

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

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

Democratic Socialist Republic of Sri Lanka

CA HCC 114/2020

High Court of Chilaw

Case No. HC 05/2019

Vs.

Marasinghe Arachchilage Chaminda
Nishantha *alias* Marasinghe Arachchilage
Chaminda Nisantha Marasinghe

Accused

AND NOW BETWEEN

Marasinghe Arachchilage Chaminda
Nishantha *alias* Marasinghe Arachchilage
Chaminda Nisantha Marasinghe

Accused-Appellant

Vs,

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

Respondent

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

Counsel: Jagath Nanayakkara with G.L.L. Dinushika for the Accused-
 Appellant

Wasantha Perera, D.S.G. for the State

Argued on: 18.05.2026

Judgment on: 27.05.2026

Judgment

Amal Ranaraja. J,

1. The Accused-Appellant (hereinafter referred to as "Appellant") has been indicted in the High Court of *Chilaw* in the case number HC/05/19. The charge in the indictment is as follows;

01. That on a date within the period of the 01st of April, 2016 and 30th of April, 2016, within the jurisdiction of this Court, in *Madagama*, you in order to gain some sexual gratification have used a certain part of your body, particularly your male genitals, by rubbing it against the body one *Karuna Pedige Nisansala Priyadharshani*, a person under 16 years of age; thereby you have committed an offence of “Grave Sexual Abuse” punishable under Section 365B (2)(b) of the Penal Code of Sri Lanka as amended by Penal Code (Amendment) Act No.22 of 1995, Penal Code (Amendment) Act No.29 of 1998 and Penal Code (Amendment) Act No.16 of 2006.

2. At the conclusion of the trial the Appellant has been convicted of the offence in the charge and sentenced as follows;
 - i. Sentenced to 15 years rigorous imprisonment in respect of the charge.
 - ii. Further, the appellant has also been imposed a fine of Rs. 25,000.00 with a term of 6 months simple imprisonment in default of payment of the same.

The appellant has also been ordered to pay a sum of Rs. 300,000.00 as compensation to PW01 with a term of 2 years simple imprisonment in default of payment of the same.

3. Being aggrieved by the conviction, the disputed judgement, together with the sentencing order, the appellant has preferred the instant appeal to this Court.

4. When the matter was taken up for argument the learned Counsel for the appellant informed the Court that he intended to limit the ground of the appeal to the following;

- i. The sentence imposed by the Learned High Court Judge is disproportionate and excessive, therefore the sentence is contrary to the sentencing policy.

5. The learned Counsel for the appellant contends that the sentence imposed, specifically 18 years rigorous imprisonment for the charge is excessive.

Additionally, the learned Counsel for the appellant has contended that the following circumstances be taken into consideration and a variation of the sentence be made in favour of the appellant. The learned counsel for the appellant has set out the following occurrences in mitigation;

- I. That the appellant was a married man at the time of the occurrence
- II. That the appellant had no previous convictions or pending cases
- III. That the appellant was a first-time offender
- IV. That the offence in question occurred in 2016, over ten years ago and the charge has weighed upon the appellant for over one and a half years representing a substantial period of prolonged uncertainty.
- V. That the appellant has demonstrated remorse while refraining from challenging the conviction and instead limiting the appeal to the sentencing order.

6. The learned Deputy Solicitor General has argued for an appropriate sentence for the appellant.
7. To begin with, it is reasonable to consider the sentence described by law for the offence stated in the charge set out in the indictment.
8. Section 365B (2)(b) of the Penal Code as amended by the Penal Code (Amendment) Act, No.16 of 2006 is as follows;

365.

(2) Whoever-

(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.

9. Prosecution witness PW01, has been only about 12 years old when the appellant committed the sexual offence against her. Whenever a child is subjected to such grave violations the consequences extend well beyond the immediate physical harm. Experiences of sexual abuse at such formative age frequently leave indelible psychological scars disrupting emotional development, impairing educational progress and undermining the victim's prospects for a stable and fulfilling adult life.
10. In recognition of this vulnerability the law imposes a heightened duty on

the Courts to safeguard the welfare of minors and to denounce, through proportionate sentencing, conduct that harm the bodily integrity and human dignity. Accordingly, the age, breach of trust inherent in offences against children, and the long-term social cost of such offences must be treated as paramount considerations when meting out punishment to offenders of such offences.

11. Further, 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.
12. In *Attorney General vs. H.N. de Silva* 57 NLR 121, Basnayake, ACJ, in explaining the matters that should be taken into consideration in determining the sentence 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 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.”

13. The appellant is a married man with no prior convictions or pending cases. The incident involving PW01 does not represent a pattern of repeated offending against her. No violence has been used during the commission of the offence. The appellant has demonstrated an understanding of the gravity of his action and exhibited remorse by not disputing the conviction.

14. Accordingly, taking the above matters into consideration, I am of the view that the ends of justice would be satisfied if a lesser sentence be imposed.

15. Therefore, I set aside the sentence of 18 years rigorous imprisonment imposed in respect of the offence stated in the charge and sentence the appellant to a term of 14 years rigorous imprisonment in respect of such offence.

The fine imposed in respect of the offence together with the sum ordered to be paid as compensation, together with the terms of imprisonment imposed in default of payment of the fine/compensation, shall remain unchanged.

However, the substantive term of 14 years rigorous imprisonment shall commence from the date of conviction, i.e. 27th of August, 2020.

16. Subject to the above variation, the appeal is partly allowed.

17. I make no order regarding costs.

Appeal partly allowed.

18. The Registrar of this Court is directed to communicate this judgement to the High Court in *Chilaw* for compliance.

Judge of the Court of Appeal

B. Sasi Mahendran, J.

I agree

Judge of the Court of Appeal

