

**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.

The Democratic Socialist Republic of Sri Lanka.

Complainant

CA - HCC 95-2020

Vs.

High Court of Tangalle
Case No: HC 51/2015

1) Jayaweera Patabendi Arachchige Jayantha

Accused

And Now Between

1) Jayaweera Patabendi Arachchige Jayantha

Accused-Appellant

Vs.

The Honourable Attorney General,
Attorney General's Department,
Colombo 12

Complainant-Respondent

BEFORE : N. Bandula Karunaratna, J.
: R. Gurusinghe, J.

COUNSEL : Neranjan Jayasinghe with
Isansi Danthanarayana
for the Accused-Appellant
Shanaka Wijesinghe, ASG
for the Respondent

ARGUED ON : 23/05/2022

DECIDED ON : 30/05/2022

R. Gurusinghe, J.

The accused-appellant was indicted in the High Court of Tangalle under two counts. However, the appellant was convicted for having committed grave sexual abuse on a girl under 16 years of age, an offence punishable under section 365(B)(2)(b) of the Penal Code, as amended by Act No. 22 of 1995, 29 of 1998 and 16 of 2006.

The appellant was sentenced to 15 years rigorous imprisonment with a fine of Rs. 10,000.00 and also ordered to pay Rs. 500,000.00 as compensation for the victim.

The counsel for the appellant makes an application to grant concession on the sentence on the basis that the sentence imposed by the learned Trial Judge is excessive. When this matter came up for the hearing, the counsel for the appellant informed the court that she was not challenging the conviction. He

invited the court to consider only a reduction of the 15 years jail term on the grounds he urged.

Section 365(B)(2)(b) reads as follows:

Commits grave sexual abuse on any person under eighteen years of age, shall be punished with rigorous imprisonment for a term not less than seven years and not exceeding twenty years and with fine and shall also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person;

The counsel for the appellant points out the following facts as grounds for the reduction of the sentence:

1. Counsel for the appellant informed the court prior to the commencement of the trial that the appellant was willing to plead guilty to the charge (Vide proceedings of 31/3/2016). He also offered to pay compensation for the victim. State Counsel who appeared for the Attorney General on that day wanted time to consider the application.
2. The appellant had the opportunity to rape the victim, which he did not commit and he brought back the victim alive to the house where she lived. Further he does not have any previous convictions.

The Learned Deputy Solicitor General concedes the above facts. However, she points out the impact of the incident on the victim's life and how her marriage life has become miserable after her husband came to know of this incident.

As the appellant was ready to plead guilty and pay compensation prior to the commencement of the trial, and as he did not have any previous convictions,

the appellant is deserved to have some reduction of the jail term. Considering the above mitigatory factors, I believe 10 years rigorous imprisonment would meet the ends of justice. The term of 15 years of rigorous imprisonment is reduced to 10 years rigorous imprisonment and to take effect from the date of the conviction namely, 11th of September, 2020. The fine and compensation awarded by the Learned High Court Judge will remain unchanged.

Subject to the above variation of sentence, the appeal stands dismissed.

The Registrar is directed to return the record to the High Court of Tangalle for the Court to inform the accused of the new sentence imposed, and to issue a new committal accordingly.

Appeal stands dismissed.

Judge of the Court of Appeal

N. Bandula Karunaratna, J.

I agree.

Judge of the Court of Appeal