

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

**CA HC 75/2009**

U.C. Mihira Alias Mahathun

**Defendant – Appellant**

**Vs.**

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

**Complainant- Respondent**

**C.A. No. 75/2009**

**H.C. Matara Case No. 37/2006(Criminal)**

**Before** : Vijith K. Malalgoda, P.C., J (P/CA) &  
H.C.J. Madawala, J.

**Counsel** : Razik Zarook, P.C. with Rohana Deshappriya and  
C. Liyanage for the accused-appellant.  
Chethiya Goonesekera, D.S.G., for A.G.

**Argued &**

**Decided on** : 30.04.2015.

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**Vijith K. Malalgoda, P.C., J (P/CA)**

Heard both Counsel on the appeal. At the outset Counsel for the petitioner submits that he will only be canvassing the sentence before us and not the conviction. In support of the above contention he submits that the accused was 17 years and the victim was 14 years when this incident had taken place. The charge in the indictment is one under Section 365 (B) (2) (b) of the Penal Code, an offence of grave sexual abuse. However the learned President's Counsel appearing for the accused-appellant submits the evidence at pages 62 and 63 and

submits that if at all an offence had been committed, the offence would be one of attempt to commit an act of grave sexual abuse or one under Section 345 of the Penal Code. However after trial the learned High Court Judge had convicted him for grave sexual abuse and imposed a sentence of 17 years rigorous imprisonment with a fine of Rs.100,000/= and in default sentence of one year rigorous imprisonment. We have carefully considered the evidence of this case of the view that the above sentence imposed by the learned High Court Judge is excessive. The learned Deputy Solicitor General who appears for the Attorney- General concedes the above position.

After considering submissions of both parties we decide to reduce the sentence imposed by the learned High Court Judge to a term of 8 years rigorous imprisonment. Rest of the sentence will remain unchanged. At this stage the Counsel for the appellant moves Court to make order to back date the sentence. We make order that the jail term imposed by this Court that is eight years rigorous imprisonment should start from the date of conviction that is from 13.03.2009. Subject to the above variation of sentence the appeal stands dismissed.

Registrar is directed to return the record to the High Court of Matara for the Court to inform the accused of the new sentence imposed and to issue a new committal accordingly. Appeal stands dismissed.

PRESIDENT OF THE COURT OF APPEAL

**H.C.J. Madawala, J.**

I agree.

JUDGE OF THE COURT OF APPEAL

**AKN**