

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

In the matter of an appeal in terms  
Of Section 331 of the Code of  
Criminal Procedure Act No. 15 of  
1979 as Amended.

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

**Complainant-Appellant**

**C. A. No : 270/2013**

**H. C. Rathnapura No : 110/2013**

**V.**

Adigama Seelawansa Thissa Thero.

**Accused-Respondent**

**BEFORE** : **H. N. J. Perera, J. &  
K. K. Wickramasinghe, J**

**COUNSEL** : Anoop de Silva SSC for the Appellant.  
Tenny Fernando for the Accused-respondent.

**ARGUED ON** : 18<sup>th</sup> March 2015

**DECIDED ON** : 30<sup>th</sup> April 2015

**K. K. WICKRAMASINGHE, J.**

The accused-respondent is present in court, produced by the prison authorities.

This is a State Appeal by the Attorney General to enhance the sentence imposed on the accused-respondent.

The accused-respondent was indicted on three similar counts. That the accused on a date between the period of 1<sup>st</sup> September 2008 – 30<sup>th</sup> September 2008 committed the offence of Grave Sexual Abuse of a boy under 16 years of age by placing his male organ between the thighs of the victim Isuru for sexual gratification which is an offence punishable under sec. 365 B (2) (b) of the Penal Code as Amended by Acts Nos. 22 of 1995, 29 of 1998 and 16 of 2006.

The accused had pleaded guilty to all three counts and subsequently the Learned High Court Judge had convicted the accused-respondent for all three counts, after considering the submissions made by both parties. The Learned High Court Judge has imposed two years rigorous imprisonment with a fine of Rs. 100 and a default sentence of one week simple imprisonment on each count.

It was brought to the notice of court by the Senior State Counsel that, the following matters as born out in the Proceedings of that date were brought to the notice of court, so as to be considered when imposing sentence.

It was informed that with reference to all three counts;  
In terms of sec. 365 B (2) (b) of the Penal Code as Amended by Acts No. 22 of 1995, 29 of 1998 and 16 of 2006 a term of Rigorous Imprisonment not less than 07 years and not exceeding 20 years have to be imposed on the convict. Further a mandatory fine and compensation to the victim has to be ordered upon conviction.

- a) The victim was a boy of 09 years at the time in which the offences came to be committed.
- b) The accused was 31 years of age.
- c) The First Complaint was lodged by the father of the victim on the 24<sup>th</sup> of December 2008.

- d) The Accused was residing in the village temple (which bore the name: "Abhinavarama") during the period of the incident.
- e) The Accused had been summoning the victim and other children of the village to the village temple where he was residing.
- f) With the said summoning, the parents of the victim having obliged the said request of the Accused had allowed the victim to go to the village temple.
- g) It is during the said visits made by the victim to the village temple that the Accused had (on several occasions) committed the offence of Grave Sexual Abuse on the victim.
- h) The Accused by virtue of being a monk had authority over the villagers of the Kokkawita area.

Considering above facts it is evident that the accused was an authoritative figure over the villagers. Taking into consideration the fact that the offence of Grave Sexual Abuse had been committed by a person in authority and had committed on an immature youth of a tender age warrants imposing a severe punishment on the accused. At the time of sentencing the accused, he was serving a sentence of 48 years of imprisonment for having committed similar offences. The previous convictions are a clear indication that the accused is a habitual offender. There can be no matter that could be deemed to be fit enough to mitigate the grave and serious nature of the instant case and the dangerous criminal potential of the accused.

The Learned Trial Judge has taken into consideration of the fact that the accused serves the 48 years of imprisonment already imposed on him and the accused will not be alive to serve the terms of imprisonment in respect of the instant matter on appeal.

It is the position of the Appellant that this is a wrong principle of law not provided for in any statutory provision of law.

In *King Vs Rankira* 42 NLR 145 it was held: "The Court of Appeal will not interfere with the judicial discretion of a Judge in passing sentence unless that discretion has been exercised on a wrong principle".

In **King Vs E. M. T. De Saram 42 NLR 528** it was held that: *"The Court of Appeal will not interfere with the judicial discretion of a Judge in passing sentence unless that discretion had been exercised on a wrong principle"*.

In **AG Vs Mendis 95 (1) SLR 138** it was held: *"in assessing punishment, the Judge should consider the matter of sentence both from the point of view of the public and the offender. The Judge should first consider the gravity of the offence as it appears from the nature of the act itself and should have regard to the punishment provided in the Penal Code or other statute under which the offender is charged. He should also regard the effect of punishment, as a deterrent and consider in what extent it will be effective"*.

The Learned High Court Judge has disregarded the fact that public interest demands that at least the minimum mandatory sentence ought to be imposed on the accused. As in; **AG Vs H. N. de Silva 1 (1956) 57 NLR 121** at page 124 it was held: *"in assessing the punishment that should be passed on an offender, a Judge should consider the matter of sentence both from the point of view of the public and the offender. Judges are too often prone to look at the question only from the angle of the offender. A Judge should in determining the proper sentence, first consider the gravity of the offence as it appears from the nature of the act itself and should have regard to the punishment provided in the Penal Code or other statute under which the offender is charged. He should also have regard effect of the punishments as a deterrent and consider to what extent it will be effective."*

Considering above facts we set aside the sentence imposed by the Learned High Court Judge of the High Court of Rathnapura by way of his order dated 11.12.2013 and substitute same with a sentence of 7 years rigorous imprisonment on each count to run concurrently and also to pay compensation of Rs. 50,000 payable to the victim, in default sentence of 6 months rigorous imprisonment on each count. We affirm the fine and default sentence on each count imposed by the Learned High Court Judge.

Subject to the above variations of the sentence the Appeal is dismissed.

The learned High Court Judge is directed to issue a fresh committal indicating the sentence imposed by this court.

JUDGE OF THE COURT OF APPEAL

**H. N. J. PERERA, J.**

I agree.

JUDGE OF THE COURT OF APPEAL

**CASES REFERRED TO:**

- 1) *King Vs Rankira* 42 NLR 145
- 2) *King Vs E. M. T. De Saram* 42 NLR 518
- 3) *AG Vs H. N. de Silva 1 (1956)* 57 NLR 121
- 4) *AG Vs Mendis* 95 (1) SLR 138