

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

*In the matter of an Appeal in terms of  
section 331 (1) of the Code of Criminal  
Procedure Act No- 15 of 1979, read with  
Article 138 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.*

**Court of Appeal No:**

CA/HCC/0104/2020

Democratic Socialist Republic of Sri Lanka

**COMPLAINANT**

**Vs.**

**High Court of Kaluthara**

**Case No:** HC/508/2012

Chandana Pinnaduwege

**ACCUSED**

**AND NOW BETWEEN**

Chandana Pinnaduwege

**ACCUSED-APPELLANT**

**Vs.**

The Attorney General

Attorney General's Department

Colombo 12

**RESPONDENT**

Before : Sampath B Abayakoon, J.  
: P. Kumararatnam, J.  
Counsel : Nayantha Wijesundara for Accused Appellant  
: Sudharshana De Silva, DSG, for the Respondent  
Argued on : 10-03-2022  
Decided on : 07-04-2022

**Sampath B Abayakoon, J.**

This is an appeal by the accused-appellant (hereinafter referred as the appellant) on being aggrieved by the conviction and the sentence of him by the learned High Court Judge of Kalutara.

The appellant was indicted before the High Court of Kalutara on three counts of rape of a minor between the period of 01-09-2008 and 31-12-2008, thereby committing the offence of rape as described in Section 364 (2) (e) of the Penal Code, an offence punishable in terms of Section 364 (2) of the Penal Code as amended by amendment Act number 22 of 1995.

After trial, the appellant was found guilty as charged and the learned High Court Judge, after hearing both parties as to the sentence has imposed a period of 18-year rigorous imprisonment on each of the three counts and a compensation of Rs. 250,000/- to be paid to the victim. In default, an additional punishment two-year imprisonment has been imposed.

The 18 years rigorous imprisonment imposed on all three counts has been ordered to run concurrently. Although the appellant has filed this appeal challenging his conviction and the sentence, the appellant has written a letter to this Court through the prison authorities indicating his willingness to withdraw the appeal against the conviction and only to canvass the sentence imposed upon him.

When this matter was mentioned before this Court on 07-02-2022 the learned Counsel appearing for the appellant informed the Court that the appellant intends to withdraw his appeal and only seeking to canvass the sentence. Upon inquiry from the appellant via Zoom platform as he was not present physically before this court, he confirmed that it was his wish to withdraw the appeal against the conviction.

Accordingly, upon the withdrawal, the appeal against the conviction was dismissed and the accused was permitted to canvass the sentence imposed upon him.

When this matter was taken up for argument in that regard, the learned Counsel for the appellant urged that the learned High Court Judge in his sentencing order has failed to consider the fact that the appellant was a first-time offender. It was contended by the learned Counsel that the Court may consider that fact in imposing a lenient punishment to the appellant considering other relevant circumstances that led to his conviction.

It was the contention of the Learned Deputy Solicitor General (DSG) that although the sentencing is a matter solely within the discretion of the Court, given the facts and the circumstances of the matter under consideration, in his view, the punishment imposed upon the appellant was the appropriate punishment even if it touched upon the high end of the maximum punishment that can be imposed for an offence of this nature. The learned DSG cited several decided cases and urged the Court to consider whether the sentence was appropriate or not before coming to a conclusion as to the appropriateness of the sentence.

It appears from the evidence placed before the High Court that the victim was a 12-year-old girl who lived with her mother as her father has abandoned them. The appellant was a neighbour who lived close to the house of the victim with his wife and two young children. The wife of the appellant was in the habit of calling the victim to look after her younger child when she was away with her

elder child whom she used to take for a tuition class. According to the evidence given by the victim, she has been subjected to several acts of rape during the period mentioned in the indictment while the wife of the appellant was away from the house.

The victim has not divulged that she is being raped to anyone due to fear and it has only come to light when she was taken to a doctor as she was suffering from a rash in her genital area which has led to the complaint against the appellant and the subsequent prosecution.

It clearly appears in the sentencing order of the learned High Court Judge that he has well considered all the relevant factors that needs to be considered when sentencing an accused who was found guilty on several counts of rape, and has decided to impose the punishment as mentioned before.

What is an appropriate punishment for an offence of this nature has been well considered in several of our Superior Court judgements as well as appeals decided under English law.

In the case of **Attorney-General V. H.N de Silva 57 NLR 121, Basnayake A. C. J.** observed as follows;

*“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 regard the effect of the punishment as a deterrent and consider to what extent it will be effective. If the offender held a position of trust or belonged to a service which enjoys the public confidence that must be taken into account in assessing the punishment. The incidents of crimes of the nature of which the offender has been found to be guilty and the*

*difficulty of detection are also matters which should receive due consideration. The reformation of the criminal, though no doubt an important consideration is subordinate to the others I have mentioned. Where the public interest or the welfare of the state (which is synonymous) outweighs the previous good character, antecedents and age of the offender, public interest must prevail.”*

Shriskandaraja, J. in the case of **M. Gomes W. V. D Leelaratne 66 NLR 233** stated as follows:

*“A judge in determining the proper sentence should first consider the gravity of the offence as it appears from the nature of the act itself. Should have regard to the punishment provided in the Penal Code or the statute under which he is charged.”*

The following observation when it comes to a sentence that should be imposed for an offence of rape was made by the Lord Chief Justice in the Court of Appeal of England in the case of **Roberts (1982) Vol 74 CAR 242 at page 244:**

*“Rape is always a crime. Other than in wholly exceptional circumstances, it calls for an immediate custodial sentence. This was certainly so in the present case. A custodial sentence is necessary for a variety of reasons. First, of all to mark the gravity of the offence. Secondly, to emphasize public disapproval. Thirdly, to serve as a warning to others. Fourthly, to punish the offender, and last by no means least, to protect women. The length of the sentence will depend on all the circumstances.”*

In the case of **Keith Billam (1986) Vol 82 CAR 347** repeating the above observations and stating that in contested case of rape the appropriate sentence should be considered from a starting point subject to any aggravating or mitigating features. It was observed thus:

*“The crime in any event be treated as aggravated by any of the following factors:*

1. *Violence is used over and above the force necessary to commit the rape*
2. *A weapon is used to frighten or wound a victim*
3. *The rape is repeated*
4. *The rape has been carefully planned*
5. *The defendant has previous convictions for rape or other serious offences of a violent or sexual kind*
6. *The victim is subjected to further sexual indignities or perversions*
7. *The victim is either very old or very young*
8. *The effect upon the victim whether physical or mental is of special seriousness*

*Where any one or more of these aggravating features are present the sentence should be substantially higher than the figure suggested as the starting point.”*

The above authorities clearly indicate that after a trial in a case of this nature the court has to consider several factors before imposing an appropriate punishment on an accused. When it comes to the sentence under appeal, the victim has been a 12 year old school going child when she was first raped by the appellant. The mother of the victim has placed her trust on the appellant when she allowed her young daughter to be alone with the appellant and the younger child of him whenever the wife of the appellant asked her to be in her house to look after the child. The appellant has clearly misused the trust placed on him by repeatedly raping her and threatening her not to divulge that fact to anyone else.

As contended correctly by the learned DSG, I am of the view that although the sentence imposed was 18 years rigorous imprisonment out of the maximum 20-year imprisonment stipulated in the statute, it is an appropriate punishment given the facts and the circumstances.

It is clear that the learned High Court Judge by ordering that the punishment for all three counts shall run concurrently, and also by not imposing fines that

he could have imposed, has addressed his mind to the appropriateness of the sentence, for which this Court finds no reasons to interfere with.

Therefore, as this Court finds no merit in the appeal against the sentence imposed against the accused, the appeal against the sentence is dismissed.

However, considering the fact that the appellant has been in incarceration from the date of the sentence namely, 28-05-2020, the period of rigorous imprisonment is ordered to be effective from 28-05-2020.

The rest of the sentence, namely, the compensation ordered and the default sentence shall remain the same.

Appeal dismissed.

Judge of the Court of Appeal

**P Kumararatnam, J.**

I agree.

Judge of the Court of Appeal