

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

In the matter of an Appeal filed in terms of
Section 133 of the Code of Criminal Procedure,
Code Act No.15 of 1979.

CA Case No: CA-HCC/ 238/23

HC of Hambantota Case No: HC-38/2017

The Democratic Socialist Republic of Sri
Lanka.

Complainant

Vs

Olokkuwa Patabandige Wijesiri

Accused

And Now in Between

Olokkuwa Patabandige Wijesiri

Accused -Appellant

Vs

The Attorney General
Attorney General's Department
Colombo 12.

Complainant- Respondent

Before: P. Kumararatnam, J
B. Sasi Mahendran, J.

Counsel : Anil Silva, PC, with Anjana Abeyratne for the Accused- Appellant
Dileepa Peeris, PC, ASG for the Respondent

Written 25.04.2024 (by the Accused-Appellant)

Submissions: 27.02.2025 (by the Respondent)

On

Argued On: 09.03.2026

Judgment On: 30.04.2026

JUDGEMENT

B. Sasi Mahendran, J.

The Accused-Appellant (hereinafter referred to as 'the Appellant'), the brother-in-law of the victim, was indicted before the High Court of Hambantota on the charge of statutory rape committed on Suduweli Kandage Nadika Lakmali, punishable under Section 364 (2)(e) of the Penal Code as amended by Act No. 22 of 1995.

At the trial, the prosecution led evidence from 6 witnesses, and in defence, the Appellant gave a dock statement.

Upon the conclusion of the trial, the Learned High Court Judge, by judgment dated 19.09.2023, found the Appellant guilty and imposed a sentence of 14 years of rigorous imprisonment and a fine of Rs. 10 000/- and one year of rigorous imprisonment in default.

Further, compensation of Rs. 150,000/- was ordered to be paid to the victim; in default, a term of 2 years of rigorous imprisonment was imposed.

When the matter came before us on 27.03.2025, the Learned Counsel for the Appellant moved to withdraw the Appeal against the conviction and canvass only the sentence, on the basis that the Learned High Court Judge had failed to consider the mitigatory factors when imposing the sentence. Additional Solicitor General Deleepa Peiries, PC, in keeping with the highest tradition of the Attorney General, also agreed that the sentence could be varied.

I am mindful that 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 as mitigating factors.

1. The appellant is 59 years old, married, and has three children under the age of 18.
2. His occupation is farming.
3. The appellant has no previous criminal record.
4. Seventeen years have passed since the incident, and the appellant has consistently appeared before the court.

I am mindful of the case *Warnakulasooriya Mudiyansele Jayanth Warnasuriya v. Attorney General*, CA/HCC/169/2022, decided on 9th December 2024 by Kulathunga J.

“However, the fact that the appellant opted to abandon and withdraw the appeal against the conviction to some extent manifests at least a belated sense of remorse or an acknowledgment of his wrongdoing.”

It is seen that the Appellant was forty years old at the time he committed the offence in the charge. I also take into consideration that the Appellant does not have previous convictions or pending cases. Also, seventeen years have passed since the incident, and the appellant has consistently appeared before the court, and on the very first day of the argument, Appellant has acknowledged his wrongdoing by accepting the conviction.

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.

Therefore, I set aside the sentence of 14 years rigorous imprisonment imposed in respect of the offence stated in the charge and sentenced the appellant to a term of 10 years rigorous imprisonment in respect of such offence.

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

The substantive term of 10 years' rigorous imprisonment shall commence from the date of conviction, 19.09.2023.

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

Appeal partly allowed.

I make no order regarding costs.

The Registrar of this Court is directed to communicate this judgment to the High Court of Hambanthota for compliance.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL