

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

In the matter of an Appeal under
Section 331 of the Code of Criminal
Procedure Act No. 15 of 1979 as amended.

Court of Appeal case No.
CA HCC 30/2016

Hewathanthrige Nuwan Janaka
NO.339, Wewalduwa Road
Hunupitiya
Wattala.

Accused-Appellant

High Court of Negombo
Case No. HC462/13

Vs.

Hon Attorney General
Attorney General's Department
Colombo 12

Complainant-Respondent

Before : **Devika Abeyratne,J**
P.Kumararatnam,J

Counsel : Nissanka Nanayakkara,PC with Sanjeewa
Senevirathne for the Appellant.

A. Navavi DSG for the Respondent.

Argued On : 08.07.2021

Decided On : 09.07.2021

Devika Abeyratne,J

Accused Appellant is not present physically before Court due to the Covid Pandemic.

However, the appellant is produced via Zoom platform from Prison. His Counsel has been given instructions to proceed with the appeal in his absence.

The appellant was indicted in the High Court of Negombo in case No. HC 462/13 under Section 357, 364(1) and 365b (2) (b) of the Penal Code for committing the offences, Abduction with intent of committing illicit intercourse, Rape and Grave Sexual Abuse respectively, to the victim *G.H Priyardarshani*.

After trial, the appellant was found guilty on all three charges and was sentenced to 7 years rigorous imprisonment and a fine of Rs 10,000/- with a default sentence of one year for the first charge, 20 years rigorous imprisonment with a fine of Rs 25000/= with a default sentence of 2 years and Rs 2.5 Million as Compensation with a default sentence of 2 years for the 2nd charge and 10 years rigorous imprisonment and a fine of Rs 10,000/= with a default sentence of 1 year and Rs 200000/= Compensation with a default sentence of 1 year for the 3rd charge. Further, all the sentences were ordered to run consecutively.

Aggrieved by the conviction, the sentence and the judgment the appellant has preferred this appeal to this Court.

At the hearing of the appeal , the Counsel for the appellant informed Court that the appellant was not challenging the conviction , but only limiting his submission to consider varying the sentence, mainly on the ground that the appellant was only 22 years of age when the incident occurred and that he has been imposed a 37 year custodial sentence. Further, that he has no previous convictions and that he has served approximately five years in prison up to now

Heard the submissions of both Counsel for their respective cases. The learned Counsel for the State conceded that as the sentences were to be implemented consecutively, the appellant has to serve a 37 year custodial sentence.

The Counsel for the Appellant submitted that the offences were committed when the appellant was only 22 years old and he had no previous convictions and that he was willing to pay an enhanced compensation.

After considering the submissions of both Counsels, this Court is of the view that a term of 15 years rigorous imprisonment would be in line, with regard to Count No.2 where, the maximum sentence of 20 years has been imposed.

Therefore, we order that the sentence of 20 years for the 2nd Count imposed by the learned High Court judge is varied to 15 years which is to be effective from the date of conviction, namely, 3.3.2016.

Further, with regard to the second count, the Compensation of Rs 2.5 million to be enhanced to Rs 3 Million with a default sentence of 2 years. The fine and the default sentence are to remain same.

The conviction and sentence with regard to count No 1 and 3 are to remain unchanged and affirmed.

We further make order that the sentences imposed for all 3 counts to run concurrently to be effective from the date of conviction namely 03.03.2016.

Subject to the above variation, the appeal is dismissed.

The Registrar is directed to communicate this order to the High Court of *Negombo*.

JUDGE OF THE COURT OF APPEAL

P.Kumararatnam,J

I Agree

JUDGE OF THE COURT OF APPEAL