

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

In the matter of an application for Revision
in terms of Article 138 of the Constitution
of the Democratic Socialist Republic of Sri
Lanka.

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

Court of Appeal
Case No. CA/CPA/129/2024
Case No. CA/CPA/130/2024

COMPLAINANT

High Court of Kalmunai
Case No. EP/HCK/480/2018

Vs.

Magistrate Court Akkaraipattu
Case No. B/8374/PC/2015

Abdul Hameed Muhammed Naleem
No.74 C, Kalyana Road,
Sainthamarudhu – 10.

ACCUSED

AND NOW BETWEEN

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

COMPLAINANT - PETITIONER

Vs.

Abdul Hameed Muhammed Naleem
No.74 C, Kalyana Road,
Sainthamarudhu – 10.

Before: **A. Ranaraja J.**

&

Dr. Sumudu Premachandra J.

Counsel: Maheshika Silva, DSG for the State, Complainant-Petitioner

Kalinga Indatissa, PC with Sampath Hewapathirana, Waseemul Akram, Rashmini Indatissa, Rozana Salih, Vaneesa Rodrigo instructed by Sajini Wickramasooriya for the Accused- Respondent.

Written Submissions: By the Complainant-Petitioner filed on 19/02/2026
By the Accused-Respondent filed on 10/09/2025.

Argument On: 08/09/2026

Order On : 16/10/2026.

Dr. Sumudu Premachandra J.

1] These Revision Applications were filed by the Complainant- Petitioner after being aggrieved to the sentences imposed by the learned High Court Judge of Kalmunai. When the matters were argued, the parties agreed that a single judgement can be given for both the applications since the questions of laws to be decided are the same.

2] In CPA 129/24, the Accused Respondent (Sometimes called as the Accused) are charged with the following counts;

- 1. Count 01:-** Between the period of 01/02/2015 to 30/11/2015 at Akkaraipattu which is within the Jurisdiction of Kalmunai High Court, the Accused inserted his male organ between the thighs of the Victim, who

was under the age of 16 years, and thereby committed the offence of grave sexual abuse punishable under Section 365 B (2) (b) of the Penal Code.

2. Count 02:- Between the above-mentioned period at the above-mentioned location, other than the incident mentioned in the 1st count, the Accused inserted his male organ between the thighs of the Victim, who was under the age of 16 years, thereby committing the offence of grave sexual abuse under Section 365 B (2) (b) of the Penal Code.

3] Amidst the trial, the Accused made an unequivocal plea of guilt to the charges, thus, the learned High Court Judge by Order dated 24/04/2024, imposed 1-year rigorous imprisonment, suspended for 15-years, in addition, a fine of Rs.15,000/- to be paid in default 6 months simple imprisonment. A compensation of Rs.500,000/- is also to be paid to the victim and in default, a 1-year simple imprisonment for each count to be undergone.

4] In CPA 130/24, the Accused is charged with;

3. Count 01:- Between the period of 01/02/2015 to 30/11/2015 at Akkaraipattu which is within the Jurisdiction of Kalmunai High Court, the Accused inserted his male organ between the thighs of the Victim, who was under the age of 16 years, and thereby committed the offence of grave sexual abuse punishable under Section 365 B (2) (b) of the Penal Code.

4. Count 02:- Between the above-mentioned period at the above-mentioned location, other than the incident mentioned in the 1st count, the Accused inserted his male organ between the thighs of the Victim, who was under the age of 16 years, thereby committing the offence of grave sexual abuse under Section 365 B (2) (b) of the Penal Code.

5. Count 03:- Between the above-mentioned period at the above-mentioned location, other than the incident mentioned in the 1st and 2nd counts, the Accused inserted his male organ between the thighs of the Victim, who was under the age of 16 years, thereby committing the offence of grave sexual abuse under Section 365 B (2) (b) of the Penal Code.

5] For this case, the learned High Court Judge by Order dated 24/04/2024, imposed 1-year rigorous imprisonment, suspended for 15-years, in addition, a fine of Rs.15,000/- to be paid in default 6 months simple imprisonment. A compensation of Rs.500,000/- is also to be paid to the victim and in default, a 1-year simple imprisonment for each count to be undergone.

6] On 24/04/2024, the High Court imposed a suspended sentence, and the Petitioner subsequently filed the Revision Application on 24/09/2024 seeking to set aside that sentence, impose a custodial sentence, and obtain a travel ban and costs. The State being aggrieved to the above sentence Order after 5 months files these two Revision Applications on the following grounds that these Orders be vacated; -

- a) The prescribed sentence for grave sexual abuse is rigorous imprisonment for a term not less than 7-years and not exceeding 20-years and with a fine and compensation and the learned Trial Judge has failed to impose the mandatory sentence prescribed by law.
- b) The learned Trial Judge failed to consider the judgements of Apex Courts regarding child abuse cases which was called for immediate custodial sentences.
- c) The sentence imposed by the learned Trial Judge is manifestly illegal and inadequate and contrary to the intention of the legislation.

- d) The learned High Court Judge misdirected the scope and applicability of the provisions of Section 303 of the Code of the Criminal Procedure Act No.15 of 1759 as amended.
- e) The learned Trial Judge erred in law that the Victim of the crime can decide whether the sentence imposed on the Accused should be custodial or non-custodial under Protection of Victims and Witnesses Act No. 10 of 23.
- f) The learned Trial Court Judge failed to consider the State have a duty under Article 27 (30) of the Constitution to promote with special care in the interest of the child and youth specially to protect them from exploitation and discrimination.
- g) The learned Trial Judge failed to consider when sentencing that the public interest is greater than the individual accused.
- h) The learned High Court Judge failed to consider the overall consequences of child abuse which may impact long term adverse effects on the Victim.
- i) The learned Trial Judge has failed to address his Judicial mind to the fact of the impact of imposing compensation instead of custodial sentence.
- j) The learned High Court Judge has erred in law in his analysis of Section 291 of the Code of Criminal Procedure Act as amended.

7] The Accused-Respondent raised preliminary objections to the maintainability of the application, principally on the ground that the Petitioner failed to exercise the statutory right of appeal within the 14-day period prescribed by Section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

8] The learned President's Counsel for the Accused-Respondents drew attention of the court that although the Petitioner attributed the delay to difficulties in obtaining proceedings, translations and administrative matters, the Journal Entries disclosed that the police applied for a copy of the Order only on 22/05/2024, after the appeal period had expired on 14/05/2024. The Respondent therefore relied on the maxim *Vigilantibus Non Dormientibus Jura Subveniunt* and contended that the Petitioner had failed to act diligently.

9] It was further argued that Revision under Article 138 of the Constitution is a discretionary and exceptional remedy requiring *uberrima fides* and the establishment of exceptional circumstances or a grave miscarriage of justice.

10] The Accused-Respondent also challenged the Revision Application is not valid in law for the non-compliance with Article 138 of the Constitution and Rule 3(1)(a) and Rule 3(1)(b) of the Supreme Court Rules. In particular, it was alleged that the Petitioner failed to submit certified copies of the relevant proceedings and judgement, translated copies of the Tamil proceedings, or a reservation to file such documents when obtained.

11] The supporting affidavit was also challenged because it had been sworn by the Officer-in-Charge of the Akkaraipattu Police Station, who allegedly lacked personal knowledge of the trial proceedings. Section 183A of the Civil Procedure Code was relied upon concerning the requirements for a valid affidavit.

12] Countering the objections, the Petitioner contended that Section 331 of the Code of Criminal Procedure Act did not require the complete case record or translated proceedings to accompany a Petition of Appeal and therefore did not prevent the Petitioner from filing an appeal within the prescribed period.

13] On the merits, the Accused-Respondent defended the High Court's exercise of sentencing discretion under Section 303 of the Code of Criminal Procedure Act. Reliance was placed on SC Reference No. 03/2008, concerning the constitutional implications of mandatory minimum sentences in relation to Articles 4(c), 11 and 12(1) of the Constitution, and on **Kumara v Attorney General** [2003] 1 SLR 139, which recognizes rehabilitation and social reintegration as relevant sentencing considerations.

14] In mitigation, the Accused-Respondent (the Respondent) relied on the evidence placed before the High Court as justification for the sentence imposed. The offences allegedly occurred in 2015, and the Respondent had no previous or pending criminal record and had continued to work as a teacher for approximately eight years without further offending. The Victims, who were minors at the time of the alleged offences but had subsequently become adults pursuing university or tertiary education, testified under oath that they did not wish the Respondent to be imprisoned and instead preferred financial compensation. One Victim specifically requested Rs. 10 lakhs to assist in establishing a business after completing his education.

15] The Respondent maintained that the High Court appropriately considered this evidence and recognized that imprisonment could prevent him from providing compensation to the Victims.

16] He further relied on alleged defects in the prosecution case, including non-compliance with Section 165 of the Code of Criminal Procedure Act concerning the dates and periods of the alleged offences, as well as other evidentiary and credibility issues. Despite these matters, the Respondent voluntarily pleaded guilty, asserting that his plea was intended to avoid further distress to the

Victims and save judicial resources. He subsequently complied with the sentence by paying the imposed fine and compensation. Accordingly, the Respondent maintained that the High Court had properly considered the aggravating and mitigating circumstances, the Victims' sworn evidence, statutory provisions and relevant sentencing principles, and that the Petitioner had failed to establish the exceptional circumstances or grave miscarriage of justice necessary to invoke Revisionary Jurisdiction under Article 138. The Respondent therefore sought dismissal of the Revision Application *in limine*.

17] The Respondent relied on the established principle that an appeal is a statutory right, whereas Revision is a discretionary and exceptional remedy. Thus, Revision should not ordinarily be invoked where an adequate statutory remedy/appeal was available, unless exceptional circumstances and a satisfactory explanation for the delay are demonstrated.

18] When I consider this fact, Section 15 of the Judicature Act No. 02 of 1978 (as amended) gives clear right of appeal to the Attorney General. It says;

“The Attorney-General may appeal to the Court of Appeal in the following cases:-

(a) from an order of acquittal by a High Court of the Republic of Sri Lanka or a High Court for the Province established by Article 154P of the Constitution-

- (i) on a question of law alone in a trial with or without a jury;*
- (ii) on a question of fact alone or on a question of mixed law and fact with leave of the Court of Appeal first had and obtained in a trial without a jury;*

(b) in all cases on the ground of inadequacy or illegality of the sentence imposed or illegality of any other order of the High Court of the Republic of Sri Lanka or the High Court for the Province established by Article 154P of the Constitution.”

19] Section 331(1) of the Criminal Procedure Act (As amended) enacts;

“331(1) An appeal under this Chapter may be lodged by presenting a petition of appeal or application for leave to appeal to the Registrar of the High Court within fourteen days from the date when the conviction, sentence or order sought to be appealed against was pronounced:

Provided that a person in prison may lodge an appeal by stating within the time aforesaid to the jailer of the prison in which he is for the time being confined his desire to appeal and the grounds therefor and it shall thereupon be the duty of such jailer to prepare a petition of appeal and lodge it with the High Court where the conviction, sentence or order sought to be appealed against was pronounced.”

20] Thus, it is seen that a right of appeal is given to the Attorney General. Now, the question is that if there is a clear right of appeal given by a statute, can a party file a Revision Application, in lieu of an appeal.

21] It was held in **Gunasekera v Chitra Silva and others** [2006] 3 SLR 188 that;

“Where an alternative remedy is available and if a party fails and or neglects to exercise such remedy due to the parties own conduct and or negligence court will not exercise the extraordinary powers of revision. However, when the party is able to show exceptional circumstances, Court will not hesitate to exercise such jurisdiction.”

22] Further, in **Siripala v. Lanerolle and another** [2012] 1 S.L.R. 105 His Lordship Sarath De Abrew J. held that Revision would lie if the aggrieved party has no other remedy, if there is, then Revision would be available if special circumstances could be shown to warrant it and the Party must come to court

with clean hands and should not have contributed to the current situation. He should also have complied with the law at that time and acts should have prejudiced his substantial rights and acts should have occasioned a failure of justice.

23] In **Rustom vs. Hapangama & Company** (1978-79) 2 SLR 225, the Court held that;

*“the powers by way of revision conferred on the Appellate Court are wide and **can be exercised whether an appeal has been taken against an order of the original Court or not.** However, **such powers would be exercised only in exceptional circumstances** where an appeal lay and as to what such exceptional circumstances are dependent on the facts of each case...*

This Court has the power to act in revision even though the appeal is available, in appropriate cases. The question which has now to be decided is whether the instant case is an appropriate case in which we should exercise our discretionary powers of revision. In his petition and affidavit, the petitioner has not set out the reasons for his seeking this method of rectification of the order rather than the ordinary method of appeal. Nor has he set out any exceptional circumstances as to why we should grant him the indulgence of exercising our revisionary powers when he could have appealed against the order with leave”. [Emphasis is added]

24] In **Dharmaratne and Another Vs. Palm Paradise Cabanas Ltd and Others** [2003] 3 SLR 24 at page 30, the Court held that;

“Thus, the existence of exceptional circumstances is the process by which the Court selects the cases in respect of which this extra-ordinary method of rectification should be adopted. If such a selection process is not there, revisionary jurisdiction of this Court will become a gateway for every litigant to make a second appeal in the grab of a revision application or to make an appeal in situations where the legislature has not given right of appeal. The

practice of Court to insist on the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has got hardened into a rule which should not be lightly disturbed. The words used by the legislature do not indicate that it ever intended to interfere with this 'rule of practice'."

25] In **Bank of Ceylon v. Kaleel & Others** [2004] 1 SLR 284 it was held that;

"To exercise the revisionary jurisdiction, the order challenged must have occasioned a failure of justice and be manifestly erroneous which is beyond an error or defect or irregularity that an ordinary person would instantly react to it... the order complained of is of such nature which would have shocked the conscience of the court."

26] In **Rasheed Ali v. Mohamed Ali** [1981] 2 SLR 29 it was held that;

"The powers of revision conferred on the Court of Appeal are very wide and the Court has discretion to exercise them whether an appeal lies or not or whether an appeal had been taken or not. However this discretionary remedy can be invoked only where there are exceptional circumstances warranting the intervention of the court ... "

27] In **Attorney General v Podisingho** 51 NLR 385 at 390 it clearly held what exceptional circumstances are;

"In my view such exceptional circumstances would be (a) where there has been a miscarriage of justice, (b) where a strong case for the interference of this Court has been made out by the petitioner, or (c) where the applicant was unaware of the orders made by the Court of trial."

It was further submitted that if the Order of the lower court is patently illegal, the courts have the power to treat the said illegality as an

‘exceptional circumstance’ and interfere with the judgment of the lower court by way of exercising revisionary jurisdiction.”

28] In ***Ranasinghe v Henry*** 1 NLR 303, held that an Order of a District Court, which is wrong *ex facie*, may be quashed by the court in the exercise of its Revisionary power.

29] In the case of ***Somawathi v. Madawala and others*** [1983] 2 Sri LR 15 at p.31. (S.C.) His Lordship Justice Soza observed that;

“The Court will not hesitate to use its revisionary powers to give relief where a miscarriage of justice has occurred. (...) a miscarriage of justice results as here, then this Court will not sit idly by. Indeed, the facts of this case cry aloud for the intervention of this Court to prevent what otherwise would be a miscarriage of justice.”

30] In the light of the above decided judgements, it is patent that availing merely a right of appeal is not bar to file a Revision Application where a miscarriage of justice has occurred, where a strong case for the interference of this Court has been made out by the Petitioner, or where the applicant was unaware of the Orders made by the Court of trial, that is failing to observe the *audi alteram partem* rule. In the instant matter, I am of the view that there is a clear miscarriage of justice as the learned Trial Judge has not considered the minimum mandatory sentence in its correct prospective. Thus, I suppress the preliminary objection of the Respondent that the Petitioner has not availed to the statutory right of appeal as there are exceptional circumstances that imposed suspended sentence instead of minimum mandatory sentence shock the conscience of this Court.

31] The other preliminary objection raised by the Learned President Counsel for the Respondent is that the Petitioner had failed to comply with the Court of

Appeal Rules, especially Rule 3. These Rules are made applicable to Court exercising Appellate and Revisionary Jurisdiction. Rule 3 reads thus:

“(a) Every Application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 or 141 of the Constitution shall be by way of petition, together with an affidavit in support of the averments therein, and shall be accompanied by the originals of documents material to such application (or duly certified copies thereof) in the form of exhibits. Where a petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of the Court to furnish such document later. Where a petitioner fails to comply with the provisions of this rule the Court may, ex mero moto or at the instance of any party, dismiss such application.

(b) Every application by way of revision or restitutio in integrum under Article 138 of the constitution shall be made in like manner together with copies of the relevant proceedings (including pleadings and documents produced), in the Court of First instance, tribunal or other institution to which such application relates.”

32] In relation to this objection, the Petitioner mentioned that they attached the necessary documents. It is seen P1 is the certified copy of the entire case record, P2 is the indictment, P3 is the sentencing submission of the State Counsel, P4 is the Mitigation submission of the Defence Counsel and P5 is the certified copy of the Sentencing Order. These records are in Tamil language which is a national language, thus, there is no necessity to provide translation at the time of filing. Thus, I am of the view that the Petitioner is not in breach of the Court of Appeal Rules.

33] The Respondent's next argument was that there was no valid affidavit before to support the Revision Application. It is to be stressed the facts of the Revision Application must be substantiated by a valid affidavit. In General, if there is no

valid affidavit in law, then, there is no proper application before the court, thus, application must be dismissed. The requirement to file an affidavit is mentioned in section 183A of the Civil Procedure Code. It enacts;

“183A. Where any person is required under the provisions of this Code, or under any other law for the time being in force, to make an affidavit, then-

(a) where the action is brought by or against the Attorney-General, any officer of the State; and

(b) where the action is brought by or against a corporation, board, public body, or company, any Secretary, director or other principal officer of such corporation, board, public body or' company; and

(c) where any party is to the action absent from Sri Lanka, his attorney duly authorized to bring, conduct or defend the action as the case may be; and

(d) where any party to the action, or where there is more than one party to the action such of the parties as are in Sri Lanka, or when such attorney of the parties as is just above mentioned, is or are unable, for want of personal knowledge or bodily or mental infirmity, to make the required affidavit, any recognized agent of such party, may make an affidavit in respect of these matters, instead of the party to the action:

*Provided that in each of the foregoing cases the person who makes the affidavit instead of the party to the action, **must be a person having personal knowledge of the facts of the cause of action, and must in his affidavit swear or affirm that he deposes from his own personal knowledge of the matter therein** contained and shall be liable to be examined as to the subject matter thereof at the discretion of the judge, as the party to the action would have been, if the affidavit had been made by such party.” [Emphasis is added]*

34] The Respondent stressed that there is no valid affidavit in accordance of the law as the deponent of the affidavit does not have personal knowledge of the

facts. The deponent is Wijethunga Mudiyanseelage Sriya Bandara Wijethunga Officer in Charge of Akkaraipattu Police. In the paragraph 2 of the affidavit, he states;

“I affirm to the following from my personal knowledge and with recourse to official documents, files and records available to me”

35] Thus, it is clear that the deponent before making the affirmation, has perused official documents, files and records available to him and has acquainted with the facts. He said *“I affirm to the following from my personal knowledge”*. (See: **Umma Anina v. Jawahar** [2004] 2 SLR 01) This is sufficient fulfilment of section 183 of the Civil Procedure Code, as amended. Moreover, section 3 of the Evidence Ordinance defines the “Fact” as;

“Fact' means and includes –

(a) anything, state of things, or relation of things capable of being perceived by the senses;

(b) any mental condition of which any person is conscious

Illustrations

(a) That there are certain objects arranged in a certain order in a certain place is a fact.

(b) That a man heard or saw something is a fact.

(c) That a man said certain words is a fact.

(d) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word, or is or was at a specified time conscious of a particular sensation, is a fact.

(e) That a man has a certain reputation is a fact.”

36] Thus, facts are where a witness is describing what she/he claims to have seen, heard, smelled, touched, tasted or mental condition what she/he thinks. There must be sensory connection to the fact in issue, that enables a Witness to

testify to what was happened behind the scene or something that occurred in a far-away location. That is called “personal knowledge”.

36A] In **Black's Law Dictionary**, (WEST® A Thomson Reuters business) Ninth Edition Page 951, defines personal knowledge as;

“Personal knowledge. (17c) Knowledge gained through first-hand observation or experience, as distinguished from a belief based on what someone else has said. Rule 602 of the Federal Rules of Evidence requires lay witnesses to have personal knowledge of the matters they testify about. An affidavit must also be based on personal knowledge, unless the affiant makes it clear that a statement relies on “information and belief.”

37] Thus, “Personal knowledge” refers to information that an individual has acquired directly through their own senses or experiences, rather than through secondhand reports, assumptions, or speculation. In legal settings, a Witness is generally only permitted to testify about facts or events of which they have personal knowledge. This means they must have seen, heard, felt, smelled, or otherwise directly perceived the information they are presenting.¹

38] In the case of ***MF Tel Sarl v Visa Europe Ltd*** [2023] EWHC 1336 Master Marsh held the importance of witness statements in stating the source of any information and belief. *“Witness statement that contains information provided by another person must provide the source of any matters of information and belief.”* This is important because *“the accuracy of this information may be challenged at the hearing of an application or at the trial.”*

39] In the case of ***Inder Pal Vs. Desh Pal Singh*** 2002(1) R.C.R.(Rent) 442, the contents of the affidavit show that the application has been verified as correct to the knowledge and belief. The person filing the affidavit has to verify the para to the personal knowledge or the information received.

¹ <https://definitions.lsd.law/personal-knowledge>. (Accessed on 09/10/2026).

40] In the case of **State of Bombay Vs. Purushottam Jog Naik** AIR 1952 SC 317 a Constitution Bench considering the importance of verification of an affidavit observed (at p.319 of AIR);

"We wish, however, to observe that the verification of the affidavits produced here is defective. The body of the affidavit discloses that certain matters were known to the Secretary who made the affidavit personally. The verification however states that everything was true to the best of his information and belief. We point this out as slipshod verification of this type might well in a given case lead to a rejection of the affidavit. Verification should invariably be modelled on the lines of Order XIX, Rule 3, of the Civil Procedure Code, whether the Code applies in terms or not. And when the matter deposed to is not based on personal knowledge the sources of information should be clearly disclosed."

41] In the case of **Smt. Savithramma Vs. Cicil Naronha & Anr.** AIR 1988 SC 1987² (para 2) the Indian Supreme Court considered the importance of verification of affidavit and rejection of affidavit in the absence of proper verification and held as;

".....Affidavit is a mode of placing evidence before the Court. A party may prove a fact or facts by means of affidavit before this Court but such affidavit should be in accordance with Order XI Rules 5 and 13 of the Supreme Court Rules. The purpose underlying Rules 5 and 13 of Order XI of the Supreme Court Rules is to enable the Court to find out as to whether it would be safe to act on such evidence and to enable the Court to know as to what facts are based in the affidavit on the basis of personal knowledge, information and belief as this is relevant for the purpose of appreciating the evidence placed before the Court, in the form of an affidavit. The importance of verification has to be judged by the purpose for which it is required. It is only on the basis of verification, it is possible to decide the genuineness and

² *Smt. Savithramma Vs. Cicil Naronha & Anr.* AIR 1988 SC 1987.

*authenticity of the allegations and the deponent can be held responsible for the allegations made in the affidavit. In this Court evidence in support of the statements contained in writ petition, special leave petitions, applications and other miscellaneous matters is accepted in the form of affidavit filed by the parties concerned. **It is therefore necessary that the party stating facts must disclose as to what facts are true to his personal knowledge, information or belief. If the statement of fact is based on information the source of information must be disclosed in the affidavit.** An affidavit which does not comply with the provisions of Order XT of the Supreme Court Rules has no probative value and it is liable to be rejected. In a matter where allegations of mala fides or disobedience of the Court's order are made against a person or party, it is all the more necessary that the person filing the affidavit in this regard must take care to verify the facts stated in the affidavit strictly in accordance with the Rules 5 and 13 of Order XI of the Supreme Court Rules.” [Emphasis is added]*

42] In the case in hand, the Deponent has stated how he acquired the information. He is an official Witness. These official records are belonged to Akkaraipattu police and was in his custody. The facts can be acquainted by reading those reports. He has disclosed his source of information. Thus, I am of the view that he has affirmed the facts in the affidavit with his personal knowledge. Thus, affidavit cannot be rendered invalid in law. It is my considered view that the Declarant of an affidavit should not only be a direct party to the incident or action, instead could be one who acquired the personal knowledge of the facts through his sensors. Only thing is that he should have mentioned in the affidavit how he acquired the knowledge. Thus, personal knowledge attracts broad interpretation. The personal knowledge is only related to question of facts, not to the question of law. A question of law need not be supported by an affidavit.

43] In **The Attorney-General V Chandrasena**, [1991] 1 SLR 85, His Lordship A. DE Z. GUNAWARDANA, J. held that the absence of an affidavit by Attorney-

General did not violate the provisions of Rule 46 of the Supreme Court Rules, as the Court was invited to decide only a question of law, and the relevant matters for that decision, have been admitted by the Accused-Respondent. It was held that, however, in a case where Attorney-General is inviting the Court to decide on a question of fact, he will be required to file affidavits through person who has personal knowledge of the relevant facts. Further the Court held that there is no requirement under Rule 46, that the copy of the proceedings, required to be filed along with a Revision Application, should be certified.

44] In this matter, the Petitioner, and the Attorney General challenges pure question of law, that is failing to impose the minimum mandatory custodial sentence by trial court which is a pure question of law. Thus, the application can be entertained without an affidavit. Thus, I am of the view that the said objections have no valid stance in law and must be suppressed.

45] Moving on to the next objection, the Respondent contended that the appeal period expired on 14/05/2024, yet the Revision Application was filed approximately five months later. The explanation based on delays in obtaining the case record, translations and administrative difficulties was disputed by reference to the High Court Journal Entries on page 82 of the Brief, which showed that although Respondent's Counsel had requested certified copies on 29/04/2024, the Officer-in-Charge of Akkaraipattu Police Station only applied for a copy on 22/05/2024. It should be said that the Respondent has only one or two cases, but for the Attorney General, he has a whole load of cases in Sri Lanka. Once the judgement is delivered, the learned State Counsel who handled the case must inform the outcome of the case to his superior officer and instruction of filing appeal or revision must come down to the ladder. These procedures generally consume time. In this matter, case brief is in Tamil and there are impediments to obtain copies. Thus, the Court cannot see that delay had been deliberate. The rule is law does not compel to do impossible things- *lex non cogit ad impossibilia*. (Vide: **Ananda Dharmadasa and others v**

Arivaratne Hewage and others, [2008] 2 Sri L.R 19³) This is not the only case Attorney General has. Thus, the reason for delay is acceptable.

46] In **Smt. Prabha V. Ram Prakash Kalra** reported in 1987 (Suppl.) SCC 338 the Supreme Court of India took the view that the Court should not adopt an injustice-oriented approach in rejecting the application for condonation of delay.

47] In **Ranasinghe and Others v L.B. Finance Ltd.** [2005] 2 SLR 393 at pgs. 401 to 402, It was held;

*“The next matter to be decided is whether the defendants are guilty of laches. The question whether delay is fatal to an application in revision depends on the facts and circumstances of the case. **If the impugned order is manifestly erroneous and is likely to cause great injustice, the Court should not reject the application on the ground of delay alone.**”* [Emphasis is added]

48] Thus, in considering above guidelines and reasons, I am of the view that 5 months’ delay in filing this application can be condoned since the impugned Sentencing Order can be manifestly an error in law and if allowed it would be a bad precedent to our criminal law.

49] I now consider the substantive question of law involved in this case. The grievance of the State is that the learned High Court Judge failed to impose the minimum mandatory sentence when sentencing the Accused Respondent. The Respondent maintained that the High Court had properly considered the

³ Her Ladyship Dr. Shirani Bandaranavake, J, (As she then was) enunciated as follows; “*Although the time limit specified under Article 126(2) of the Constitution is mandatory, in cases where there is no delay or fault on the part of the petitioner and on the application of the principle lex non cogit ad impossibilia, the Supreme Court has a discretion to entertain an application made out of time lex non cogit ad impossibilia - the law does not compel a man to do what is impossible*”.

aggravating and mitigating circumstances before imposing the suspended sentence, fines and compensation.

50] The Trial Court considered when sentencing that the Accused-Respondent, a teacher with approximately eight years' service and no previous or pending criminal record, pleaded guilty during the trial, partly to avoid further distress to the Victims and unnecessary expenditure of judicial resources. The High Court relied on SC Reference No. 03/2008 concerning judicial discretion and constitutional principles in sentencing, as well as **Kumara v. Attorney General** (2003 1 SLR 139), and considered the Victims' sworn evidence under the Protection of Victims of Crime and Witnesses Act No. 10 of 2023. Both Victims, by then adults pursuing higher education, expressed a preference for financial compensation rather than imprisonment, including a request by one Victim for Rs. 10 lakhs to support his future.

51] Applying Sections 303 and 291 of the Code of Criminal Procedure Act, the trial Court considered that the suspended sentence coupled with compensation, which the Respondent had fully paid would justify the suspension of custodial sentence.

52] The learned President's Counsel relied on the following decisions in considering the Judicial Discretion on sentencing. He said that the learned Trial Judge has rightly applied the sentencing principles. I now consider the legality of the sentence and the exercise of judicial discretion in relation to this case.

53] In **Kumara v. Attorney General** [2003] 1 SLR 139, this court reduced a murder charge to culpable homicide not amounting to murder and converted a prison sentence to a suspended sentence, establishing key principles on rehabilitation and sentencing mitigation. The Appellant, at the time of the

commission of the alleged incident, was a youth of 21 years, and has no previous convictions of this nature. In addition, he had shown remorse and pleads for clemency. His Lordship Eddusuriya J stated the prison sentence should be the last resort and held;

“A suspended sentence is a means of re-educating and rehabilitating the offender, rather than alienating or isolating the offender...”

no offender should be confined to, in a prison unless there is no alternative available for the protection of the community and to reform the individual”

54] In **Ambagala Mudiyansele Samantha Sampath vs Attorney General** [S.C. Appeal No. 17/2013], in applying the SC Reference 03/2008, the Court held;

"In the present case, we must look at the big picture with the victim of rape the Appellant, the father of the child born, and the 10-year-old girl child who was born into this world as a result of the victim having been raped. The victim of rape never complained to the Police until after a pregnancy of 5 months when Police on its own came to the victim in search of her when an outsider informed the Police of her missing from home. There was no chance for the victim to give evidence as the Appellant pleaded guilty to the charge of statutory rape of the victim. There is a bar for the victim and the Appellant to enter into a marriage as the Appellant is already legally married to the victim 's sister who is living abroad. The child is being looked after by the Appellant father in the eyes of the society, and the child is dependent on the income earned by the Appellant ...

I agree with the decision of the Supreme Court in S. C. Reference 03/2008 and uphold the conclusion of that case that the minimum mandatory sentence in Section 364(2) (e) is in conflict with Articles 4 (c), 11 and 12(1) i of the Constitution and that the High Court is not inhibited from imposing a sentence that it deems appropriate {n the exercise of its judicial discretion notwithstanding the minimum mandatory sentence ... "

55] In **Illayathmaby Naguleskaran v Attorney General** SC SPL/LA/176/2016 (SC Minutes dated 27/10/2016), the Supreme Court in applying the judicial discretion, reduced the fine of Rs.65,000/- imposed by the learned Magistrate to Rs.50,000/- and the Supreme Court by its Order dated 21/03/2017, further allowed for the Appellant to vary the word 'fine' to read as 'State costs', thereby treating the fifty thousand Rupee fine imposed on the Accused-Appellant by its previous Order as State costs. According to the Section 303 (3) (ii), the maximum state cost that can be imposed is only Rs.1500⁴. The provision remains as then it was enacted in 1979. Despite major revolutionary amendments to the Code of Criminal Procedure in the recent past, the legislature missed to enhance the amount of State Cost for a considerable sum to be imposed. However, by the above Order, Supreme Court has forgone the above provision in the light of principle of proportionality, if the sentence is detriment considering the offence, a lighter justified sentence is attracted. This salutary decision clearly indicates that the sentence should be proportionated to the crime committed.

56] Furthermore, in **Mohamed Mustapha Faisz v Attorney General** CA 86/2009 dated 15/11/2011, the Accused-Appellant was a Government teacher who has been convicted for Section 308 A (2) of the Penal Code for causing cruelty to children. Ampara High Court imposed a two and half years of rigorous imprisonment and a fine of Rs.1000/- and a default sentence of six months' imprisonment. Additionally, the Court also ordered the Accused-Appellant to pay a sum of Rs.10,000/- as compensation and to serve two years of imprisonment in the event of default. In that case, in applying the discretion of the Court, His Lordship Lecamwasam J reduced the term of imprisonment from two and half years to two years and suspend the term for a period of five years.

⁴ 306 (3) The court may, in addition to any order it may make under subsection (1) or subsection (2), order the offender to pay - (i) compensation under section 17 (4); and (ii) State costs in an amount not exceeding one thousand five hundred rupees as the court thinks fit.

Most importantly, he ordered the fine of Rs.1000/- to be treated as State costs, preventing the impact of imposing a fine to the Accused jeopardising his job.

57] Moreover, In **Mohamed Irupan Impar Vs. Attorney General** Sc Appeal No.204/2015, Decided on: 29/01/2020, His Lordship S. Thuraiaraja, PC. J, considered the impact of plea bargaining as;

“1. Nobody can dispute that "plea bargaining" is not permissible. However at the same time, it cannot be overlooked that raising of a "plea of guilty" at the appropriate stage as provided form in the statutory procedure for the accused and showing the special and adequate reasons for the discretionary exercise of powers by the trial Court in awarding sentences cannot be admixed or should not be treated the same.

*2. Every "plea of guilty" which is a part of the statutory process in a criminal trial, cannot be said to be a "plea bargaining" ipso facto. **It is a matter requiring evaluation of the factual profile of each accused in criminal trial before reaching a specific conclusion of it being only a "plea bargaining" and not a plea of guilty simpliciter.***

*3. **The triad of crime, offender and the interests of the society should be taken into consideration when delivering a judgment which should ensure it incorporates the purpose of a punishment namely deterrence and retribution among other purposes.***

*4. The Appellant **cannot expect the Learned Magistrate to violate the provisions of the law** to impose another suspended sentence when he is already serving a suspended sentence pending against him as this would be completely unacceptable.” [Emphasis is added]*

58] In the case of **Hirimuthugoda Sanjeewa, Shantha alias Ran Mama V. Attorney General** (C.A. 150/2010- decided on July 16, 2014), His Lordship Justice A. Gooneratne observed the scope of SC 03/2008 as follows;

"In S.C 03/2008 the Accused and] the complainant though under age had a love affair. and both parties had eloped and had sexual intercourse. Thereafter the respective parents intervened and brought the complainant back home. To arrive at a decision the Supreme Court considered numerous authorities and decisions inclusive of Article 4 (c), 11 & 12(1) of the Constitution. What is paramount is the nature of the offence/age and the judicial discretions that need to be exercised by a court of law, in the circumstances and the context of the case before court and I think the decision in S. C. 03/2008 cannot bind any other court where the offence is of a very serious nature as in that judgment (s. C. 03/2008) court emphasis the fact of the nature of the offence and judges' discretion. It could be used in an appropriate case to impose a sentence below the minimum mandatory sentence, but not in each and every case of grave sexual offence. I would, I refer to the following excerpts from the judgment in S. C. 03/2008 ...

However, there may well be exceptional cases in which an offence may be so serious in nature that irrespective of the circumstances a I Court may never exercise judicial discretion in favour of a punishment that is less than an appropriate minimum mandatory punishment. *The reasoning In Re: Prevention of Organized Crime Bill (supra) relates to such an exceptional case. The Supreme Court in Ref Prevention of Organized Crime Bill (supra) in fact contrasted the serious nature of the offences in Re: Prevention of Organized Crime Bill (supra) with far lesser serious offences in Re: Prohibition of Ragging and Other Forms of Violence in Educational Institutions Bill (supra). A minimum mandatory punishment of appropriate severity for such serious offences would not be inconsistent with Articles 4(c), 11 and 12(1)" [Emphasis is added]*

59] In the case of **Attorney General V. Mayagodage Sanath Dharmadiri Perera** [CA (PHC) APN 147/2012], it was stressed when to impose suspended sentence and held that, *"On the other hand this is not a fit. case to order*

suspended sentence. The nature and the gravity of the offence have to be considered before ordering a suspended sentence.”

60] In ***Attorney General v. Jinak Sri Uluwaduge and another*** [1995] 1 Sri L R 157, the court considered how to determine the proper sentence and held that;

"In determining the proper sentence, the Judge should 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... The Judge must consider the interests of the accused on the one hand and the interests of society on the other; also, necessarily the nature of the offence committed ..."

61] In the case in hand, the offence committed attracted a statutory mandatory minimum sentence. That is 7 years minimum and 20 years maximum. The provisions for suspended sentences are mentioned in Section 303 of the Code of Criminal Procedure, as amended. In that, there is a clear provision for Statutory Bar on Suspension of minimum Custodial Sentence. Section 303 (2) (a) of the Code of Criminal Procedure Act No. 15 of 1979 (as amended by Act No. 47 of 1999) explicitly states that a Court shall not make an Order suspending a sentence of imprisonment if a mandatory minimum sentence has been prescribed by law for that offense. Thus, the impugned sentencing order of the learned High Court Judge ex facie erred in law.

62] In the above backdrop, the theory of judicial discretion cannot be surrendered to the statute came in to the light. SC. Reference No: 03/2008 decided on 15/08/2008, His Lordship Justice P. A. Ratnayake held against the minimum mandatory sentence stating that:

“the minimum mandatory sentence in Section 364(2)(e) is in conflict with Article 4(c), 11, and 12(1) of the Constitution.”

“Article 80(3) (of the Constitution) only applies where the validity of an Act is called into question. However, Article 80(3) does not prevent a court from exercising its most traditional function of interpreting laws. Interpretation of laws will often require a court to determine the applicable law in the event of a conflict between two laws. This is a function that has been exercised by this court from time immemorial.”

“In the event of a conflict between an ordinary law and the Constitution, the constitutional provisions must prevail over an ordinary law.”

“The minimum mandatory sentence in Section 364(2)(e) of the Penal Code is in conflict with Article 4(e), 11 and 12 of the Constitution and 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.”[Emphasis is added]

63] Aftermath of the said decision, the Law Commission of Sri Lanka in its Proposals regarding punishment for statutory rape approved by the Law Commission on 19/06/2009 ⁵ recommended the following;

⁵(https://lawcom.gov.lk/images/stories/reports/punishment_for_rape_of_a_girl_under_16_years_of_age.pdf -accessed on 08/10/2026).

12. The Law Commission therefore recommends as follows -

- a) the State policy of incorporating provisions in statutes recognizing minimum sentences for identified serious crimes, is acceptable and should be retained. In fact the Law Commission observes that paragraph 3 of Article 13(6) of the Constitution suggests that incorporating minimum sentences in statutes is not unconstitutional.
- b) the minimum mandatory sentences for rape and other sexual offences as contained in the Penal Code at present should continue to be applicable ;
- c) Rape of a child under 16 years of age (statutory) is a serious crime for which there should be a minimum mandatory sentence of imprisonment which is in proportion to the gravity of the offence ;

- d) the legal principle that a girl under 16 years cannot consent to sexual intercourse must be recognized. The proviso to section 364(2) violates this principle. There should be no reference in the statute to *consent* of a victim (girl, under 16 years ;
- e) however, court should be vested with discretion to impose a sentence which is less than the minimum mandatory sentence for rape, in the following circumstances only, i.e. where -
 - (i) the offence is committed in respect of a girl under 16 years of age ; and
 - (ii) the offender is –
 - i. under 18 years of age and the evidence establishes that there are circumstances which justify the imposition of a lesser sentence ; or
 - ii. over 18 years of age but under 21 years of age and the evidence establishes that there are exceptional and compelling circumstances which justify the imposition of a lesser sentence.
- f) such a determination should be based on the evidence led which should establish that there are circumstances (as specified above) to impose a lesser sentence ;
- g) in all such instances where court in its discretion determines that a lesser sentence should be imposed, the court must record reasons for imposing such a lesser sentence.

64] Thus, it is clear that imposing mandatory minimum sentence can only be done away with when the Accused is underage or extreme youth. I do agree when exercising to bypass minimum mandatory sentence or crime naturally attracts custodial sentence, except Romeo Juliet cases like the above, no discretion should be vested upon sexual crime cases. It could be exercised on cases of murder, culpable homicide, offence under motor traffic Act or other appropriate instances, not on sex offences.

65] It is a trite law when sentencing deterrence must be considered. Deterrence has a twofold object. The first object relates to specific deterrence. It will deter the individual from committing the same or other offences in the future. The second object is as to general deterrence. It will convince or deter others that "crime does not pay" (See *Crime and Punishment* by Harry E. Allen & Ors. at 735).

66] In **Alistar Anthony Pereira vs. State of Maharashtra** [2012] AIR 3820 (SC), it was held;

*“Sentencing policy 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 commenced 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 is 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”. [Emphasis is added]

67] In **Bed Raj vs. State of Uttar Pradesh** [1954] AIR 778 (SC), 78, it was held that,

“a question of a sentence is a matter of discretion and it is well settled that when discretion has been properly exercised along accepted judicial lines, an appellate court should not interfere to the detriment of an accused person except for very strong reasons which must be disclosed in the face of the judgement.

In a matter of enhancement, there should not be interference when the sentence passed imposes substantial punishment. Interference is only called for when it is manifestly inadequate,”

68] In **Smt. Triveniben & Ors vs State of Gujarat & Ors**, 989 AIR 1335, 1989 SCR (1) 509, the court noted;

“The criminal law always keeps pace with the development of society. It reflects as Chief Justice Warren said: "the evolving standards of decency that mark the progress of a maturing society". (Trop. v. Dulles, 356 U.S. 86, 101 (1958). We have much to learn from history of every country. The punishment which meets the unanimous approval in one generation, may rank as the most reprehensible form of cruelty in the next.”

69] Again, in **Bachan Singh**, [1980] 2 SCC 684 at 721 His Lordship Sarkaria, J., recognises the importance of retribution and deterrence as:

"Retribution and deterrence are not two divergent ends of capital punishment. They are convergent goals which ultimately merge into one...

The punishments are provided in order to deter crimes. The punishments are imposed to make the threat credible. Threats and imposition of punishments are obviously necessary to deter crimes. As a venerated British Historian, Arthur Bryant writes "The sole justification for the death penalty is not to punish murderers but to prevent murder."

70] In considering the sentencing principles in our judge made law, in **Attorney General vs. Mendis** (1995) 1 SLR 138, His Lordship Gunasekara, J. had this to say;

“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”

71] In **Asan Mohammed Rizwan vs. Attorney General**, Court of Appeal Revision No. CA [PHC] APN 141/2013 decided on 25/03/2015, His Lordship Chitrasiri, J, has discussed a range of issues regarding sentencing, stating the following:

“Sentencing is an important aspect in the administration of criminal justice system. A sentence ranges from death penalty to the mere censure in the form of good behavior bond or probation.

There are multiple considerations relevant to the determination of a sentence. The most important consideration is the seriousness of the crime. Jurisprudentially, this position is persuasive despite pragmatic difficulties associated with matching the harshness of the sanction to the severity of the crime...”

“Therefore, it is necessary for the judges to keep in mind the objectives of sentencing and also the sentencing guidelines, in order to arrive at the correct and appropriate decision. Objectives of sentencing include the following:

- (i) To punish offenders to an extent and in a manner, which is just in all the circumstances;*
- (ii) To protect the community from offender;*

- (iii) To deter offenders or other persons from committing offences of the same or similar nature;*
- (iv) To establish conditions so that rehabilitation of offenders may be promoted or facilitated;*
- (v) To signify that the court and the community denounce the commission of such offences;*
- (vi) To maintain the required standards of societal expectations in making decisions;*
- (vii) To prevent overcrowding prisons also could be considered as one such objective particularly when it comes to developing countries such as ours.”*

I will now advert to the other aspects that are necessary to consider before a sentence is determined. Those can be categorized as follows:

- (a) The maximum and the minimum (if any) penalty prescribed for the offence;*
- (b) The nature and gravity/seriousness of the particular offence.*
- (c) The offender's culpability and degree of his/her responsibility for the offence;*
- (d) Mental state of the accused at the time the offence was committed;*
- (e) Evidence as to pre-arrangement for the commission of the offence;*
- (f) The impact of the offence on any victim and the injury, loss or damage caused as a result of the offence committed;*
- (g) Whether the offender pleaded guilty to the offence and if so, the stage in the proceedings at which the offender did so or the stage at which it was indicated;*
- (h) The conduct of the offender during the trial as an indication of remorse or the lack of remorse;*
- (i) Any action taken by the offender to make restitution of the injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider.*
- (j) The offender's previous character, good or bad;*
- (k) Imprisonment should be used when no other sentence is adequate;*
- (l) Proportionality between the crime and the sentence;*

- (m) Possibility of reforming the offender;
- (n) To ensure consistency in deciding sentences;
- o) Presence of any aggravating or mitigating factors concerning the offender or any other circumstance relevant to the commission of the offence.”

72] I now consider whether punishment of this case be enhanced or not. In **Attorney General v Hewa Walimunige Gunasena** CA/PHC/110/2012 (Decided on 12/02/2014) it was held by His Lordship Sunil Rajapakshe J that severe punishment must be dealt with in a child abuse case as;

*“After analyzing the submissions made by the Petitioner and the Accused Respondent, I am of the opinion that the facts relating to this case warrants that the accused should be severely dealt with. **Therefore, a sentence of two years rigorous imprisonment suspended for ten years on the accused for a grave child abuse is a very lenient sentence considering the beastliness of the crime.** When an offence of child abuse is proved victims of tender age and innocent behavior the sentence of imprisonment should be imposed severely.*

Further I hold two years R.I suspended for ten years is not adequate for the purpose of preventing the commission of further offences by the accused.

Cases of indecent touching, threats by an older man on a small girl seem to attract custodial sentence.”[Emphasis is added]

73] In **Dharma Sri Tissa Kumara Wijenaike v. The Attorney General** SC Appeal 179/2012 decided on 18/11/2013 Her Ladyship Justice Tilakawardena held that;

“In such cases, it would be incumbent upon the judge to set out, with clarity, all the reasons which are relevant and salient for not imposing the mandatory statutory minimum period of 7 years or in the case of a person under 18 years, a mandatory period of 10 years, and the court would have

the power to do so as only where the accused is under 16 years of age, as the court in its capacity of the upper guardian of each and every child has the inherent power to consider such matters and reduce the statutorily mandated minimum sentence.”

74] In **Hohourable Attorney General vs Mayagodage Sanath Dharmadiri Perera** , CA (PHC) APN 147/12, Decided on : 01/06/2016, His Lordship L.T.B. Dehideniya J. considered the sentence of a married man who abused an underage girl attracts custodial sentence and went on saying;

“In the instant case there is no violence practiced on the victim, but she is a person unable to give consent under the law. The victim is a girl under 16 years of age and the accused is a married person with two children. Therefore, even if there is no violence used on her, Court has to consider that the accused having a sexual relationship with this young girl repeatedly as a very serious crime which deserves a deterrent punishment, a long-term custodial sentence”

75] In this matter, the learned High Court Judge imposed a suspended sentence with a fine and compensation. In both cases, the Victims testified and needed money for their educational purposes and running a business, thus, the Appellant was given a suspended sentence without considering the minimum mandatory sentence.

76] It is my view that a convicted individual cannot simply pay compensation to evade a custodial sentence in a grave sexual abuse case. Criminal law treats serious crimes, especially sexual violences, as offenses against the State and Society, not just private disputes that can be settled financially. When a law dictates a minimum prison term, the judge has no legal authority to replace that imprisonment with a financial penalty, even if the Accused is willing to pay a massive sum. There are two ways of penalties. One is fine, it is paid directly to

the Government as a punishment. Other is Restitution as a compensation to the victim or affected party. Latter is ordered by the judge to be paid to the Victim or affected party to cover the physical injuries, pain and suffering , monetary expenses and mental trauma. It is to be observed that a compensation is ordered in addition to a prison sentence, never as a substitute for it. I must stress that paying compensation does not undo the criminal conviction or erase the requirement for imprisonment.

77] Moreover, allowing prison sentence to be converted to a compensation would be a detrimental effect to our criminal law justice system. It is against the public policy and one can interpret it as "Buying Freedom" by paying substantial amount of compensation. Allowing an Accused person to pay their way out of jail for a violent or predatory crime violates the core principle of equal justice. It would be a bad precedent as it will allow wealthy offenders to buy freedom without going to prison while low-income offenders face incarceration for the same crime. That is not equal justice.

78] On the other hand, criminal charge is a crime against the State and a Victim, at his own wish, a victim cannot trade or replace a custodial sentence with monetary compensation from the Accused. Criminal punishment and Victim compensation serve distinct legal roles. A custodial sentence is meant to punish the offender and protect society, whereas financial compensation is intended to repair or mitigate the loss, injury, or suffering caused to the Victim. Thus, the approach of the learned Trial Judge to forgo the minimum mandatory sentence cannot be permitted to stand.

79] As Law Commission recommends forgoing minimum mandatory sentence should be a case like Romeo and Juliet cases; young age couples who had consensual sex. The Respondent Petitioner is a teacher, is expected to educate and protect the Victims (Students) who were schooling at the time of the incident who placed utmost trust on the Accused Respondent. Instead of protecting them, the Accused Respondent has committed a sexual offence, grave sexual abuse on them for several times.

80] His Lordship Justice A. Gooneratne stressed in **Hirimuthugoda Sanjeewa, Shantha alias Ran Mama V. Attorney General**, C.A. 150/2010, decided on: 16/07/2014 as;

"The damage caused to the victim mentally and physically cannot be compensated by payment of money alone. It is the mental trauma that could shape or destroy or weaken the life of the victim in the subsequent year of victim's life ... "

81] Under SC Reference 03/2008, sentencing is a matter for judicial discretion. Though, SC Ref 03/2008, established that statutory minimum mandatory sentences cannot completely strip a Trial Judge of their inherent judicial discretion. However, this discretion must be exercised based on sound legal principles, not individual whims or fancies.

82] In **Dharmaratne v Dassanaik** [2006] 3 SLR 130 His Lordship Andrew Somawansa (P/CA) clearly indicated what is judicial discretion as;

"Discretion given to a judge must be exercised according to the rules of reason and justice, not according to private opinion, according to law and not humour, its exercise must be uninfluenced by irrelevant consideration must not be arbitrary, vague and fanciful but legal and regular, and it must be exercised within the limit to which an honest man competent to discharge his office ought to confine himself"

83] I specially note that the Learned State Counsel who was on the prosecution side in the High Court of Kalmunai, has enlightened the law and sought severe punishment, yet learned Trial Judge failed to consider it. The learned State Counsel concludes;

*"Therefore, I seek Your Honour's Court to consider the above facts, legal concepts, punishments, the reasons for expecting a punishment and principles to give acceptable compensation that will satisfy the victim, punishment for the accused who committed this nature of offence, a lesson for the persons who anticipate to commit this offence. **Your Honour grant***

a severe punishment that deems fit to Your Honour's Court as the upper guardian of and to safe guard the society from nature of offence.” [Emphasis is added]

84] In these circumstances, I hold that the suspended sentences imposed by the learned High Court Judge on the charges of grave sexual abuse are manifestly erroneous, against the legal norms and insufficient. This Court has the power to act in Revision if the impugned order is manifestly erroneous.

85] Therefore, suspended sentence is varied by substituting the 10-years rigorous imprisonment for each count which were imposed suspended sentences by the learned High Court Judge for both cases CPA 129/2024 for Counts 1 and 2 (EP/HCK/0480/2028) and CPA 130/2024 for Counts 1,2 and 3(EP/HCK/0482/2028) and other fines, compensations and default sentences are to be remained intact. All 10-years sentences are to be run concurrently from the date the learned High Court Judge of Kalmunai pronounce this judgement in open court.

Accordingly, the Revision application is allowed.

The Registrar is directed to send a copy of the judgement to the relevant High Court of Kalmunai to take steps to communicate and compliance the order forthwith.

JUDGE OF THE COURT OF APPEAL

AMAL RANARAJA J.

I agree

JUDGE OF THE COURT OF APPEAL