

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

**In the matter of an appeal under  
and in terms of the Section 331 of  
the Code of Criminal Procedure  
Act No.15 of 1979 and in terms of  
Article 138 of the Constitution of  
the Democratic Socialist Republic  
of Sri Lanka**

The Attorney General of the Democratic  
Socialist Republic of Sri Lanka.

**Complainant**

**Court of Appeal  
Case No. CA/148/2014**

**Vs,**

1. Ramanathan Prashantha Kumar  
alias Annapaya.
2. Thankarasa Pakyaraja.
3. Sangarapillai Senthil Kumar.

**Accused**

**And Now Between**

1. Ramanathan Prashantha Kumar  
alias Annapaya.
2. Thankarasa Pakyaraja.
3. Sangarapillai Senthil Kumar.

**Accused-Appellant**

**High Court of Kalmunai  
Case No. HC 230/2012**

**Vs,**

The Attorney General of the Democratic  
Socialist Republic of Sri Lanka

**Respondent**

**Before : S. Devika de L. Tennekoon, J &  
S. Thurairaja PC, J**

**Counsel : Dr. Ranjith Fernando for the Accused-Appellant  
Dilan Ratnayake DSG for the Respondent**

**Argued on : 28<sup>th</sup> September 2017  
Judgment on : 04<sup>th</sup> October 2017**

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## Judgment

### **S. Thuraiaraja PC, J**

Accused appellants were originally indicted before the High Court of Kalmunai under section 354 and 364(2)(g) of the penal code. For abduction and gang rape committed on a child who is less than 16 years of age. After the trial the accused appellants were convicted and sentenced as follows:

- i. For the first count all three accused persons were sentenced to 5 years rigorous imprisonment and a fine of RS. 2000, in default 3 months rigorous imprisonment,
- ii. For the second count, the first accused appellant sentenced to 15 years rigorous imprisonment, fine of RS. 5,000/- in default 6-month rigorous imprisonment, RS 200,000/- compensation payable to the victim in default 2 years rigorous imprisonment,
- iii. For the third and fourth count, second and third accused appellants were sentenced to 7 years rigorous imprisonment, fine of RS. 5,000/- in default 6 months and RS. 25,000/- compensations payable to the victim in default 1-year rigorous imprisonment.

The accused appellants preferred an appeal against the said conviction and the sentence imposed on them by the High Court of Kalmunai.

When the appeal was taken up, the accused appellants submitted to courts through their counsel, that they will not be contesting the conviction but the sentence. Counsel for the appellants and the respondent made submissions.

As per the available material, it appears that the child victim was born on the 25<sup>th</sup> May 1993 and the incident had happened on the 11<sup>th</sup> of December 2005. At the time of the offence she was 12 ½ years old. All three accused appellants had dragged, virtually carried the victim to a house which is under construction and the 1<sup>st</sup> accused appellant had raped her, 2<sup>nd</sup> and 3<sup>rd</sup> appellant were there. There is no evidence that these two accused persons had sexual intercourse on the victim child.

The accused appellants are not contesting the conviction therefore the finding of guilty and conviction on the accused appellants by the learned high court judge will stand as it is. Perusing the proceedings and the judgment we find that the finding of the learned trial judge was justified and warranted by the evidence which was revealed in the trial. Therefore, we do not intend to interfere with the findings of the High Court judge.

In **Sanjewa and others V. The Attorney General 2004 BLR 65**, Shirani A. Bandaranayake, J who headed a five-bench decision stated that:

A first offender should receive some kind of mitigation of sentence in most offences but where the first offence is grave; there might be little reason to make a concession to human frailty.

Regarding the sentence imposed on the 1st accused appellant is very reasonable and warranted by the available facts before the courts. Therefore, we do not intend to interfere with the sentence imposed on the 1<sup>st</sup> accused appellant by the learned trial judge.

Regarding the 2<sup>nd</sup> and the 3<sup>rd</sup> accused appellant sentence appears to be illegal as per Section 364(2)(g) the minimum sentence to be imposed is 10 years. Both the 2<sup>nd</sup> and 3<sup>rd</sup> appellant had not challenged the conviction therefore it is mandatory for the court to impose a sentence stipulated by the law.

Acting under section 328 of the Code of Criminal Procedure Act and considering facts of this case we decided to impose a minimum sentence stipulated in Section 364(2)(g) of the Penal Code. Accordingly, the 2<sup>nd</sup> and 3<sup>rd</sup> accused appellant is imposed of 10 years rigorous imprisonment, fine of Rs. 5,000/- in default 6 months simple imprisonment and Rs. 25,000/- compensations payable to PW1 victim child in default 1-year simple imprisonment

For the purpose of clarity, the sentence is reproduced,

- **1<sup>st</sup> accused appellant**

1<sup>st</sup> count: 5 years rigorous imprisonment and a fine of Rs. 2,000/- in default 3 months simple imprisonment.

2<sup>nd</sup> count: 15 years rigorous imprisonment, fine of Rs. 5,000/- in default 6 months simple imprisonment and Rs. 200,000/- compensations payable to PW1 victim child in default 2 years simple imprisonment.

The sentence for the 1<sup>st</sup> and 2<sup>nd</sup> count will be implemented concurrently from the date of conviction namely 4<sup>th</sup> November 2014.

- **2<sup>nd</sup> and 3<sup>rd</sup> Accused appellant**

1<sup>st</sup> count: 5 years rigorous imprisonment and a fine of Rs. 2,000/- in default 3 months simple imprisonment.

3<sup>rd</sup> and 4<sup>th</sup> count: 10 years rigorous imprisonment, fine of Rs. 5,000/- in default 6 months simple imprisonment and Rs. 25,000/- compensations payable to PW1 victim child in default 1-year simple imprisonment respectively.

The sentence for the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> count will be implemented concurrently from the date of conviction namely 4<sup>th</sup> November 2014.

If the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> accused appellants fail to pay the fine and the compensation the default sentence will be implemented consecutively.

**Subject to alteration of the sentence the appeal is dismissed.**

**JUDGE OF THE COURT OF APPEAL**

**S. Devika de L. Tennekoon, J**  
I agree,

**JUDGE OF THE COURT OF APPEAL**