

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/0069/2023

High Court of Trincomalee Case No:

HCT-1012-2020

Nelson Sudrikku Jayawikrama *alias* Lokka

Accused

AND NOW BETWEEN

Nelson Sudrikku Jayawikrama *alias* Lokka

Accused – Appellant

Vs

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

Complainant - Respondent

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

Counsel : Nasreen Nanhadh for the Accused – Appellant.
: Azard Navavi, A.S.G. for the state.

Argued on : 25.02.2026

Decided on : 14.05.2026

Pradeep Hettiarachchi, J

Judgment

1. The Accused-Appellant (hereinafter referred to as “the Appellant”) was indicted before the High Court of Trincomalee for the rape of Herath Bandage Chandralatha on 29.09.2015, an offence punishable under Section 364(1) of the Penal Code. Upon the indictment being read, the Appellant initially pleaded not guilty. The trial commenced before a High Court Judge sitting without a jury, and the prosecution called five witnesses, including the prosecutrix. At that stage, the Appellant withdrew his initial plea and pleaded guilty to the charge.
2. The Learned Trial Judge recorded the Appellant’s plea of guilt and convicted him accordingly. The Appellant was sentenced to seven years of rigorous imprisonment and a fine of Rs 25,000.00, with a three-month term of simple imprisonment in default of payment.
3. Additionally, as the prosecutrix and her husband were deceased, the Appellant was ordered to pay Rs 60,000.00 in compensation to the prosecutrix’s three children, carrying a six-month default sentence. Furthermore, the Appellant was ordered to pay Rs 5,000.00 to the Security Fund in terms of Section 28(1) of the Assistance to and Protection of Victims of Crime and Witnesses Act, with a one-month default sentence.

4. In the present appeal, Counsel for the Appellant contended that although the Learned Trial Judge imposed the minimum sentence, he failed to consider the existence of exceptional circumstances that might warrant a lesser or suspended sentence. Accordingly, the Appellant requests that a reduced or suspended sentence be imposed, in light of the mitigating factors submitted on his behalf. In support of the Appellant's argument, the following mitigating factors were urged.
 - a. The Appellant pleaded guilty and thus saved valuable judicial time;
 - b. The Appellant has no previous convictions, and is not a habitual offender;
 - c. The Appellant is 32 years of age, married, has two children, and also takes care of his mother;
 - d. No evidence of violence and hence no aggravating factors present; and
 - e. The Appellant is a relatively young individual and can be reformed and rehabilitated.

5. The offence committed by the Appellant is punishable under Section 364(1) of the Penal Code.

Section 364(1) reads:

(1) Whoever commits rape shall, except, in the cases provided for in subsections (2) and (3), be punished with rigorous Imprisonment for a term not less than seven 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 each persons.

6. The relevant statutory provision prescribes a minimum mandatory sentence of seven years' rigorous imprisonment. In the present case, the Learned Trial Judge imposed the minimum sentence of seven years' rigorous imprisonment on the Appellant, being the statutory minimum.

7. It is true that the Appellant pleaded guilty, but only after the conclusion of five prosecution witnesses, and not at the very inception of the trial. It may be inferred that, having considered the strength of the evidence led by the prosecution witnesses, the

Appellant ultimately decided to plead guilty. However, it would be incorrect to suggest that the plea of guilty was entered solely with the intention of saving judicial time.

8. The Appellant has no previous convictions; however, that fact cannot be considered in isolation. In other words, being a first-time offender does not, in itself, warrant leniency, as it must be assessed in light of the nature and gravity of the offence, the manner in which it was committed, and the attendant circumstances. In these circumstances, while due consideration has been given to the fact that the Appellant is a first-time offender, the seriousness of the offence, the vulnerability of the prosecutrix, and the breach of trust involved far outweigh any mitigating factors.
9. Furthermore, the legislature, in its wisdom, has enacted stringent laws and prescribed severe punishments in order to deter future offenders and to convey a clear message to society that offences of this nature will not be tolerated or treated lightly, as they infringe not only the rights of individuals but also their dignity. A prosecutrix of such an offence suffers not only physical harm but also profound psychological trauma, which, in many instances, may endure for the remainder of the prosecutrix's life.
10. It is also evident that the Appellant was known to the prosecutrix's family, and it was the prosecutrix's husband who requested that she travel in the Appellant's three-wheeler due to the prevailing dark and rainy conditions. The Appellant took undue advantage of the trust reposed in him by the prosecutrix and her husband.
11. The fact that the Appellant is married, has two children, and is responsible for the care of his mother are circumstances common to many Accused persons and, in themselves, do not constitute exceptional grounds warranting leniency. Accordingly, these factors do not carry any significant mitigating weight.
12. Numerous authorities have addressed the gravity of rape, highlighting its profound physical and psychological impact on victims. These precedents underscore the importance of deterrence and the clear message that must be conveyed to society.
13. In *State of Madhya Pradesh vs. Bala @ Balaram on 3 October, 2005 Appeal (crl.) 1277 of 2005*, The Indian Supreme Court, while stressing the court's duty to society and to the prosecutrix, has emphasized that the intention of the legislature must be

honored; any departure from that intent should occur only in exceptional and compelling circumstances. In this regard, the Supreme Court has stated:

“It is true that reformation as a theory of punishment is in fashion but under the guise of applying such theory, courts cannot forget their duty to society and to the victim. The Court has to consider the plight of the victim in a case involving rape and the social stigma that may follow the victim to the grave and which in most cases, practically ruins all prospects of a normal life for the victim. Could a Court afford to forget these aspects while imposing a punishment on the aggressor? I think not. The Court has to do justice to the society and to the victim on the one hand and to the offender on the other. The proper balance must be taken to have been struck by the legislature. Hence, the legislative wisdom reflected by the statute has to be respected by the Court and the permitted departure therefrom made only for compelling and convincing reasons.”

14. Similar sentiments expressed in ***S vs. Chapman [1997] ZASCA 45; 1997 (3) SA 341 (SCA) 345D-E***, where Mahomed CJ held that:

“The courts are under a duty to send a clear message to the accused in rape cases, to other potential rapists and to the community that the courts are determined to protect the equality, dignity and freedom of all women, and they will show no mercy to those who seek to invade those rights.”

15. I shall now consider whether, in the circumstances of the present appeal, the sentence imposed by the Learned High Court Judge is manifestly excessive and thereby justifies the suspension of the said sentence.

16. In assessing whether the sentence imposed by the Learned High Court Judge is excessive, regard must be had to established principles governing sentencing. The imposition of a sentence is not confined to punishment alone; rather, it requires a judicious balancing of the seriousness of the offence, the manner in which it was committed, and the personal circumstances of the offender. The sentence must bear a reasonable relationship to the degree of culpability attributable to the Accused, where appropriate, to the objectives of deterrence and rehabilitation.

17. In the instant case, the gravity and character of the offence cannot be understated. The offence involved a grave violation of bodily integrity and trust. Offences of this nature call for the imposition of a deterrent sentence.
18. Nevertheless, it remains incumbent upon the Court to give due consideration to any mitigating factors. Further, the Court must also examine whether the Learned Trial Judge has adequately taken into account both the aggravating and mitigating circumstances and has furnished reasons in support of the sentence imposed.
19. Accordingly, the propriety of the sentence must be determined having regard to the seriousness of the offence, the attendant circumstances, and the governing principles of proportionality and fairness, in order to ascertain whether the suspension of the sentence is warranted.
20. In ***Archbold: Sentencing Guidelines (2019), Thomson Reuters, on page 274***, under the heading of applicability of guidelines on sexual offences, it is stated that;
- “Starting points define the position within a category range from which to start calculating the provisional sentence.*
- Once the starting point is established, the court should consider further aggravating and mitigating factors and previous convictions so as to adjust the sentence within the range. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial.”*
21. The following authorities underscore the necessity of imposing a sentence commensurate with the gravity of the offence and lay down guiding principles to assist the court in arriving at an appropriate and just sentence.
22. In ***Karunaratne vs. The State 78 NLR 413***, the court held that
- “Here, one would take into consideration all the aggravating factors as well as the mitigating circumstances, such as age, good character, etc.”*
23. In the case of ***Alister Anthony Pereira vs. State of Maharashtra [2012] AIR 3820 (SC)***, held that;

“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 duo 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. ***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 sentencing a convicted individual, the court must balance mitigating and aggravating factors, the legislature's intent, and the need for justice for the prosecutrix. Furthermore, it must consider the broader message sent to society as well as the specific plight of the Accused.
26. In this context, it is also pertinent to bear in mind that prescribed sentences ought not to be departed from lightly or for flimsy reasons. The Court must guard against being

influenced by speculative hypotheses favourable to the offender, undue sympathy, or reluctance to impose custodial sentences on first-time offenders. If such considerations are allowed to prevail, the very purpose of the legislative framework would be defeated.

27. In the present case, the Learned High Court Judge has duly considered all these factors and has assessed the circumstances of the case in the proper perspective before imposing the sentence. The sentence so imposed reflects a logical and reasoned exercise of statutory requirement, which, in my view, is not open to criticism. The Learned High Court Judge has duly considered the submissions made by both the prosecution and the defence prior to sentencing the Appellant, and has correctly observed that the Appellant failed to establish any exceptional circumstances warranting the imposition of a suspended sentence in lieu of the minimum mandatory sentence as prescribed by the law.

28. Accordingly, having regard to the totality of the circumstances, I am not persuaded that the sentence imposed by the Learned High Court Judge is either excessive or disproportionate so as to warrant interference by this Court, including by way of suspending the sentence so imposed. The sentence imposed is therefore affirmed. The appeal stands dismissed.

29. The sentence imposed on the Appellant will take effect from the date of conviction, i.e., from 10.03.2023.

Judge of the Court of Appeal

P. Kumararatnam, J

I agree,

Judge of the Court of Appeal.