi Nakandala for the Accused-Appellant

: Nishanth Nagarathnam SC for the State.

Argued on : 19.03.2026

Decided on : 14.05.2026

Pradeep Hettiarachchi, J

Judgment

1. This appeal has been preferred by the Accused-Appellant (hereinafter referred to as "the Appellant") seeking a reduction of the sentence imposed on him. The Appellant was initially indicted before the High Court of Trincomalee on four counts, namely: the kidnapping of a girl under 16 years of age from her lawful guardian, and the commission of rape on the said girl on three occasions. These offences are punishable under Sections 354 and 364(2) read with Section 364(2) (e) of the Penal Code, as amended by Act No. 22 of 1995.

2. When the indictment was read to the Appellant on 04.06.2024, he pleaded not guilty to the charges, and accordingly, a pre-trial conference was scheduled for 09.07.2024. Upon the conclusion of the pre-trial conference, the trial was fixed for 08.10.2024.

3. On that date, the Appellant, with the leave of the Court, withdrew his earlier plea of not guilty and entered an unconditional plea of guilty to all four charges. The Appellant was accordingly convicted on all four counts by the Learned Trial Judge. Thereafter, the Appellant was sentenced as follows:

a. For the first count, the Appellant was sentenced to one year's rigorous imprisonment, suspended for a period of ten years, and a fine of Rs. 1,000/-, in default of which he was to undergo one month's imprisonment.

b. In respect of the 2nd, 3rd, and 4th counts, the Appellant was sentenced to ten years' rigorous imprisonment on each count, with the said sentences to run concurrently. In addition, he was fined Rs. 10,000/- on each count, in default of which he was to undergo one month's imprisonment for each count.

c. The Appellant was further ordered to pay a sum of Rs. 100,000/- on each of the 2nd to 4th counts as compensation to the prosecutrix, in default of which he was to undergo an aggregate term of eighteen months' imprisonment.

4. It was submitted on behalf of the Appellant that the Learned High Court Judge erred in law by imposing sentence without adhering to the mandatory requirements introduced by the Code of Criminal Procedure (Amendment) Act No. 50 of 2024, which requires compliance with a proper plea agreement procedure prior to the acceptance of a guilty plea and the imposition of sentence.

5. It was further contended that the Learned Trial Judge failed to comply with section 06(8)(c) of the said Amendment Act, in that no proper plea-bargaining agreement was entered into, thereby depriving the Appellant of the statutory opportunity to withdraw his plea upon becoming aware of the sentence to be imposed.

6. Furthermore, it was submitted that the Learned Trial Judge failed to consider and evaluate the mitigating factors, in particular the fact that the Appellant has no previous convictions, prior to imposing the sentence. It was also contended, relying on *S.C. Special Determination No. 03 of 2008*, that this Court should exercise its discretion to impose a suspended sentence.

7. In view of the Appellant's contention that the Learned Trial Judge failed to act in compliance with section 197A (1) of the Code of Criminal Procedure (Amendment) Act No. 50 of 2024, it becomes necessary to examine the provisions of section 197A, which reads as follows:

197A. *(1) A plea agreement may be entered into between the prosecutor and an Accused who is indicted in the High Court, at any time before the sentence is passed, subject to the procedure specified in this section.*

(2) Where the parties to a case intend to negotiate a plea agreement under this section, the court shall be informed of the same: Provided that, the court shall not participate in the negotiations for such plea agreement. (3) The prosecutor, the Attorney-at-Law for the accused, or the accused, may initiate the offer to enter into a plea agreement: Provided that, the prosecutor shall maintain the sole discretion on whether or not to enter into a plea agreement with the accused person

8. The above section is clear and unambiguous. There is no mandatory requirement for the Court to persuade the parties to enter into a plea agreement, nor is it the duty of the trial Judge to require the parties to do so prior to the imposition of sentence. It is for the parties to inform the Court if they intend to enter into a plea agreement. More importantly, the Court is expressly precluded from participating in any negotiations relating to such a plea agreement.

9. Thus, it is incumbent upon Counsel for the Accused to notify the Court if any plea agreement exists. The section does not impose a duty on the Trial Judge to inquire into the existence of a plea agreement or to invite the parties to enter into such an agreement.

10. In the present case, it is evident that no plea agreement was in existence, nor was any such agreement brought to the attention of the Court by Counsel for the Appellant. In these circumstances, the Learned High Court Judge was entitled to proceed to impose sentence on the Appellant, who pleaded guilty to the charges in the indictment.

11. Accordingly, the contention advanced by the Appellant regarding non-compliance with section 197A of the Code of Criminal Procedure Act is devoid of merit and must fail.

12. The next issue that arises for determination in this appeal is whether the Learned Trial Judge ought to have exercised his discretion to suspend the sentence imposed on the Appellant, particularly in view of the Appellant having pleaded guilty at the earliest stage. The Appellant has placed considerable reliance on *S.C. Reference No. 03 of 2008*,

and has contended that, in light of the fact that he has no previous convictions and entered a plea of guilty at the first instance, thereby saving valuable judicial time, a non-custodial sentence should have been imposed.

13. In view of the reliance placed on *S.C. Reference No. 03 of 2008*, it becomes necessary to examine and analyze the circumstances under which a court may exercise its discretion to depart from a prescribed minimum mandatory sentence.

14. The unanimous opinion of the Court in that determination (S.C. Reference 3/2008, HC Anuradapura Case No. 333/2004, SCM 15. 10. 2008) was that the minimum mandatory sentence in Section 362(2)(e) is in conflict with Articles 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** (*emphasis added*) in the exercise of its judicial discretion notwithstanding the minimum mandatory sentence.

15. The Court emphasized that factors such as a plea of guilty, the absence of previous convictions, or the saving of judicial time, though relevant, do not by themselves constitute exceptional circumstances warranting a departure from the prescribed sentence. Such factors may be taken into account in mitigation, but they must be weighed against the nature and gravity of the offence, the manner in which it was committed, and the impact on the prosecutrix.

16. Applying these principles to the present case, it is evident that the Appellant has relied primarily on the fact that he is a first-time offender and that he pleaded guilty at the earliest opportunity. While these are relevant mitigating factors, they do not, in themselves, rise to the level of exceptional circumstances contemplated in *S.C. Reference No. 03 of 2008*.

17. On the contrary, the offences in question involve the kidnapping of a minor and the commission of rape on multiple occasions. The gravity of these offences, the vulnerability of the prosecutrix, and the breach of trust involved are all significant aggravating factors which militate against the exercise of leniency.

18. Similarly, in ***Rohana alias Loku vs. Attorney General [2011] 2 Sri L.R. 174,*** the Supreme Court, in a case involving a charge of statutory rape, substituted the custodial

sentence with a suspended sentence, having regard to the attendant circumstances of that case. The Supreme Court observed inter alia at pages 180 and 181 as follows:

> *"There is no doubt whatsoever that the Accused is technically guilty of the offence described in section 364 (2) (e) of the Penal Code. However, after considering the facts of the case and the submissions of the counsel, I hold that this is not a case where the Accused has to suffer a custodial sentence."*

19. In the above case, the Accused had a love affair with the prosecutrix, and the prosecutrix urged the Accused to take her away from her home and threatened to commit suicide in the event of his failure or refusal to comply with her request. Further, the Court observed the prosecutrix's reluctance to testify against the Accused and her evasiveness in answering critical questions.

20. The said decision was based on its own peculiar facts and cannot be treated as laying down a general principle that suspension of sentence is warranted in all cases involving sexual offences. Each case must necessarily be determined on its own factual matrix, having due regard to the gravity of the offence, the age and vulnerability of the prosecutrix, the manner in which the offence was committed, and the presence or absence of exceptional mitigating circumstances.

21. In the present case, the circumstances are materially distinguishable. The offences involve grave violations committed against a minor and do not disclose any exceptional features which would justify the exercise of discretion to suspend the sentence imposed. Accordingly, the decision in ***Rohana alias Loku vs. Attorney General*** (*supra*) is of no assistance to the Appellant.

22. The Appellant in the present case was a father of two children at the time of the commission of the alleged offence. Even if it is assumed that the prosecutrix had consented to the particular act, the Appellant could and should have refrained from such conduct, having regard to the significant age gap between them and the fact that he was a married man with two children at that time.

23. Where the Court is invited to depart from mandatory minimum sentencing provisions, there must exist compelling and exceptional circumstances which would justify the

exercise of discretion to substitute a suspended sentence in place of a custodial sentence. In the present case, no such compelling reasons have been established to the satisfaction of this Court. The mere fact that the Appellant has no previous convictions cannot dilute the gravity of the offence, particularly having regard to the age and vulnerability of the prosecutrix.

24. It is also desirable to emphasize that imposition of suspended sentences on first offenders, if applied without due caution, may lead to a perception that serious offences can be committed with limited consequences on the basis of first-offender status. This may, in turn, encourage a tendency to treat the commission of serious offences with unwarranted leniency. The resultant effect could be an increase in criminal conduct within society. The Court must, therefore, be mindful of such consequences and exercise caution in ensuring that the objectives of deterrence and the interests of justice are not undermined.

25. Time and again, our courts have emphasized the need to protect children from becoming victims of grave sexual offences. The legislature, in its wisdom, has enacted stringent laws with the intention of deterring the commission of such offences, and this Court cannot lightly disregard that legislative intent when determining the appropriate sentence.

26. If undue prominence is given to the fact that an accused is a first-time offender, thereby undermining the gravity of the offence, it would send a wrong signal to society and dilute the deterrent purpose underlying the statutory framework.

27. Accordingly, it is incumbent upon the Trial Judge to evaluate all the circumstances of the particular case and thereafter determine the most appropriate sentence, ensuring that it is proportionate to the nature and gravity of the offence.

28. In terms of section 364(2)(e) of the Penal Code, the prescribed sentence ranges from ten years to twenty years' rigorous imprisonment. In the present case, the Learned Trial Judge has imposed ten years' rigorous imprisonment, which is the minimum mandatory sentence prescribed by law.

29. In the absence of any compelling and exceptional circumstances warranting the exercise of discretion to depart from the minimum mandatory sentence, I am not inclined to interfere with the sentence imposed by the Learned Trial Judge.

30. However, the quantum of compensation ordered to be paid by the Appellant to the prosecutrix requires revision, having regard to the fact that the prosecutrix is now married. Accordingly, I reduce the compensation payable by the Appellant to Rs. 50,000/- on each of the 2nd to 4th counts, in default of which the Appellant shall undergo three months' simple imprisonment on each count.

31. Subject to the above variation in respect of compensation, the appeal is dismissed. The Registrar of this Court is directed to communicate this judgment to the High Court forthwith and to take all necessary steps to give effect to this Order. The sentence to take effect from the date of conviction. i.e. from 11.12.2024.

Judge of the Court of Appeal

P. Kumararatnam, J

I agree,

Judge of the Court of Appeal