

**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**

Court of Appeal Case No:

**CA/HCC/0243/2024**

High Court of Colombo Case No:

**HC 13/2018**

**Vs**

Anju Ishan Welgamage *alias* Anju Isara  
Welgamage

**Accused**

**AND NOW BETWEEN**

Anju Ishan Welgamage *alias* Anju Isara  
Welgamage

**Accused – Appellant**

**Vs**

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

**Complainant - Respondent**

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

Counsel : Nihara Randeniya with Kasun Sarathchandra, led by Chandima Athukorala for the Accused – Appellant.  
: Suharshi Herath DSG for the state.

Argued on : 13.03.2026

Decided on : 14.05.2026

**Pradeep Hettiarachchi, J**

### **Judgment**

1. The sole issue for determination in this appeal is whether the sentence imposed by the Learned Trial Judge is excessive, having regard to the circumstances under which the Accused-Appellant was found guilty of the charges set out in the indictment.
2. The Accused-Appellant (hereinafter referred to as “the Appellant”) was indicted on three counts of rape of a girl under the age of 16 years, offences punishable under Section 364(2)(e) of the Penal Code, as amended by Act No. 22 of 1995.
3. At the conclusion of the trial, the Learned Trial Judge found the Appellant guilty on all three counts and accordingly convicted him. The Appellant was sentenced to 20 years’ rigorous imprisonment on each count. In addition, a fine of Rs. 20,000/- was imposed in respect of each count, with a default sentence of six months’ imprisonment.
4. Being aggrieved by the said conviction and sentence, the Appellant has preferred the present appeal. At the hearing, Learned Counsel for the Appellant informed the

Court that the appeal would be confined to the question of sentence, and accordingly, made submissions only in respect of the sentence.

5. In determining whether the sentence imposed by the Learned Trial Judge is excessive, it is necessary to consider both the aggravating and mitigating circumstances of the case. The offences for which the Appellant was convicted are undoubtedly grave in nature, particularly as they involve a child under the age of 16 years. The law treats such offences with the utmost seriousness, recognizing the physical and psychological harm caused to the prosecutrix. The fact that the Appellant was convicted on three separate counts further aggravates the gravity of the offence.
6. At the same time, it is incumbent upon the Court to consider whether the sentence imposed is proportionate to the culpability of the offender and the circumstances surrounding the commission of the offence. Relevant mitigating factors may include the age of the Appellant, the absence of previous convictions, the period already spent in custody, and any other personal circumstances that may warrant leniency. It is also necessary to consider whether the sentences imposed on each count ought to run concurrently or consecutively, so as to avoid a punishment that is crushing or disproportionate.
7. While the imposition of 20 years' rigorous imprisonment on each count reflects the seriousness with which the Learned Trial Judge viewed the offences, the Appellate Court must ensure that the overall sentence is just, fair, and commensurate with the totality of the circumstances. The principle of proportionality requires that the punishment must fit both the crime and the offender.
8. Accordingly, this Court must examine whether, in light of all the circumstances, the sentence imposed is manifestly excessive or whether it falls within the permissible limits of judicial discretion.
9. Since the Appellant contests only the sentence, it is necessary to briefly set out the circumstances under which the offences were committed. During the period relevant

to the alleged offence, the Appellant was residing at the residence of the prosecutrix. The prosecutrix's mother had been suffering from certain ailments for several years, and the family suspected that these were attributable to some form of evil influence.

10. The Appellant, who is an exorcist, was introduced to the prosecutrix's family by a cousin of the prosecutrix. Thereafter, the Appellant performed exorcism rituals over a period of three days while residing at the prosecutrix's house. Subsequently, the prosecutrix developed a friendly relationship with the Appellant and, on one occasion, visited the Appellant's residence in Kandy with her parents to attend the funeral of the Appellant's brother.
11. After performing certain exorcism rituals, the prosecutrix's mother recovered. Upon learning of this, villagers began visiting the Appellant to obtain similar rituals for their own problems. Consequently, the Appellant resided at the prosecutrix's house for a period of one year, occupying the front room.
12. At that time, the prosecutrix was 15 years old and attending school. According to her evidence, the Appellant initially proposed that she commence an affair with him, which she refused. Thereafter, the Appellant threatened her, stating that he would undo the treatment he had performed on her mother and worsen her condition. This incident occurred approximately two months after the Appellant began residing at the house.
13. The Appellant eventually initiated an affair with the prosecutrix and subsequently convinced her to have sexual intercourse. This was achieved by threatening to harm her family members if she did not comply. The Complainant admitted that sexual encounters occurred between them on several occasions.
14. Following the demise of the Appellant's brother, the Appellant did not return to the prosecutrix's house. Nevertheless, the prosecutrix continued to contact the Appellant using her mother's mobile phone. Thereafter, the Appellant suggested that the prosecutrix either accompany him abroad or marry him.

15. The prosecutrix did not initially disclose these incidents to any member of her family. She subsequently left her home in search of an older girl whom she had come to know through Facebook. The prosecutrix stayed at that girl's house for a couple of days and later, upon being advised, returned home and disclosed the entire matter to her mother. Thereafter, she made a complaint to the National Child Protection Authority.
16. It is to be noted that the Appellant was 28 years of age and unmarried during the period relevant to this incident. For whatever reason, the prosecutrix had an affair with the Appellant while he was residing at her home for a period of one year. There is no evidence to suggest that the Appellant ever used violence against the prosecutrix during his stay, including at the times he had sexual intercourse with the prosecutrix.
17. The evidence that emerged during the cross-examination of the prosecutrix confirms that she was in an intimate relationship with the Appellant. It is also apparent that the prosecutrix was evasive when certain letters she had written to the Appellant were produced and questioned during cross-examination. Although the prosecutrix maintained that she was frightened by the Appellant and had consented under threat, the evidence, when considered in its entirety, indicates that her consent was given not as a result of any threat but due to her voluntary involvement in an affair with the Appellant.
18. There can be no doubt that the Appellant is technically guilty of the offence described under section 364(2)(e) of the Penal Code. However, the attendant circumstances of this case, particularly the fact that the Appellant was unmarried at the time, had an affair with the prosecutrix, and the conduct of the prosecutrix within her family, when considered in their entirety, do not warrant the imposition of the maximum sentence prescribed by law. The prosecutrix's testimony indicates that her mother was somewhat suspicious of the relationship between the Appellant and the prosecutrix. On the occasion of the funeral of the Appellant's brother, the prosecutrix's family had attended the ceremony. It is also evident that the Appellant had invited the prosecutrix to marry him.

19. Although the prosecutrix stated that the Appellant did not return after the death of his brother, this account was contradicted by the prosecutrix's mother, who testified that the Appellant was still residing at their house when the prosecutrix left home.

*“ඉ: දුව ගෙදරින් යන කාලය වෙනකොට මේ අංශු ගෙදර සිටියද? උ: ඔව්.” (vide page 202 of the Appeal Brief)*

20. It is also significant to note that the Learned Trial Judge did not provide any reasons for imposing a sentence of 20 years' rigorous imprisonment on the Appellant. The Trial Judge merely stated that he had considered the aggravating and mitigating circumstances submitted by the prosecution and the defense before proceeding to sentence the Appellant.

21. If adequate reasons are given for imposing a more lenient or a more stringent sentence, this Court may not interfere with the judicial discretion exercised by the High Court. The approach to be adopted by a Trial Judge when sentencing an accused has been succinctly stated in the authorities cited below.

22. In *Attorney General vs. Mendis (1995) 1 SLR 138*, Gunasekara, J. held that,

*“Once an accused is found guilty and convicted on his own plea or after trial, the judge in deciding on sentence, should consider the point of view of the accused on the one hand and the interest of society on the other. The nature of the offence committed the machinations and manipulations resorted to by the accused to commit the offence, the effect of committing such a crime insofar as the institution or organization in respect of which it has been committed, is concerned, the persons who are affected by such crime the ingenuity with which it has been committed and the involvement of others in committing the crime are matters which the judge should consider.”*

23. As held in the case of *Alister Anthoney Pereira vs. State of Maharashtra [2012] AIR 3820 (SC)*,

*“Sentencing is an important task in the matters of crime. One of the prime objectives of criminal law is imposition of appropriate adequate just and proportionate sentence, commensurate with the nature and gravity of the crime and the manner in which the crime is done. There is no straight-jacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: Twin objectives of sentencing policy are deterrence and correction. What sentence would meet the ends of Justice depends on the fact and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offense and all other attendant circumstances. The principle of proportionality in sentencing is a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears mostly relevant influence in determination of sentencing the crime to a full stop the court has to take into consideration all aspects including social interest and consciousness of the society, for award of appropriate sentence.”*

24. In ***Illakotulena Gamaralalage Thilakerathna vs. Officer in Charge, Motor Traffic Division, Police Station, Kandy SC Appeal No. 173/2017***, decided on 22/10/2024, the Supreme Court observed that:

*“Consideration of aggravating or mitigatory circumstances generally, has relevance to the assessment of the seriousness of the offence. The appropriate effect on such consideration in sentence would depend on the circumstances of each case, in which the Court can take note of any factor it considers to aggravate or mitigate the imposed sentence. As such, the consideration of proportionality of the sentence to the gravity of the convicted offence, must be well reasoned.”*

25. In the present case, the Learned Trial Judge’s order in passing the sentence was insufficiently reasoned, despite the Appellant being imposed the maximum sentence prescribed by law.

26. Having regard to the totality of the circumstances, this Court is of the view that the sentence imposed by the Learned Trial Judge is excessive. While the gravity of the

offences cannot be understated, the imposition of 20 years' rigorous imprisonment on each count, without due consideration of the mitigating factors and the overall proportionality of the punishment, results in an unduly harsh sentence.

27. Accordingly, this Court deems it appropriate to interfere with the sentence. The sentence imposed on each count is hereby reduced to 10 years' rigorous imprisonment, and it is further directed that the sentences shall run concurrently, from the date of conviction, i.e., from 05.03.2024. The fines imposed by the Learned Trial Judge are affirmed. Subject to the above variation, the appeal against the sentence is allowed.

**Judge of the Court of Appeal**

**P. Kumararatnam, J**

I agree,

**Judge of the Court of Appeal**