

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

**In the matter of an appeal in terms of  
Section 331(1) of the Criminal  
Procedure Act No.15 of 1979.**

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

**Complainant**

**CA HCC 188/25**

Vs.

High Court of Balapitiya  
Case No. HCB 2095/2017

Thempalan Nishantha *alias* Manju *alias*  
Theppalani Nishantha

MC- Elpitiya  
Case No. 85921

**Accused**

**AND NOW BETWEEN**

Thempalan Nishantha *alias* Manju *alias*  
Theppalani Nishantha

**Accused-Appellant**

Vs.

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

**Respondent**

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

**Counsel:**    Thanuka Nandasiri for the Accused-Appellant.

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

**Argued on:**    26.03.2026

**Judgment on:** 06.05.2026

### **Judgment**

**Amal Ranaraja, J.**

1.     The accused-appellant (hereinafter referred to as appellant) has been indicted in the high court of *Balapitiya* in High Court Case No. HCB 2095/17.

2.     The charges in the indictment are as follows;

01. That on or about 26<sup>th</sup> of October, 2014 at Elpitiya, within the jurisdiction of this Court, you did kidnap *Wijekumar Abisani*, a minor under 16 years of age, from the lawful guardianship of *Arumugam Muththukumari*; and that you have thereby committed an offence punishable under Section 354 of the Penal Code.

02. That in the time, place, and course of action of the above first charge, you did commit the offence of rape on *Wijekumar Abisani*, a minor under 16 years of age; and that you have

thereby committed an offence punishable under Section 364 (2)(e) of the Penal Code as amended by the Penal Code Amendment Act No. 22 of 1995.

03. That on a date between the 26<sup>th</sup> of October 2013 and the 25<sup>th</sup> of October 2014, within the jurisdiction of this Court, in *Elpitiya*, and at a time other than that of the second charge above, you have committed the offence of rape on one *Wijekumar Abisani*, a minor under 16 years of age; and that you have thereby committed an offence punishable under Section 364 (2)(e) of the Penal Code as amended by the Penal Code Amendment Act No. 22 of 1995.

04. That on a date between the 26<sup>th</sup> of October 2013 and the 25<sup>th</sup> of October 2014, within the jurisdiction of this Court, in *Elpitiya*, and at a time other than that of the second and third charges above, you have committed the offence of rape on one *Wijekumar Abisani*, a minor under 16 years of age, and that you have thereby committed an offence punishable under Section 364 (2)(e) of the Penal Code as amended by the Penal Code Amendment Act No. 22 of 1995.

3. At the conclusion of the trial the appellant has been convicted of the first and third charges referred to above and acquitted of the others. The learned High Court Judge had thereafter proceeded to sentence the appellant as follows;

Charge 01

To a term of 1 year rigorous imprisonment and a fine of Rs. 3000.00 with a term of three months simple imprisonment in default of the payment of the fine.

### Charge 03

To a term of 10 years rigorous imprisonment and a fine of Rs.10,000.00 with a term of 1 year rigorous imprisonment in default of the payment of the fine.

The appellant has also been ordered to pay a sum of Rs.300,000.00 as compensation to PW01 with a sentence of 2 years rigorous imprisonment in default of the payment of compensation. Also, the learned High Court Judge has directed that the terms of imprisonment shall run concurrently.

4. Being aggrieved by the conviction, the disputed judgement 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 Counsel for the appellant informed Court that he has obtained instructions to limit the grounds 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 Counsel for the appellant has contended that the sentence of 10 years rigorous imprisonment imposed in respect of the third charge was a mandatory sentence imposed by statute. Additionally, he has contended that the following mitigatory circumstances be taken into consideration and a variation of the sentence be made in favour of the appellant.
7. The following occurrences have been set out by the learned counsel for the appellant in support of his contention; that the appellant was just

16 years and a few months old, a minor, when the alleged offences occurred. A significant period, 12 years, have elapsed since then, during which the prospect of criminal proceedings has cast a continual shadow over the life of the appellant. The appellant's limited education has left him ill equipped to navigate his life, and the absence of his mother, who has been compelled to seek employment overseas has deprived the appellant of crucial parental guidance. Moreover, the appellant's decision not to challenge the conviction is a clear indication of remorse and accountability. Taken together, these factors call for a compassionate assessment of the sentence.

8. The learned Deputy Solicitor General has raised no objection to the mitigating factors put forward nevertheless, he has maintained that the Court should impose a sentence that is both proportionate to the gravity of the offences and consistent with established sentencing principles.
  
9. To begin with, it is reasonable to consider the sentences prescribed by law for the offences stated in the first and third charges set out in the indictment;

**354.** *Whoever kidnaps any person from Sri Lanka or from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

**364.(2)** *Whoever-*

*(e) commits rape on a woman under eighteen years of age;*

*shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shall in addition 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;*

10. Accordingly, a mandatory sentence has been prescribed in respect of those convicted of committing the offence set out in the third charge in the indictment.
11. 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 pre-determined sentences regardless of the specifics of the case.
12. However, the Supreme Court of Sri Lanka in SC Reference No. 3/2008, has determined that a trial Judge's discretion to reach a conclusion as regards to a sentence is not inhibited or controlled by a mandatory sentence imposed by a statute.
13. In *SC Reference No.03/2008*, the Supreme Court has held,  
*"In 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"*
14. In *Warnakulasooriya Mudiyanseelage Jayanth Warnasuriya vs. Attorney General CA/HCC/169/2022*, decided on 09.12.2024, Kulathunga, J, discussing the connotations of the judgement 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 certainly 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 judgement 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.”*

15. Rape is a heinous crime that violates an individual’s bodily integrity and inflicts deep, long-lasting psychological wounds. Survivors often experience trauma related conditions, such as depression, anxiety and difficulties with trust, which can persist for years or even decades after the assault. The impact extends beyond the victim, affecting families, workplaces and entire communities, as they struggle to support those whose lives have been shattered. Because of its profound physical, and emotional consequences, rape demands a strong multifaceted legal response.
16. 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 behaviour will not be tolerated thereby, fostering a sense of safety and justice.
17. 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.”*

18. In determining the sentence, on the third charge, the learned High Court Judge has carefully considered all relevant factors, including the appellant’s status as a minor at the time of the offence. Exercising the discretion available under the statute, the learned High Court Judge has imposed the statutory minimum term of ten years imprisonment rather than a sentence within the higher range of ten to twenty years.

Further, the learned High Court Judge has not departed below the prescribed minimum hence, was not required to give further reasons for the sentence. In these circumstances, the term imposed on the appellant cannot be regarded as excessive, it is proportionate to the seriousness of the third offence for which the appellant stands convicted together with the first.

19. In those circumstances I am not inclined to interfere with the conviction, disputed judgement and the sentencing order and proceed to affirm the same.

20. I dismiss the appeal and make no order regarding costs

*Appeal dismissed*

21. The Registrar of this Court is directed to send a copy of this judgement to the High Court in *Balapitiya* for compliance.

**Judge of the Court of Appeal**

**B. Sasi Mahendran, J.**

I agree

**Judge of the Court of Appeal**